
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-K

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 30, 2006

Commission File Number: 000-04829

Nabi Biopharmaceuticals

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

59-1212264
(I.R.S. Employer
Identification No.)

5800 Park of Commerce Boulevard N.W., Boca Raton, FL 33487
(Address of principal executive offices, including zip code)

(561) 989-5800
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$.10 per share

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer (as defined in Exchange Act Rule 12b-2).

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the Registrant is a shell company Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, as of the last business day of the Registrant's most recently completed second fiscal quarter was: \$343,338,357

As of March 7, 2007, 60,703,937 shares of the Registrant's common stock were outstanding.

Documents Incorporated by Reference

Portions of the Registrant's definitive Proxy Statement for its Annual Meeting of Shareholders, which will be filed within 120 days after the close of the Registrant's fiscal year ended December 30, 2006, are incorporated by reference into Part III.

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Nabi Biopharmaceuticals

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ITEM 1. BUSINESS

OVERVIEW

We leverage our experience and knowledge in powering the human immune system to develop and, in certain areas, market products that target serious medical conditions in the areas of transplantation, infectious disease, nicotine addiction, and hematology/oncology. We are a vertically integrated company with marketed products, a pipeline of products in various stages of development, state-of-the-art manufacturing capability and a cash position that will allow us to advance our near-term pipeline products. We have two products on the market today: Nabi-HB[®] [Hepatitis B Immune Globulin (Human)] and Aloprim[™] [Allopurinol sodium (for injection)]. In addition to our biopharmaceutical business, we collect specialty and non-specific antibodies for the strategic use as raw materials in the manufacture of our products and sell excess production to various customers.

Our business model is focused on advancing our technology platforms to develop antibody and vaccine products that we can commercialize ourselves or through partnership opportunities while maximizing net cash flow from our marketed products. Our products in clinical development include vaccines and antibody-based therapies: Civacir[™] [Hepatitis C Immune Globulin (Human)], a polyclonal antibody for preventing re-infection with hepatitis C virus in liver transplant patients, ATG-Fresenius S, an immunosuppressive polyclonal antibody for the prevention of solid organ rejection after transplant, various vaccines and antibody-based therapies that target healthcare-associated and community acquired *S. aureus* and *S. epidermidis* infections, and NicVAX[™] (Nicotine Conjugate Vaccine), a vaccine to treat nicotine addiction.

Our operating focus is directed toward generating cash returns from our operations and we use that cash to invest in the enhancement of key product development programs. These efforts are aligned with our multi-year strategic plan. In order to accomplish this goal we are pursuing three major objectives:

- Optimizing the value of current operations and reducing our cost structure;
- Building value through strategic partnerships and commercial alliances; and
- Proving value and mitigating risk in key research and development programs through “proof-of-concept” clinical studies.

We have retained Banc of America Securities LLC to assist with our exploration of the full range of strategic alternatives available to us to further enhance shareholder value. These alternatives may include, but are not limited to, licensing or development arrangements, joint ventures, strategic alliances, a recapitalization, and the sale or merger of all or part of the company. There can be no assurance that the exploration of strategic alternatives will result in any agreements or transactions.

In March 2006, we entered into an agreement with Fresenius Biotech GmbH, or Fresenius Biotech, to develop and market ATG-Fresenius S in North America. ATG-Fresenius S is an immunosuppressive polyclonal antibody product for the prevention and treatment of organ rejection following transplantation and, potentially, for graft-versus-host reaction following allogeneic stem cell transplantation. The product, which Fresenius currently markets in more than 60 countries worldwide, has been shown to significantly reduce transplant failure and substantially improve survival rates. Under the terms of the agreement, Fresenius Biotech granted us exclusive sales and distribution rights to ATG-Fresenius S in the U.S. and Canada for up to 15 years following the first commercial sale of the product after licensure in the U.S. Fresenius Biotech will manufacture and supply the product from its European facility in exchange for a royalty, and we are responsible for the clinical development, regulatory approval process, marketing and sales of ATG-Fresenius S in the U.S. and Canada. We also assumed oversight of an ongoing randomized, double-blind, placebo-controlled Phase III clinical study that is being conducted in lung transplant patients in the U.S. and Europe. ATG-Fresenius S is an important addition to our transplant franchise.

In June 2006, we entered into an agreement with Kedrion S.p.A., or Kedrion, to co-develop and commercialize Civacir. Under the terms of the agreement, we will pursue a common strategy with Kedrion to develop and commercialize Civacir in both the U.S. and European markets. This agreement validates our development efforts, and aligns us with an important commercial partner for Europe.

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In addition, we signed an agreement with Sanofi Pasteur, part of the Sanofi-Aventis Group, to fractionate human plasma used for the production of Imogam[®] Rabies-HT (Rabies Immune Globulin [Human] USP Heat Treated). The agreement affirms our core competency as a leading provider of source and specialty antibody plasma products.

In 2006 we signed an agreement with ProMetic Biotherapeutics, Inc., or ProMetic, of Montreal, Canada for the exclusive worldwide use of its technology for the purification of immunoglobulins for several hyperimmune products including Altastaph and Civacir. The ProMetic technology promises a higher yield of immunoglobulin from a liter of plasma, thereby reducing the cost of production and improving manufacturing efficiency.

We intend to work in consultation with an external scientific and clinical advisory panel on the design, execution and interpretation of the results from each development program; conduct Phase II “proof-of-concept” studies that will follow a design similar to planned future Phase III clinical trials; use clinical material manufactured in our plant on a scale capable of supporting commercial launch and analyze relevant pharmaco economic data that support the cost benefit of our treatment approach.

During 2006, we initiated two “proof-of-concept” clinical trials for our development programs. In May 2006, we initiated a Phase IIB clinical trial for NicVAX. This trial was fully enrolled in September 2006, three months ahead of schedule and paving the way for release of trial results in the second quarter of 2007. In December 2006, we initiated a Phase IIB clinical trial for Civacir in the U.S.

In 2006, we also advanced our Gram-positive program, part of our infectious disease franchise, which we believe has the potential to provide a multi-faceted solution to preventing and treating the most dangerous hospital acquired Gram-positive pathogens. In February 2006, we announced positive Phase I clinical safety results from our *S. epidermidis* PS-1 and *S. aureus* Type 336 vaccine trials and demonstrated that these antigens elicited the production of specific antibodies in a dose-dependant manner. Based on these results, our goal is to advance a multi-valent anti-*S.aureus* vaccine and corresponding antibody programs in collaboration with a partner.

We were incorporated in Delaware in 1969. We maintain our commercial and manufacturing operations in Boca Raton, Florida, a nationwide network of plasma centers, and our research and development operations in Rockville, Maryland.

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The following table shows our currently marketed and development products:

Products	Indication/Intended Use	Commercialization Plan	Manufacturer	Status
Transplants				
Nabi-HB [®]	Post-exposure prevention of hepatitis B infection	Nabi – U.S.; Partners – ROW	Nabi	Marketed in U.S.
Nabi-HB Intravenous [™] (HEBIG [™] in Europe)	Prevention of re-infection with hepatitis B in HBV positive liver transplant patients	Nabi – U.S.; Partners – ROW	Nabi	U.S. BLA filed in November 2002; MAA to be filed in Europe in 2007
Civacir [™]	Prevention of re-infection with hepatitis C in HCV positive liver transplant patients	Nabi – U.S.; Kedrion – Europe	Nabi	Orphan Drug Designation and Fast Track Status in the U.S.; Orphan Medicinal Product Designation in Europe; Phase II clinical trial ongoing
ATG Fresenius-S	Acute lung transplant rejection	Nabi – U.S.	Third party	Phase III clinical trial ongoing in the U.S.; Fast Track Status in the U.S.
IVIG and other Plasma fractions	Various immune deficiencies and coagulation disease	Nabi – U.S.	Nabi	Pre-clinical development
Infectious disease				
StaphVAX [®]	Protection against Types 5 and 8 <i>S. aureus</i> infections	Partner – world-wide	Nabi	Clinical development pending partnering/external funding
Altastaph [™]	Treatment and/or protection of Types 5 and 8 <i>S. aureus</i> infections	Partner – world-wide	Nabi	Clinical development pending partnering/external funding
<i>S. aureus</i> 336 and <i>S. epidermidis</i> Vaccine and corresponding antibodies	Protection against <i>S. epidermidis</i> and Type 336 infections	Partner – world-wide	Nabi	Clinical development pending partnering/external funding
Panton-Valentine Leukocidin (PVL)	Protection and/or treatment against the PVL toxin	Partner – world-wide	Nabi	Pre-clinical development
Alpha Toxin	Protection and/or treatment against the <i>S. aureus</i> alpha toxin	Partner – world-wide	Nabi	In preclinical development
Nicotine addiction				
NicVAX [™]	Treatment of nicotine addiction	Partner – world-wide	Nabi	Phase IIb clinical trial enrollment completed in September 2006; Data expected in Q2 2007; Phase III clinical trial planned for 2007 pending external funding
Hematology and oncology				
Aloprim [®]	Chemotherapy-induced hyperuricemia	Nabi – U.S.	Third party	Marketed in U.S.
Anti-D product	Immune thrombocytopenic purpura	Nabi – U.S.	Nabi	Pre-clinical development

PRODUCTS AND PRODUCTS IN DEVELOPMENT

TRANSPLANTS

The transplant market is an important area of focus for Nabi's commercialization efforts. According to the Organ Procurement and Transplantation Network, or OPTN, in the U.S., there were approximately 29,000 organ transplants during 2006 and approximately 28,000 organ transplants during all of 2005. Also according to the OPTN, during 2006, there were approximately 17,000 kidney, 6,500 liver, 2,210 heart and 1,400 lung transplants. In addition, there are approximately 94,000 patients waiting for organs to become available for transplant.

Our focus in the transplant market is on commercializing therapies that complement or suppresses the body's immune system to allow for a successful transplant. Transplantation continues to be challenged by a serious shortage of available organs. For all types of transplants there are far more people on waiting lists for transplantation than there are available organs.

Recent advances in transplant medicine as well as evaluation of historical data have led to changes in transplantation procedures and policies and helped increase the number of transplants that can be performed.

Demand for liver transplantation far outweighs available donor livers. Often patients are within hours of death before they qualify to receive a liver. In recent years, several new types of liver transplantation have been employed to help more eligible patients receive a liver transplants. These include:

- Split liver transplant – In this procedure, a cadaver liver is divided between two eligible recipients. Each patient receives a lobe of the liver that regenerates into a fully functional liver in both recipients.
- Living Donor transplant – In this procedure one lobe of the liver of a healthy donor is transplanted to a recipient. The donor's liver regenerates completely and the transplanted lobe that is received by the recipient regenerates into a fully functional liver.
- Core positive liver transplant – Traditionally, livers from healthy donors were rejected if the donor tested positive for the hepatitis B core antibody. All patients who are ever infected with hepatitis B virus in their lifetime will produce the core antibody to hepatitis B. Statistics show that over 90% of these patients made a full and complete recovery, yet they were considered ineligible to donate their organs due to the less than 10% chance that they were still infectious. Hepatitis B immune globulin and antivirals have been very instrumental in negating that risk even further so that those critically needed organs can be used.

Stem cell transplantation is another area that has benefited from recent advances. Better harvesting techniques of stem cells make it possible to isolate stem cells from peripheral blood as well as bone marrow. This makes the donation process easier and less painful thereby increasing the likelihood of more participants in the donor registry. Increased awareness of stem cells in cord blood have led to dramatic increases in cord blood donations to both public and private cord blood banks. This in turn has led to increased availability of stem cell sources for transplantation.

Nabi-HB [Hepatitis B Immune Globulin (Human)]

Nabi-HB is a human polyclonal antibody product indicated to prevent hepatitis B infection following accidental exposure to hepatitis B virus, or HBV. However, we believe the majority of our Nabi-HB sales are for use to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. In November 2002, we filed a Biologics License Application, or BLA, with the Federal

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Drug Administration, or FDA, for Nabi-HB Intravenous, to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. A Blood Product Advisory Committee, or BPAC, meeting was held at the request of the FDA in July 2006. The BPAC recommended that the FDA approve Nabi HB Intravenous with nine votes in favor and two votes against. Subsequent to the meeting, the FDA requested additional clarifying information, which was supplied in September 2006. This information is currently under review by the FDA and we expect a decision in 2007.

We filed our MAA in Europe for Nabi-HB™ Intravenous under the tradename HEBIG in June 2005 under the Mutual Recognition Process, or MRP. This means that approval in the initial country (Reference Member State, or RMS) will be the basis for submission to additional countries within the EU. The EU filing was prepared in the Common Technical Document, or CTD, format, which is widely accepted on a global basis facilitating our ability to file for marketing approval of Nabi-HB beyond the U.S. and the EU. We withdrew the application in the second quarter of 2006 at the recommendation of the RMS to reformulate the product to comply with EU requirements. We anticipate resubmitting the MAA during the third quarter of 2007.

Nabi-HB reflects the application of our clinical, regulatory, manufacturing and commercial expertise in antibody technology to the treatment of patients exposed to HBV and HBV-positive liver transplant patients. We collect the anti-HBV plasma raw material at our FDA approved antibody collection centers and we manufacture Nabi-HB in our state-of-the-art fractionation and purification facility in Florida.

Nabi-HB is a purified human polyclonal antibody product collected from plasma donors who have been previously vaccinated with a hepatitis B vaccine containing the hepatitis B surface antigen, which is known to provide protection against HBV. When administered, the anti-hepatitis B antibody contained in Nabi-HB binds to the Hepatitis B virus and triggers its clearance by the body's immune system.

HBV is a major global health concern. The Center for Disease Control, or CDC, estimated that, as of 2003, there were approximately 1.25 million chronic hepatitis B carriers in the U.S. In addition, the CDC estimated that there were approximately 73,000 new hepatitis B infections in 2003. Rates of HBV infection throughout the EU are reported as similar to those in the U.S. Chronic HBV infection is a frequent cause of end-stage liver disease, or ESLD, and according to the United Network for Organs Sharing, or UNOS, approximately 2.7% of 2005 liver transplants through November 2005 were due to underlying hepatitis B liver disease. Currently, during surgery and in the period immediately following transplant surgery, patients do not have any licensed treatment options to prevent re-infection of the transplanted liver. Re-infection of the transplanted liver is almost inevitable after surgery in HBV-positive patients without treatment with a hepatitis B immunoglobulin product such as Nabi-HB.

Nabi-HB Intravenous has received Orphan Drug Designation from the FDA for prevention of re-infection of hepatitis B disease in HBV-positive liver transplant patients, entitling us to marketing exclusivity in the U.S. for this indication for a period of seven years post-licensure.

ATG-Fresenius S [Anti-Thymoglobulin]

In March 2006, we entered into a sales and distribution agreement with Fresenius Biotech to advance the development of ATG-Fresenius S in the U.S. and Canada. As part of the sales and distribution agreement, we are responsible for the clinical development, regulatory approval process, marketing and sales of ATG-Fresenius S in the U.S. and Canada. ATG-Fresenius S is manufactured by Fresenius Biotech.

ATG-Fresenius S is a concentrated, highly purified anti-human T-lymphocyte immunoglobulin preparation derived from rabbits after immunization with a T-lymphoblast cell line. ATG-Fresenius S is an immunosuppressive product for the prevention and treatment of

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acute rejection following organ transplantation. We are developing ATG-Fresenius S for patients undergoing solid organ transplants, such as lung and kidney transplants and potentially for patients undergoing bone marrow transplants. ATG-Fresenius S is currently indicated in 60 countries outside the U.S. and Canada to be used in combination with other immunosuppressive agents for the prevention of organ rejection for solid organ transplants. In addition, we are developing ATG-Fresenius S with Fresenius Biotech for use in combination with other immunosuppressive agents for the prevention of graft-versus-host disease for bone marrow transplant patients. Finally, ATG-Fresenius could potentially be useful for certain autoimmune diseases, although a U.S. development program has not been initiated for this indication.

In 2004, over 29,000 solid organ transplants were conducted in the U.S., and solid organ transplants in the U.S. have been increasing at an annual rate of four percent per year. More than 60 percent of these procedures involve the replacement of a kidney and 23 percent are for liver transplants. Currently, the total U.S. market for all immunosuppressive agents is approximately \$1.8 billion, approximately \$1.6 billion for chronic treatment and \$0.2 billion for acute treatment. Most immunosuppressive therapies are used in combination with each other and as such, we anticipate that ATG-Fresenius S will be as well.

Currently, we are conducting a Phase III double-blind, multi-center, placebo-controlled randomized clinical trial of ATG-Fresenius S for the prevention of acute organ rejection in patients receiving lung transplantation in the U.S., Europe and Australia. Enrollment is ongoing and our goal is for one-year data to be available in the second half of 2008 with BLA submission possible by the end of 2008. When we entered into our agreement with Fresenius Biotech, we assumed responsibility for the clinical trial.

In January 2005, the FDA granted Fast Track Status to ATG-Fresenius S in lung transplantation.

Civacir [Hepatitis C Immune Globulin (Human)]

Civacir is an investigational human polyclonal antibody product that contains antibodies to hepatitis C virus, or HCV. Pre-clinical studies indicate that Civacir contains antibodies that are neutralizing to HCV. We are developing Civacir to prevent re-infection with hepatitis C disease in HCV-positive liver transplant patients, an unmet medical need among these patients.

Civacir applies our clinical, regulatory, manufacturing and commercial expertise in antibody technology and our knowledge of the transplant market to the treatment of HCV liver transplant patients. We collect the anti-HCV plasma raw material for this product at our FDA approved antibody collection centers and we have manufactured clinical lots of Civacir in our state-of-the-art fractionation and purification facility and intend to market the product in the U.S. through our own sales force.

Civacir is derived from human plasma enriched with HCV antibodies collected from screened donors at our FDA-licensed antibody collection centers. After viral inactivation, we use the process of fractionation to purify and concentrate the antibodies that neutralize HCV. The antibodies in Civacir have been shown in animal studies to neutralize HCV. It is believed that the antibodies against HCV in Civacir bind to the virus in the blood stream and help the body's immune system to clear these viruses before they re-infect critical organs, such as a transplanted liver in an HCV-positive patient.

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HCV is a major cause of acute hepatitis C and chronic liver disease, including cirrhosis and liver cancer. The World Health Organization, or WHO, estimates that about 170 million people, or 3% of the world's population are chronically infected with HCV and two to four million people are newly infected each year. The CDC currently estimates that there are approximately 2.7 million individuals in the U.S. chronically infected with HCV.

HCV has significant social impact because it causes chronic infections in a large percentage of those infected and often results in severe illness and death in later stages of the disease. Chronic HCV infection is the most frequent cause of end-stage liver disease, or ESLD, in the U.S., often resulting in death or the need for liver transplantation. In the U.S. approximately 34% of all liver transplants, or approximately 2,000 liver transplants per year, are due to HCV infections. The proportion of liver transplants due to HCV infection is expected to reach 40-50% as patients' mature and other reasons for ESLD decline. Moreover, during surgery and in the period immediately following, these patients have no treatment options to prevent re-infection of the transplanted liver. Re-infection of the transplanted liver is certain within weeks to months following surgery and can occur within days of transplantation. HCV infection also contributes to frequent hospitalizations and failure of the transplanted liver when it occurs in transplant patients.

During 2005, we initiated important steps in defining the clinical and regulatory program for Civacir including the development of an advisory panel to assist us in defining the design of a clinical plan. In discussions with the FDA and the European Medicines Agency, or EMEA, we were able to confirm a clinical plan for this product, including the end points for a Phase II "proof-of-concept" study that we initiated in December 2006.

In 2004, we announced results from a Phase I/II clinical trial of Civacir in HCV-positive liver transplant patients funded by The National Institute of Allergy and Infectious Diseases, or NIAID, which is a part of the National Institutes of Health, or NIH. The trial was conducted by the NIAID sponsored Collaborative Anti-Viral Study Group at four study sites in the U.S. This trial was a three-armed, randomized, placebo-controlled clinical study evaluating two different dose levels of Civacir in a total of 18 patients undergoing liver transplantation. In this trial, the NIH evaluated the safety of dosing patients with Civacir during and after transplant surgery. The NIH also evaluated the level of HCV-specific antibodies in trial subjects following dosing, as well as liver enzyme levels, a measure of liver damage, and HCV levels in the transplanted livers. Although this trial was not designed to show efficacy, the results contributed to supporting the safety of Civacir in this patient population and will assist us in defining the efficacy markers that may be important in subsequent Phase II and III clinical trials. Preliminary results from this trial were released in February 2004. The results showed that Civacir was well tolerated at both dose levels. In addition, a trend towards a reduction in Alanine Aminotransferase levels, an important indicator of improved liver function, was observed. There also appeared to be a reduction in viral levels in liver tissue in the group receiving high doses of Civacir. We will use these data as we define our continued clinical development strategy for Civacir.

Civacir has received Orphan Drug Designation in the U.S. and EU for use in prevention of re-infection with HCV in HCV-positive liver transplant patients, entitling us to seven (U.S.) or ten years (EU) marketing exclusivity post-licensure for this indication. In 2006 Civacir was also granted Fast Track Designation by the FDA.

Intravenous Immune Globulin (IVIG) and other Plasma-based Proteins

IVIG is used to fight infections and in the treatment of several conditions, including bone marrow transplantation, B-cell chronic lymphocytic leukemia, hypogammaglobulinemia, Kanasaki syndrome and other chronic immune deficiencies. Demand for IVIG in the U.S. has increased significantly, due to the renewed confidence of physicians and patients in the safety of the product as well as the expanded use of the product. Demand exceeds the capacity of currently licensed manufacturers which has resulted in significant shortage and the associated improvement in the price of IVIG. This shortage led the FDA to issue a notice encouraging potential manufacturers to enter the IVIG market. The FDA indicated in its notification that they have simplified and streamlined the pivotal clinical development program to license new IVIGs. This is expected to greatly expedite the review of such applications.

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We have the assets, core competencies and facilities to participate in this market. We own and operate nine high quality plasma centers with reasonable capacity for normal source plasma collection. Currently, the plasma we collect at our centers is sold to other fractionators who then use the material to manufacture and sell IVIG. Our state-of-the-art fractionation and purification manufacturing facility is well-suited for the manufacture of IVIG using a variation of the Cohn/Oncley process. During 2006, we worked on improvements to our manufacturing process so as to increase the yield of IVIG from a liter of plasma and reduce our production cost. In addition, the manufacturing process also allows the extraction of other valuable proteins such as Factor VIII and Fibrinogen VWF. During the first half of 2007, we intend to manufacture clinical lots of IVIG and initiate a pivotal clinical trial according to the recent FDA guidelines. Upon conclusion of our clinical trial, we intend to file a BLA with the FDA for licensure of the product. When approved, IVIG would allow us to substitute current low raw material margins with higher end-product margins. In addition, manufacture of IVIG would improve asset utilization of our manufacturing facility.

INFECTIOUS DISEASE

The CDC estimates that more than two million patients in the U.S. each year contract an infection as a result of exposure to a bacteria while receiving care in a healthcare setting. Collectively, *S. epidermidis* and *S. aureus* represent approximately 57% of all Gram-positive hospital-acquired bacterial infections. These bacteria often live transiently or permanently in the nasal passages or on the skin of humans, and can spread to the blood through breaks in the nasal membranes or skin causing serious complications. *S. epidermidis* frequently colonizes catheters and surgical implants and form an impenetrable biofilm. It can then spread to the bloodstream and cause serious and life-threatening infections. *S. aureus* can spread from the blood to the bones or the inner lining of the heart and its valves, or cause abscesses in internal organs such as the lungs, kidneys and brain.

Staphylococcal infections are difficult to treat because the bacteria that cause them are often resistant to antibiotics. The rise of antibiotic resistance as reported by the CDC in the 2003 National Nosocomial Infections Surveillance Systems report has markedly curtailed options for treating these infections. Methicillin-resistant *S. aureus*, or MRSA, infections from all sites of infection has risen from 22% in 1995 to 57% in 2002 in the U.S. Methicillin-resistant *S. epidermidis*, or MRSE, rates have reached approximately 80%, and over 50% of *S. epidermidis* infections are also resistant to some other currently administered antibiotics.

Of the approximately 2.6 to 2.8 million hospital-associated infections reported in the U.S. annually, the mean cost is estimated at \$14,000 per infection for a range of total costs estimated at \$36 to \$39 billion annually. The overall mortality rate associated with hospital-associated (nosocomial) bloodstream infections and pneumonia are 27% and 27% to 50%, respectively. In 2004, investigators from Duke Clinical Research Institute, Duke University Medical Center, Durham, North Carolina and Health Economics Consulting, Annapolis, Maryland completed a study sponsored by us evaluating heart disease patients with implanted cardiovascular devices who developed *S. aureus* bacteremia. In this study, 44% of the patients evaluated experienced serious complications as a result of their infection and 35% died within 12 weeks. The study also demonstrated that *S. aureus* bacteremia was associated with substantial medical costs showing individual patients incurring a mean cost of \$82,300 for a hospital-acquired infection. It is estimated that healthcare-associated treatment costs associated with *S. epidermidis* infections total almost \$600 million in the U.S. each year.

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Three clinically significant *S. aureus* serotypes have been identified: *S. aureus* Types 5 and 8, and Type 336. We identified and patented the Type 336 antigen, found in some *S. aureus* bacteria, independent of serotypes 5 and 8.

S. aureus produces a variety of potent toxins. We believe that the next generation *S. aureus* vaccine should include antigens to some of those toxins. Pantone-Valentine Leucocidin, or PVL, is a pore-forming cytotoxin that targets human mononuclear and polymorphonuclear cells. Recently, there has been much interest in PVL, due to its involvement in severe disease among children and young adults with no known exposure to healthcare establishments. In the U.S., outbreaks of severe skin infections associated with PVL have occurred in homosexual men, prison inmates, and schoolchildren. Recently there have been an increasing number of reports of PVL-positive strains associated with severe necrotizing community-acquired pneumonia.

Alpha toxin is a hemolytic exotoxin regarded as a major pathogenicity factor of *S. aureus*. The secreted toxin binds irreversibly to specific receptor sites present on a variety of human cells. Several molecules then aggregate to form a transmembrane pore that causes leakage of cellular contents and lysis.

We have identified and patented two clinically significant *S. epidermidis* strains, PS-1 and GP-1. We believe PS-1 serotype is responsible for approximately 70% of *S. epidermidis* infections. GP-1 is present in approximately 20% of *S. epidermidis* infections. Combined, it is believed that these two antigens may provide protection for up to 90% of *S. epidermidis* infections.

Enterococcus is the other clinically significant Gram-positive bacterium that causes hospital-acquired infections, representing approximately 10-12% of all bloodstream infections. We intend to extend our product coverage to this third type of Gram-positive bacteria in separate vaccine and antibody products.

Gram-positive vaccines

Vaccines and antibody therapies represent a new and innovative approach in broadening the available clinical tools against the global health problem of healthcare-associated bacterial infections. This approach is focused on effective prevention whenever possible and using a combination approach of antibiotics with antibodies to treat serious infection.

We have advanced the development of StaphVAX for use in patients who are at high risk of *S. aureus* infection and who are able to respond to a vaccine by producing their own antibodies. StaphVAX is an investigational polysaccharide conjugate vaccine based on patented technology that we have licensed on an exclusive basis from the Public Health Service/NIH. In its initial formulation, it contained surface polysaccharides found in the outer coating of Types 5 and 8 *S. aureus* bacteria. To produce the vaccine, the polysaccharide molecules are linked, or conjugated, to a non-toxic, carrier protein derived from the bacteria *Pseudomonas aeruginosa* (*Pseudomonas* exoprotein A) that causes a strong response by the immune system to the conjugated complex. Once given the vaccine, the patient's immune system produces antibodies, to the polysaccharides, which should bind to *S. aureus* upon subsequent exposure to the bacteria. These antibodies help the immune system to eliminate the *S. aureus* bacteria before significant damage can be inflicted. Since these antibodies bind to several sites on the bacteria's surface polysaccharides, we believe that it will be much more difficult for the bacteria to develop resistance to the antibodies.

Our next-generation StaphVAX® [*Staphylococcus aureus* Polysaccharide Conjugate Vaccine] vaccine and antibody products, may contain the *S. epidermidis* PS-1 and *S. aureus* Type 336 antigen combined with *S. aureus* Types 5 and 8 antigens, as well as two other antigens against *S. aureus*-detoxified Pantone-Valentine Leucocidin and alpha toxin. We believe that these next-generation products will have the ability to provide protection against virtually all clinically significant *S. epidermidis* and *S. aureus* infections known today.

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S. aureus Type 336, accounts for the approximately 20% of *S. aureus* infections that do not form a polysaccharide capsule in the human bloodstream. We believe that the mechanism of action of the Type 336 vaccine is independent of the polysaccharide capsule targeted by our *S. aureus* Types 5 and 8 vaccine approach, in that it attacks a structure in the cell wall of the bacteria, not the polysaccharide capsule outside the cell wall. Research has supported that the target in *S. aureus* Type 336 is cross-reactive to *S. epidermidis*.

We believe that the antibodies to the PS-1 antigen targets a taichoic acid-like structure in the cell wall of the bacteria and that immunization with PS-1 results in the production of antibodies that attack this cell wall structure. This would make the mechanism of action of this vaccine independent of the polysaccharide capsule approach targeted by StaphVAX. We also are advancing our GP-1 antigen through pre-clinical development. It also targets a component of the bacterial cell wall. Additionally, this antigen may be effective in preventing the bacteria from colonizing catheters and implanted devices.

Both PVL and alpha toxin are major virulence factors of *S. aureus*. We have advanced programs for both of those toxins with the objective to include detoxified antigens of these toxins in our next generation *S. aureus* vaccine. The programs are in the pre-clinical phase and our goal is that clinical lots of both toxins would be available by the end of 2007.

Potential at-risk populations who may benefit from the use of vaccines to prevent Gram-positive bacterial infections include:

- patients with indwelling catheters, including patients in intensive care units, patients receiving cancer chemotherapy and premature babies;
- elderly patients and those suffering chronic diseases including end-stage renal disease, or ESRD, congestive heart failure, chronic obstructive pulmonary disease and diabetics who are expected to have long stays in medical or extended care facilities;
- patients undergoing planned surgery;
- patients with various types of prosthetic and vascular graft surgery;
- chronic osteomyelitis patients, spinal cord injury and spinal fusion patients;
- hematology/oncology patients undergoing chemotherapy; and
- patients who have previously been treated for *S. aureus* infections.

In November 2005, we announced the results of our second Phase III clinical trial of StaphVAX. The study, a randomized, double-blinded, placebo-controlled trial among 3,976 patients on hemodialysis did not meet its defined end point of reduction in *S. aureus* Types 5 and 8 infections in the StaphVAX group as compared to the placebo group through eight months following initial vaccination. These results were in contrast with the results of our analysis of a Phase III clinical trial among 1,804 ESRD patients previously reported in 2000 where it was shown that a single injection showed a 57% reduction in the incidence of *S. aureus* bacteremia. As a result, we conducted an assessment in consultation with an outside panel of experts, including scientists and clinicians with expertise in immunology, vaccines, bacterial infections and nephrology. In an attempt to understand the results, the assessment focused on five areas: changes in the bacteria itself, changes in the care of dialysis patients, the manufacture of the vaccine, the quality of antibodies produced by the vaccine, and the conduct of the clinical trial. Based on experimental data, the panel concluded that the quality of antibody produced in the recent trial was of lower quality than the antibody produced in the original trial. Moreover, evidence suggested that the vaccine lot used in the recent trial had some subtle but significant structural differences from the lot used in the original trial as well as from lots manufactured more recently. We have placed further clinical development of StaphVAX and Altastaph on hold pending partnership or external funding of the program.

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In 2005, we completed a Phase I study with our Type 336 vaccine. The trial was a double-blinded, placebo-controlled study evaluating safety and antibody responses of the vaccine in 48 patients at four different dosage levels. Within each of these four dose groups there were 12 patients, nine receiving the Type 336 vaccine and three receiving the placebo. The doses were administered in an escalating manner. The data support that escalating doses of the vaccine were well tolerated and resulted in significant dose-related increases in levels of antibodies against *S. aureus* Type 336. In 2005, we also conducted a Phase I double-blinded, placebo-controlled study evaluating safety and antibody responses to our *S. epidermidis* PS-I vaccine in 36 patients at three different dosage levels. Within each of these three dose groups there were 12 patients, nine receiving the *S. epidermidis* vaccine and three receiving the placebo. The doses were administered in an escalating manner. The data support that escalating doses of the vaccine were well tolerated and resulted in significant dose-related increases in levels of antibodies against *S. epidermidis* PS-1 and *S. aureus* Type 336.

The FDA has awarded StaphVAX Fast Track Designation for the prevention of *S. aureus* bacteremia in ESRD patients. The next generation StaphVAX, if the program continues, would include antigens for Types 5 and 8, Type 336 and two other antigens against *S. aureus* toxins; the detoxified Pantone Valentin Leucocidin and alpha toxin.

Gram-positive Antibody Products

Altastaph [*Staphylococcus aureus* Immune Globulin Intravenous (Human)] is an investigational human polyclonal antibody product that in its current formulation contains high levels of *S. aureus* Types 5 and 8 specific antibodies. These antibodies are collected from the plasma of healthy donors who have been vaccinated with StaphVAX at our FDA approved antibody collection centers. Next generation formulations of Altastaph, if we continue with its development, are expected to contain antibodies to *S. aureus* Type 336 and *S. epidermidis* as well as other antigens. We believe Altastaph can be used to treat patients with active *S. epidermidis* and *S. aureus* infections in conjunction with standard of care therapy including antibiotic treatment. Altastaph can also provide a prevention option for patients who cannot respond to vaccines due to their compromised immune system or who do not have the 7 to 14 days necessary to respond to the vaccine, prior to being at risk of infection.

We have placed this program on hold, as well, for further clinical development pending partnership or external funding of the program.

High-risk patient populations that could benefit from Altastaph include patients with persistent *S. epidermidis* or *S. aureus* infections, very low birth-weight newborns, emergency surgery patients, trauma patients and patients in intensive care and burn units.

We believe patients with active *S. aureus* infections could benefit from a combination therapy of Altastaph initially plus a dose of StaphVAX at the conclusion of their treatment to reduce the otherwise high risk for re-infection. Re-infection with *S. aureus* following initial treatment and release from the hospital has been reported in up to 30% of patients within 18 months after discharge.

In January 2005, we announced results from our U.S. Phase I/II clinical trial using Altastaph to treat adult in-hospital patients with persistent *S. aureus* bloodstream infections, or bacteremia. The study was a double-blinded, placebo-controlled, randomized trial in 40 patients designed to evaluate the safety of Altastaph and to measure *S. aureus* specific antibody levels. Patients were randomly allocated to receive two intravenous doses of Altastaph or saline placebo in combination with standard-of-care treatment, which included treatment with antibiotics. The results of the study demonstrated that Altastaph was well tolerated and no drug-related, serious adverse events were reported. Patients were able to maintain antibody titers at or above levels previously demonstrated to be

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protective against *S. aureus* infections in patients with ESRD. In this study there was an observed 36% reduction in median time from administration of the study drug to hospital discharge in the Altastaph-treated patients as compared to the placebo-treated patients, representing nine days in the Altastaph group versus 14 days in the placebo group. Because this overall result in a small safety/immunogenicity trial approached statistical significance, we believe this reduction in the length of hospital stay for the Altastaph-treated group indicates that the *S. aureus* antibodies in Altastaph could be associated with a measurable medical benefit in the treatment of persistent *S. aureus* infections.

NICOTINE ADDICTION

NicVAX (Nicotine Conjugate Vaccine)

NicVAX is an investigational vaccine designed as an aid to smoking cessation, as well as an aid to prevent relapses of a treated smoker.

NicVAX represents an extension of our conjugate vaccine technology that allows us to address a significant medical need. We believe that broad commercialization of NicVAX will be in conjunction with a marketing partner that has a demonstrated expertise in executing large scale sales and marketing programs because the physician audience will likely be primary care physicians and focused outside the hospital setting.

Nicotine is a small molecule that upon inhalation into the body quickly passes into the bloodstream and subsequently reaches the brain by crossing the blood-brain barrier. Once in the brain, the nicotine binds to specific nicotine receptors, which results in the release of stimulants, such as dopamine, providing the smoker with a positive sensation, which causes addiction. NicVAX is designed to stimulate the immune system to produce antibodies that bind to nicotine in the bloodstream and prevent it from crossing the blood-brain barrier and entering the brain. Therefore, the brain does not produce the positive-sensation stimulants as a response to nicotine. Pre-clinical animal studies with NicVAX have shown that vaccination could prevent nicotine from reaching the brain blocking the effects of nicotine, including effects that can lead to addiction or can reinforce and maintain addiction.

Smoking is a global healthcare problem. The WHO estimates that there are 1.3 billion smokers worldwide today and nearly five million tobacco-related deaths each year. If current smoking patterns continue, smoking will cause some 10 million deaths each year by 2020. According to the CDC, tobacco use is the single leading preventable cause of death in the U.S., responsible for approximately 438,000 deaths each year. In addition, it is estimated that smoking results in an annual health-related economic cost of approximately \$157 billion. The CDC estimates that, among the 45 million adult smokers in the U.S., 70% want to quit, but less than five percent of those who try to quit remain smoke-free after 12 months.

Nicotine addiction is difficult to treat effectively. We believe NicVAX has advantages over existing treatment therapies because its effect is irreversible for potentially six to 12 months following vaccination as antibodies to nicotine continue to be produced by the body's immune system. This is important due to the extremely high relapse rate that has been observed when a smoker attempts to quit smoking. Currently, smokers being treated for nicotine addiction can stop using their therapy and resume their addiction.

In September 2005, we were awarded a \$4.1 million grant by the U.S. National Institute on Drug Abuse, or NIDA, partially offsetting our funding requirements for the NicVAX development program.

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Following the award of the NIDA grant, we formed a scientific advisory panel to provide us guidance on clinical trial design and clinical development plans for NicVAX.

We have advanced the NicVAX clinical program through completion of a second Phase II dose-ranging clinical trial in smokers for NicVAX in 2005. During 2006, we initiated and completed enrollment into a large Phase IIb “proof-of-concept” study in 300 smokers, who were randomly allocated to receive one of four different doses or dosing schedules of NicVAX or placebo. The primary end point, which was discussed and agreed with the FDA and EMEA is abstinence rate at 6 months. The study is a double-blind, randomized, placebo-controlled “proof-of-concept” dose-ranging clinical trial in smokers designed to evaluate the anti-smoking activity, safety and antibody response to NicVAX. Two dose levels, 200 mcg and 400 mcg per injection, and two different administration regimens were included in the study. The study completed enrollment 3 months ahead of schedule in September 2006 and we expect to announce primary end point data during the second quarter of 2007.

In September 2004, we announced the results of a Phase II dose response, double-blinded, placebo-controlled, and randomized clinical trial in 63 smokers. The objectives of the study, which were met, were to demonstrate that NicVAX was able to safely generate nicotine-specific antibodies in smokers, and to assess its potential use as an aid in smoking cessation among smokers who wanted to quit. The effect of the vaccine indicated a 33% quit rate in smokers who received NicVAX at the highest dose level versus 9% in the placebo group, however, given the limited number of smokers included in the trial this result was not statistically significant. The results represented a vaccine-only effect, as patients were only given NicVAX without any supplemental treatments, behavioral support or counseling. This trial was funded in part by a grant from NIDA. Based on these results, we have initiated a second Phase II clinical trial in the EU dosing NicVAX at doses equal to and higher than those administered in the first Phase II clinical trial and at more frequent intervals. The clinical end points of this trial are also to assess safety and to measure nicotine-specific antibody titers and smoking cessation.

In February 2004, we announced the results of a placebo controlled, double-blinded Phase I/II clinical trial of NicVAX in smokers, ex-smokers and non-smokers in collaboration with researchers at the University of Maastricht in The Netherlands. The primary end point of this trial was to evaluate the development of nicotine-specific antibody levels and safety of the vaccine in study participants. The results showed that multiple injections of NicVAX were well tolerated and resulted in a rapid and boosted immune response that generated nicotine-specific antibodies.

HEMATOLOGY AND ONCOLOGY

Aloprim [(Allopurinol sodium) for injection]

Aloprim is indicated for the treatment of chemotherapy-induced hyperuricemia, or elevated uric acid levels, for patients with leukemia, lymphoma or solid organ tumors who cannot tolerate oral therapy. Complications associated with chemotherapy-induced hyperuricemia in these patients include renal failure.

The Leukemia and Lymphoma Society estimates that approximately 96,000 patients were diagnosed with leukemia and lymphoma in the U.S. in 2004. These patients could potentially be at-risk for developing chemotherapy-induced hyperuricemia. Aloprim is generally administered in the in-patient hospital setting.

Anti-D polyclonal antibody

Our anti-D polyclonal antibody, or Anti-D, is an investigational human polyclonal antibody product intended for use to achieve a temporary and occasionally long-term elevation of the platelet counts. It has been shown that infusion of polyclonal anti-D products can reverse thrombocytopenia in patients with idiopathic thrombocytopenic purpura, or ITP, within hours of the administration of these products.

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We have significant experience commercializing anti-D for ITP. Until early 2005, we were responsible for commercializing the only other product licensed for such an indication in the U.S. While there are other competing non-plasma derived products under development for the treatment of ITP, we believe that anti-D polyclonal antibodies would still capture an important part of the market.

We have the know how and facility to manufacture anti-D. The product is made from human plasma derived from a limited list of suitable donors in a specific donation program. Donors are stimulated with specific red blood cells derived from a separate and select group of red blood cell donors and red blood cells are then processed to be suitable for immunization. Upon stimulation with red blood cells, donors produce immunoglobulin with especially high levels of specific antibodies. The plasma from these donors is then used to manufacture the purified anti-D in our state-of-the-art facility. We are one of very small number of companies that has the facilities and capabilities to engage in such a complex program.

After consultation with the FDA, we initiated a clinical development program at the end of 2006 using anti-D product manufactured at our own facility from plasma collected in our nine plasma centers.

CONTRACT MANUFACTURING

We have a state-of-the-art facility located in Florida for the fractionation and purification of human immunoglobulin. Our facility was designed to accommodate manufacture of Nabi-HB, as well as our polyclonal antibody-based products in development, including Civacir, Altastaph, IVIG, and anti-D. Based on current utilization forecasts, we have available manufacturing capacity for the manufacture of the antibody-based products of other companies on a contract basis. Although we do not consider contract manufacturing to be a core operating strategy, we have utilized contract manufacturing to partially offset the fixed costs of maintaining the facility.

During 2005, we completed the construction of a vaccine plant within our manufacturing facility in Florida. The facility, currently being operated under current Good Manufacturing Processes, or cGMP, will be available for clinical testing and potentially for commercial manufacture of the vaccine products in our research pipeline, including NicVAX, and contract manufacturing.

Potential contract manufacturing customers are primarily research and development-stage companies that do not possess their own manufacturing capacity or companies that possess mature products that are being manufactured in older facilities that would require significant capital expenditure to upgrade to current compliance requirements.

In 2006, we signed an agreement with Sanofi Pasteur to partly manufacture their anti-rabies immunoglobulin product. Under the agreement, we will supply the anti-rabies plasma and initiate the manufacture of the purified immunoglobulin. The intermediate product is then shipped to France for Sanofi Pasteur to complete the manufacture of the purified anti-rabies immunoglobulin. The agreement with Sanofi Pasteur highlights our reputation for high quality manufacturing.

In 2006, we also signed a contract manufacturing agreement with ADMA, a distributor of immunoglobulin and plasma proteins product, to collect and manufacture their investigational immunoglobulin against respiratory syncycial virus, or RSV.

CURRENTLY MARKETED ANTIBODIES

We operate nine FDA-licensed antibody collection centers located in six states within the U.S. that supply specialty antibodies and non-specific (normal source) antibodies to our worldwide customers in the pharmaceutical and diagnostic industries. Our operating strategy for these products is to sell our excess production under contracts that provide a consistent operating cash flow. As we achieve licensure for antibody-based biopharmaceutical products in our research and development pipeline, we anticipate a strategic shift in our antibody segment by converting production of antibodies for use in the manufacture our own antibody-based biopharmaceutical products.

Specialty Antibodies

Specialty antibody products contain high concentrations of a specific antibody and are used primarily to manufacture antibody-based biopharmaceutical products to treat chronic immune disorders or to prevent and treat viral and bacterial diseases as well as to develop diagnostic products.

We identify potential specialty antibody donors through screening and testing procedures. We also have developed FDA-licensed programs to vaccinate potential donors to stimulate their production of specific antibodies. Our expertise in antibody collection, operational expertise in donor immunization programs, clinical and medical experience in conducting clinical trials under Investigational New Drug Applications, or INDs, and access to a diverse antibody donor base provides us with the ability to produce competitive specialty antibodies.

Our specialty antibody products include hepatitis B, Rh₀D, tetanus, cytomegalovirus, or CMV, Varicella Zoster Virus, or VZV, or RSV antibodies as well as other plasma products sold to diagnostic customers. Hepatitis B antibodies are the primary raw material in the manufacture of Nabi-HB.

Non-specific Antibodies

Our nine FDA-licensed antibody collection centers also supply non-specific human antibodies from normal healthy donors to our customers.

Although non-specific antibodies lack high levels of antibodies to specific antigens, such antibodies are used by our customers to manufacture standard IVIG, a product used to fight infections, and in the treatment of several conditions, including bone marrow transplantation, B-cell chronic lymphocytic leukemia, hypogammaglobulinemia, Kawasaki syndrome and other chronic immune deficiencies.

In 2006, we renewed our long-term supply agreement for non-specific antibodies with Talecris Biotherapeutics. The agreement guarantees sale of our non-specific antibodies at a predetermined price and protects our product from possible market downturns.

Sales and Segment Sales

Sales of our biopharmaceutical products excluding PhosLo totaled \$40.1 million in 2006 compared to \$48.2 million in 2005 and \$94.2 million in 2004. Sales of our biopharmaceutical products in 2005 and 2004 included sales of WinRho SDF totaling \$6.1 million and \$47.8 million, respectively, which we ceased to distribute on March 24, 2005. In 2006, biopharmaceutical products accounted for 45% of our sales and 67% of our gross margin. Total sales of our antibody products were \$49.8 million in 2006 compared to \$45.9 million in 2005 and \$48.0 million in 2004. In 2006, antibody products accounted for 55% of our sales and 33% of our gross margin.

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Research and Development Programs

The following table provides the estimated amounts spent during the last three fiscal years on our research and development programs:

(in thousands)	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
StaphVAX	\$ 6,262	\$ 38,458	\$ 34,270
Altastaph	146	3,642	3,119
Other Gram-positive products	2,712	1,543	491
Total Gram-positive	9,120	43,643	37,880
NicVAX	7,151	1,976	2,016
ATG-Fresenius S	6,214	—	—
Anti-D	2,713	2	—
Civacir	2,125	245	3,872
Boca Raton, FL vaccine facility	8,089	14,060	14,022
Other, pre-clinical programs	1,166	298	273
Other currently marketed products, including Nabi-HB	994	682	1,488
Total R&D programs - Continuing operations	37,572	60,906	59,551
PhosLo, including PhosLo CKD	5,671	5,930	1,453
Total R&D programs - Discontinued operations	5,671	5,930	1,453
Total operations	\$ 43,243	\$ 66,836	\$ 61,004

Research and development expenses of approximately \$2.2 million, \$0.3 million and \$0.3 million related to the NicVAX program were reimbursed by NIDA for fiscal years 2006, 2005 and 2004, respectively.

STRATEGIC ALLIANCES

We enter into strategic alliances for the manufacture and commercialization of some of our marketed and pipeline products. Our current key strategic alliances are discussed below.

Public Health Services/National Institutes of Health

Under a license agreement with the Public Health Services/National Institute of Health, or PHS/NIH, we have the exclusive, worldwide right to use their patented conjugation process to manufacture vaccines against *staphylococcal* infections including StaphVAX.

During the term of the license we are obligated to pay PHS/NIH a royalty based on net sales of products made using this technology. This agreement remains in effect until the earlier of the expiration of the last-to-expire licensed patent, which is April 20, 2010, and no further royalties will be due to PHS/NIH for use of the subject technology after that date. In addition to our license with PHS/NIH, we own an extensive global portfolio of issued patents and pending patent applications directed to our novel vaccine products and methods of using such products as described in further detail below under "Patents and Proprietary Rights."

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Novartis

We have an agreement with Novartis, that grants us an exclusive supply arrangement for four vaccines, including the vaccine for hepatitis C. In addition, we have rights to 10 additional Novartis vaccines for use in humans to produce immunotherapeutic products. The agreement may also grant us access to a vaccine adjuvant, MF 59.

This agreement may be important to the development of the next generation of our investigational product, Civacir.

We will be responsible for all development, manufacturing and worldwide distribution of these products. We may terminate the agreement on a product-by-product basis in which event we must transfer to Novartis all of our rights with respect to the product as to which the agreement has been terminated. Similarly, Novartis may terminate its obligations to supply immunizing agents to us on a product-by-product basis, in which event Novartis shall grant to us a license of the technology necessary for us to manufacture the applicable immunizing agent and the financial arrangements in the Novartis Agreement with respect to such agent shall continue.

Talecris Biotherapeutics

In 2006, we extended our long-term supply agreement for non-specific antibodies with Talecris. The agreement guarantees sale of our non-specific antibodies at a predetermined price and protects our product from possible market downturns.

We are responsible for supplying Talecris with an annual minimum amount of non-specific antibodies until the end of 2011 while Talecris is responsible for testing the plasma.

ProMetic

In 2006, we signed an agreement with ProMetic of Montreal, Canada for the exclusive worldwide use of its technology for the purification of immunoglobulins for several hyperimmune products including Altastaph and Civacir. The ProMetic technology promises a higher yield of immunoglobulin from a liter of plasma, thereby reducing the cost of production and improving manufacturing efficiency.

Fresenius Biotech

During 2006, we signed an agreement with Fresenius Biotech to advance the development of ATG-Fresenius S in the U.S. and Canada. ATG-Fresenius S is an immunosuppressive polyclonal antibody product used for the prevention and treatment of acute rejection following organ transplantation. The product, which Fresenius Biotech currently markets in more than 60 countries worldwide, has been shown to significantly reduce transplant failure and substantially improve survival rates.

Under the terms of the agreement, Fresenius Biotech has granted us exclusive sales and distribution rights to ATG-Fresenius S in the U.S. and Canada for up to 15 years following the first commercial sale of the product after licensure in the U.S. We are required to make aggregate milestone payments of \$1 million to Fresenius Biotech during development and a \$4 million payment upon approval by the FDA. Fresenius Biotech will manufacture and supply the product from its European facility in exchange for a royalty. We will be responsible for the clinical development, regulatory approval process, marketing and sales of ATG-Fresenius S in the U.S. and Canada.

CUSTOMER RELATIONSHIPS

We sell our biopharmaceutical products to wholesalers, distributors, hospitals and home healthcare companies and sell our antibody products to pharmaceutical and diagnostic product manufacturers.

We sell a significant amount of our biopharmaceutical products to AmerisourceBergen, Cardinal Health, Inc. and McKesson Drug Co. under purchase orders placed by them on terms that are generally between 30 days, net and 60 days. During 2005, we extended a distribution service agreement with one of our major wholesaler customers under which this customer will provide us defined services for a fee measured at least equal to a minimum discount from our standard prices.

Pricing for product deliveries under our antibody products contract is fixed for the contract term, generally one year or less, although the contracts generally provide for price increases/decreases during the contract term to reflect changes in customer specifications or new governmental regulations. In addition, in 2007 we expect to sell antibody products in individually negotiated transactions that will be subject to market conditions at the time of negotiation. Our profit margins for these transactions may be adversely or beneficially affected by market conditions for antibody products at those times.

Revenue to significant customers for the year ended December 30, 2006 included revenue to three customers of our biopharmaceutical products segment, McKesson Drug Co., AmerisourceBergen Corporation, Cardinal Health, Inc., and one customer of our antibody products segment, Talecris Biotherapeutics Inc., representing 20%, 19%, 15% and 20% of total consolidated 2006 revenue including discontinued operations, respectively.

SUPPLY AND MANUFACTURING

Biopharmaceutical Products

We manufacture Nabi-HB in our FDA-approved biopharmaceutical manufacturing facility in Florida. Our facility has been licensed by the FDA for the manufacture of Nabi-HB since 2001 and, as such, is among the most recently licensed fractionation and purification facilities in the U.S. Additionally, we manufacture clinical lots of our investigational products, Altastaph and Civacir, in the same facility. These activities utilize only part of the available capacity of the facility. To reduce the fixed cost of running the facility, we also engage in contract manufacturing. During 2006, we entered into two contract manufacturing agreements: one with Sanofi Pasteur to partly manufacture its rabies immunoglobulin and the other with ADMA to manufacture their anti-RSV immunoglobulin. The various plasma raw materials required to manufacture all of these products are collected at our own plasma centers.

During 2005, we completed the construction of a vaccine plant within our manufacturing facility in Florida. The facility, currently being operated under cGMP, will be available for manufacture of our own products now in clinical development as well as contract manufacturing. We have manufactured clinical lots of NicVAX in this facility at commercial scale for use in a clinical trial and the facility may also be used for the commercial manufacture of our vaccines in development including our Gram-positive vaccines and NicVAX. We designed the facility to allow maximum manufacturing flexibility to be able to support the manufacture of our vaccines and possibly other products in our research and development pipeline. We also added features that would permit future expansion, when needed, with minimal disruption to current operations.

A third party manufactures Aloprim for us and another third party performs filling and finishing for us for Nabi-HB.

Fresenius Biotech manufactures ATG Fresenius S for us for use in clinical trials using materials sourced in the U.S. to comply with FDA requirements. When licensed, Fresenius Biotech will continue to manufacture ATG Fresenius S for us for commercial use in the U.S. and Canada. We have audited Fresenius Biotech's manufacturing facility in Germany and we believe that the manufacture of the product complies with all U.S. cGMP requirements.

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Antibody Collection Process

We currently collect and process antibodies from our nine FDA-licensed antibody collection centers located in six states across the U.S. These centers are also licensed and approved for collection by a German regulatory agency, on behalf of the EU.

PATENTS AND PROPRIETARY RIGHTS

Our success depends in part on our ability to maintain our rights to our existing marketed biopharmaceutical products and our ability to obtain patent protection for product candidates in clinical development. Currently, we have been granted 37 patents and have over 60 patent applications pending.

Products in development

We have 37 patents issued, including nine U.S. patents, 15 patents in European countries and 13 in other countries, and 50 patent applications pending worldwide relating to our Gram-positive infections program.

With respect to *Staphylococcus*, the patents and pending patent applications relate both to polysaccharide antigens—our “336” *S. aureus* antigen and “PS-1” *S. epidermidis* antigen—and to a glycopeptide antigen common to *S. epidermidis*, *S. haemolyticus* and *S. hominis*. Additional issued patents relate to *Enterococcus* and describe polysaccharide antigens from *E. faecalis* and *E. faecium*, respectively.

In addition to the licensed PHS/NIH patent that relates to the manufacture of StaphVAX, our granted U.S. patents and ex-U.S. patents in our *S. aureus* program contain claims directed to vaccines, antibody based therapies, methods of preparing antigen and diagnostic assays and kits against surface antigens of *S. aureus*. These patents all expire in September 2016. The patent underlying our PHS/NIH licensed rights expires on April 20, 2010. After this date, no further royalties will be due to the PHS/NIH for use of the technology.

Patent applications still pending include claims directed to the antigens, as well as to compositions or conjugates of the antigens, vaccines containing the antigens, antibodies to the antigens, and immunotherapy and diagnostic methods using the antigens and/or the antibodies to the antigens. In addition, we have filed U.S. and ex-U.S. patent applications covering methods directed to the use of StaphVAX, among other compositions. These applications, which address a method of protecting a human being with a compromised immune system from *Staphylococcal* or *Enterococcal* bacterial infection, include claims that prescribe our use of proprietary antigens. The applications also encompass a method for the use of Types 5 and 8 *S. aureus* antigens.

With regard to *S. epidermidis*, we have been issued U.S. patents and ex-U.S. patents, including patents that have been issued in 15 European countries. The patents we have been issued in the U.S. and Europe contain claims to vaccines and hyperimmune globulins against *S. epidermidis* surface antigen. Most of these patents expire in 2016.

Also in this portfolio are an issued U.S. patent and ex-U.S. patent applications pending that contain claims directed to a pharmaceutical composition containing a glucan and intravenous hyperimmune globulin, which can be specific for a given pathogen like *S. aureus*. This combination produces an unexpected antimicrobial effect that is greater than that obtained when either the glucan or the intravenous hyperimmune globulin is used separately. Another related U.S. patent application has been allowed with claims to a pharmaceutical composition containing a glucan and antibody.

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Our patent portfolio for technology related to the NicVAX product comprehends both compositions and therapeutic methodology for treating or preventing a nicotine addiction. Our patent claims are directed to compositions, or conjugates, that comprise a nicotine-like molecule linked to a carrier protein and to the methods for the use of these conjugates to treat or prevent nicotine addiction. In particular, we hold three issued U.S. patents relating to our conjugates, antibodies against the conjugates, and methods for using the conjugates and antibodies against nicotine addiction. These U.S. patents expire in 2018. We also have pending U.S. applications relating to our conjugates and their use. We hold granted patents in the following countries, relating to our conjugates and antibodies against our conjugates, for use in treating nicotine addiction: Europe (18 countries), Australia, China, Eurasia (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan), Hong Kong, Indonesia, New Zealand, and Turkey. We also have 12 pending foreign patent applications relating to our conjugate technology (Brazil, Canada, Hungary, India, Israel, Japan, Korea, Mexico, Norway, Poland, Serbia-Montenegro and Yugoslavia).

We have received correspondence alleging that our plans to commercialize NicVAX infringe certain U.S. and European patent rights. Based upon our current plans for NicVAX we do not believe that any valid U.S. or European patent rights will be infringed.

Trade Secrets and Trademarks

We rely on unpatented proprietary technologies in the development and commercialization of our products. We also depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as those of our advisors, consultants and other contractors that cannot be patented. To help protect our proprietary know-how, we often use trade secret protection and confidentiality agreements to protect our interests. We require employees, consultants and advisors to enter into agreements that prohibit the disclosure of confidential information and where applicable require disclosure and assignment to us of the ideas, developments, discoveries and inventions that arise from their activities for us.

We own or license trademarks associated with each of our products, including several international trademark registrations or common law rights, for each of our marketed and development products.

GOVERNMENT AND INDUSTRY REGULATION

The collection, processing and sale of our products, as well as our research, pre-clinical development and clinical trials, are subject to regulation for safety and efficacy by numerous governmental authorities including the U.S., Canada, UK, Germany, Spain, Italy, Australia and France. In the U.S., the Federal Food, Drug and Cosmetic Act, the Public Health Service Act, and other Federal and state statutes and regulations govern the collection, testing, manufacturing, safety, efficacy, labeling, storage, record keeping, transportation, approval, advertising and promotion of our products.

Biopharmaceutical Products

Vaccines and human polyclonal antibody products are classified as biological products under FDA regulations. The steps required before a biological product may be marketed in the U.S. generally include pre-clinical studies and the filing of an Investigational New Drug application, or IND application, with the FDA, which must be accepted by the FDA before human clinical studies may commence. The initial human clinical evaluation, called a Phase I clinical trial, generally involves administration of a product to a small number of normal, healthy volunteers to test for safety. Phase II clinical trials involve administration of a product to a limited number of patients with a particular disease to determine dosage, immunogenicity and safety. In some cases Phase II clinical trials

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may provide limited indications of efficacy. Phase III clinical trials examine the efficacy and safety of a product in an expanded patient population. Phase IV clinical trials primarily monitor for adverse effects and are undertaken post-licensure, such as additional large-scale, long-term studies of morbidity and mortality. The FDA reviews the clinical plans and the results of trials and can stop the trials at any time if there are significant safety issues. Biological products, once approved, currently have no formalized U.S. FDA mechanism for allowing competitors to seek approval of generic versions.

The results of all trials are submitted in the form of a BLA or a New Drug Application, or NDA, for small molecules. The BLA or NDA must be approved by the FDA prior to commencement of commercial sales. For BLA/NDA approval, the FDA requires that the sponsor demonstrate a favorable risk-benefit ratio. This often involves treatment of large numbers of patients, typically in double-blinded, placebo controlled or comparative randomized trials, followed for protracted periods of time. The actual size of the trials, and the length of follow-up vary from indication to indication. In addition, the prospective manufacturer's methods must conform to the agency's cGMP regulations, which must be followed at all times. The prospective manufacturer must submit three conformance lots in support of the application. In complying with standards set forth in these regulations, manufacturers must continue to expend time, money and effort in the area of production, compliance and quality control to ensure full regulatory compliance. The approval process is affected by several factors, including the severity of the disease, the availability of alternative treatments, and the risks and benefits demonstrated in clinical trials. The FDA also may require post-marketing surveillance to monitor potential adverse effects of the product. The U.S. Congress, or the FDA in specific situations, can modify the regulatory process.

The overall regulatory process is similar within the EU insofar as the sponsor needs to demonstrate a favorable risk-benefit ratio of the drug product, as well as reproducible manufacturing methods. The European equivalent of the BLA/NDA is called the MAA. There are two different procedures to file an MAA, the Centralized Registration Procedure and the Mutual Recognition Procedure. The Centralized Procedure allows for simultaneous approval throughout the EU. The Mutual Recognition Procedure provides for initial approval in one country that can be used to seek approval in additional countries within the EU. There have been different requirements from country to country with regard to initiating clinical trials, however, that is also in the process of being standardized. A new standardized procedure, the Clinical Trials Application was introduced in the EU during 2004.

Product specific reimbursement expectations

When Nabi-HB is administered peri-operatively in the hospital setting, the cost of Nabi-HB is reimbursed under the established Diagnosis Related Group, or DRG. When Nabi-HB is administered as part of the patient's follow-up care in a physician's office or out patient setting, the Medicare Prescription Drug Improvement and Modernization Act of 2003, or MMA, establishes the reimbursement rate. Beginning in January 2006, the MMA will allow physicians to choose to purchase and store pharmaceutical products in their offices, or to order the product from vendors who will be responsible for securing reimbursement from the government or other third party payers.

In the EU, the Reference Pricing System, or RPS, is typically applied to pharmaceutical products that derive from the same therapeutic class as an alternative pharmaceutical product for which the patent has expired. Using the RPS, prices may be set at the average of prices in effect for the same class of pharmaceutical products currently available or prices may be set within a range below the price of the most expensive product in the group and above the least expensive product in the group. Patients have to pay the difference if the price charged exceeds the reference price. In the EU, RPS is expected to be applied to Nabi-HB Intravenous (HEBIG in Europe) as certain EU countries currently reimburse for similar products that would compete with each product.

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Antibody Products

The FDA strictly regulates the collection, storage and testing of antibodies and antibody-based products derived from human plasma. In order to operate in the U.S., an antibody collection facility must hold a Biologics License issued by the FDA's Center for Biologics Evaluation and Research. Each collection facility must be regularly inspected and approved in order to maintain licensure. In addition, collection centers require FDA product licenses to collect each specialty antibody product. We are also subject to and are required to be in compliance with pertinent regulatory requirements of countries to which we export antibody products.

Orphan Drug Act

In January 2004, the FDA granted our investigational product Altastaph Orphan Drug Designation for use in neonate patients for protection against *S. aureus* infections. Nabi-HB Intravenous has received Orphan Drug Designation under this Act for prevention of hepatitis B re-infection in liver transplant recipients. We filed a BLA for Nabi-HB Intravenous in November 2002. In November 2002, the FDA granted our investigational product Civacir Orphan Drug Designation for prevention of hepatitis C infection in HCV-positive liver transplant recipients.

Under the Orphan Drug Act, the FDA may designate a product as having Orphan Drug status to treat a "rare disease or condition", which currently is defined as a disease or condition that affects populations of less than 200,000 individuals in the U.S. at the time of designation, or, if victims of a disease number more than 200,000, for which the sponsor establishes that costs of development will not be recovered from U.S. sales in seven years. When a product is designated an Orphan Drug, the sponsor is entitled to receive certain incentives to undertake the development and marketing of the product. In addition, the sponsor that obtains the first marketing approval for a designated Orphan Drug for a given indication effectively has marketing exclusivity for a period of seven years. There may be multiple designations of Orphan Drug status for a given drug and for different indications. However, only the sponsor of the first BLA approved for a given drug for its use in treating a given rare disease may receive marketing exclusivity.

Orphan Medicinal Product Designation

During 2005, Civacir and Altastaph were granted Orphan Medicinal Product Designation, or OMP, in Europe. The OMP designation will result in reduced MAA fees, free access to scientific advice from the EMEA and other potential research and development incentives. If a product with OMP designation is the first to receive marketing authorization in Europe for its designated indication, the product will be entitled to a 10-year marketing exclusivity, which means that a similar drug is prevented from receiving authorization for the same indication during this period.

Under Regulation (EC) No 141/2000, the EMEA through its Committee for Orphan Medicinal Products, or COMP, is responsible for reviewing designation applications from sponsors who intend to develop medicines for rare diseases, or orphan medicines. Orphan medicines are designated diagnosing, preventing or treating life-threatening or very serious conditions that affect not more than five people in 10,000 in the EU. In addition to market exclusivity for a period of 10 years, products designated as orphan medicines received the following incentives: protocol assistance and medical advice from EMEA, access to the Centralized Procedure for regulatory filings and fee reductions.

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Fast Track Designation

Civacir has received Fast Track Designation from the FDA for use in prevention of re-infection with HCV in HCV-positive liver transplant patients and Altastaph has been granted Fast Track review designation for use in very low birth weight neonate patients. StaphVAX has been granted Fast Track review designation for protection from infection with *S. aureus* for the ESRD patient indication.

Fast Track designation refers to a process of interacting with the FDA during drug development. The Fast Track mechanism is described in the Food and Drug Administration Modernization Act of 1997. The benefits of the Fast Track designation include scheduled meetings to seek FDA input into development plans, the option of submitting a BLA in sections rather than all components simultaneously and the option of requesting evaluation of studies using surrogate endpoints. The Fast Track designation is intended for a combination of a product and a claim that addresses an unmet medical need. The Fast Track mechanism is independent of Priority Review and Accelerated Approval.

COMPETITION

Biopharmaceutical Products

During 2005, there was one antibody-based therapy for prevention of hepatitis B post exposure that competed with Nabi-HB in the U.S. In January 2006, a second competitive product developed by Cangene Corporation received approval for this indication in the U.S. Based on our internal market studies, we believe that Nabi-HB has achieved a significant share of the U.S. market. We believe the majority of our Nabi-HB sales are for use to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. In November 2002, we submitted a BLA to the FDA for Nabi-HB Intravenous seeking the indication that Nabi-HB Intravenous prevents re-infection with hepatitis B disease in HBV-positive liver transplant patients and have received Orphan Drug Designation for this indication. If approved, Nabi-HB Intravenous will have seven years marketing exclusivity on the basis of its Orphan Drug Designation.

In June 2004, we submitted an MAA filing for Nabi-HB Intravenous, known as HEBIG in the EU to European regulators. At the recommendation of the RMS under the MRP in Europe, we withdrew the MAA in the second quarter of 2006 to further refine the product formulation. The refined product is expected to be resubmitted to the RMS during the second quarter of 2007. If approved in the EU, Nabi-HB Intravenous will compete in the market to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. Unlike the U.S., competitive intravenous hepatitis B immune globulin products are already marketed in most of the EU.

Aloprim was the first intravenous allopurinol therapy available for the treatment of chemotherapy-induced hyperuricemia. Aloprim provides a therapeutic option for patients that cannot tolerate oral allopurinol therapy. Another intravenous allopurinol product formulation is available in the U.S. market and competes with our product based on price.

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Antibody Products

We sell antibody raw materials to pharmaceutical companies that process this raw material into finished products. Although these pharmaceutical companies generally own plasmapheresis centers, in the aggregate they purchase a portion of their antibody requirements from independent suppliers. There is competition with independent suppliers as well as fractionators who own their own plasmapheresis centers. We compete for sales by maintaining competitive pricing and by providing customers with high-quality products and superior customer service.

EMPLOYEES

We believe that relations between our management and our employees are generally good. None of our employees are covered by a collective bargaining agreement.

We had a total of 653 employees at December 30, 2006.

FINANCIAL INFORMATION ABOUT SEGMENTS AND GEOGRAPHIC AREAS

We have provided financial information about (i) our industry segments, and (ii) our domestic and foreign operations for each of the last three fiscal years in Note 23 to our consolidated financial statements set forth in Part II of this Annual Report on Form 10-K.

AVAILABLE INFORMATION

Our Internet address is <http://www.nabi.com>. We make available, free of charge, through our Internet website our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission.

ITEM 1A. RISK FACTORS

Statements in this document that are not strictly historical are forward-looking statements and include statements about our marketed products, products in development, demand for our products, clinical trials and studies, licensure applications and approvals, assessment of the StaphVAX phase III trial results, and alliances and partnerships. You can identify these forward-looking statements because they involve our expectations, beliefs, projections, anticipations, or other characterizations of future events or circumstances. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties that may cause actual results to differ materially from those in the forward-looking statements as a result of any number of factors. These factors include, but are not limited to, risks relating to our ability to: successfully partner with third parties to fund, develop, manufacture and/or distribute our existing and pipeline products; obtain successful clinical trial results, including results from our Phase IIb NicVAX “proof-of-concept” study generate sufficient cash flow from sales of products or from milestone or royalty payments to fund our development and commercialization activities attract and maintain the human and financial resources to commercialize current products and bring to market products in development; attract, retain and motivate key employees; obtain a commercial partner to fund research, development and commercialization activities to advance our Gram-positive infections program; depend upon third parties to manufacture or fill our products; obtain regulatory approval for our products in the U.S. or other markets; realize sales from Nabi-HB due to patient treatment protocols and the number of liver transplants performed in HBV-positive patients; achieve market acceptance of our products; expand our sales and marketing capabilities or enter into and maintain arrangements with third parties to market and sell our products; effectively and/or profitability use, or utilize the full capacity of, our vaccine manufacturing facility; manufacture NicVAX or other products in our own vaccine manufacturing facility; comply with reporting and payment obligations under government rebate and pricing programs; raise additional capital on acceptable terms, or at all; and re-pay our outstanding convertible senior notes when due. These factors and others are more fully discussed below.

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Each of the following risk factors could adversely affect our business, operating results and financial condition.

We have entered into and will continue to enter into strategic alliances that may not be successful and may adversely affect our ability to develop and market our products.

In 2006, we entered into strategic alliances with respect to certain of our biopharmaceutical products in development, including agreements with Fresenius Biotech, Fresenius USA Manufacturing, Inc., or Fresenius, Kedrion and ProMetic. We also intend to enter into other strategic alliances in the future as a means of funding our development activities. Our strategy for developing, manufacturing and commercializing certain of our biopharmaceutical products in development and to fund these activities currently requires us to enter into and successfully maintain strategic alliances with other pharmaceutical companies or other industry participants to advance our programs and reduce our expenditures on each program. If we fail to enter into or maintain successful strategic alliances for certain of our products in development, we will have to reduce or delay our product development or increase our expenditures or cease development with respect to certain of our pipeline products. No assurance can be given that we will be successful in these efforts or, if successful, that our collaborative partners will conduct their activities in a timely and effective manner. If we are not successful in our efforts, our ability to develop, commercialize or market our products or to fund our operations will be affected adversely. Even if we are successful, if any of our collaborative partners violates or terminates its agreements with us or otherwise fails to complete its collaborative activities in a timely manner, the development or commercialization of our products could be delayed. This might require us to devote significant additional resources to product development or commercialization or terminate certain development programs. In addition, there can be no assurance that disputes will not arise in the future with respect to the ownership of rights to any technology developed with third parties. These and other possible disagreements between our collaborative partners and us could lead to delays in the collaborative research, development or commercialization of certain products, or could require or result in litigation or arbitration, which would be time consuming and expensive and could have a material adverse effect on our future business, financial condition and results of operations.

A number of our product candidates and products in development are in or will undergo clinical trials and the results from these trials may not be favorable.

A number of our product candidates or products in development are in or will undergo clinical trials. These trials may not meet their defined end points, and, even if they do achieve their end points, we cannot be certain that results from future clinical trials will be positive. The results of our Phase III trial of StaphVAX announced in November 2005 were not positive. In late 2006, we completed enrollment of our Phase IIb “proof-of-concept” clinical trial for NicVAX which we expect to complete in the first half of 2007. Unfavorable clinical trial results in any clinical trial could adversely affect our business plans and have an adverse effect on our market valuation and/or our future business, financial condition and results of operations.

We may not generate sufficient cash flow from our biopharmaceutical and antibody products, achieve milestones necessary to receive royalty or milestone payments or obtain financing necessary to fund our research or development or commercialization activities at an appropriate level.

We generate revenues from sales of our biopharmaceutical and antibody products. We ceased to generate revenues from sales of two of these products, WinRho SDF, in March 2005 when our exclusive distribution agreement in the U.S. ended and from PhosLo, in October 2006 when we sold this product to Fresenius. We also have generated or anticipate generating revenues from milestone or royalty payments under various strategic alliance agreements, including our agreement with Fresenius. We have incurred and expect to continue incurring significant expenses associated with our biopharmaceutical research and development activities, including the

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cost of clinical trials, marketing and other commercialization expenses. Our products under development may not generate sales for several years or at all. Our current revenues from sales of biopharmaceutical and antibody products are insufficient to fund our products under development. We do not have the financial resources to fund all of our biopharmaceutical product development programs to completion.

Therefore, our ability to continue to fund all of our ongoing research and development activities depends on our ability to generate sales from our biopharmaceutical and antibody products, to obtain commercial or development partners, to receive milestone and royalty payments, that are not under our exclusive control, and, our ability to raise additional capital. There can be no assurance that we will be able to continue to fund our research and development activities at the level required to commercialize all of our biopharmaceutical product development programs. If we are required to reduce the funding for certain of our research and development activities, this could have a material adverse effect on our future prospects.

Our operating results have fluctuated in the past and are likely to continue to do so in the future. Our revenue is unpredictable and may fluctuate due to the timing of non-recurring licensing fees, decisions of our collaborative partners with respect to our agreements with them, the achievement of milestones or our receipt of the related milestone payments under existing and future licensing, collaboration or asset sale agreements. Our expenses are unpredictable and may fluctuate from quarter to quarter due to the timing of expenses, which may include obligations to manufacture or supply product or royalty or milestone payments owed by us under licensing, collaboration or other agreements. Our present operations, as we are currently structured, places a greater reliance on our meeting projected milestones in order to generate cash flow to finance our operations. Should we encounter difficulties in meeting significant milestones, many of which are outside of our control, resulting cash flow difficulties could have a material adverse effect on our operations.

We expect that our existing capital resources and our ability to control expenditures will enable us to maintain our operations for at least the next twelve months based on current activities; however, to fully fund ongoing and planned activities beyond the next twelve months we will need to raise additional funds. Our operations will require significant additional funding in the future due to our current and future clinical development and commercialization efforts.

The following are illustrations of potential impediments to our ability to successfully secure additional funds:

- the trading price of our common stock may affect our ability to raise funds through the issuance of equity;
- our Phase III trial for StaphVAX did not meet its defined primary end point;
- our revenues from continuing operations have declined over the last three years; and
- the outstanding indebtedness from our 2.875% convertible senior notes issued in 2005 and the terms of the related indenture may discourage additional financing.

We may seek additional funding through public or private equity or debt financing, collaborative arrangements with strategic partners or from other sources. To the extent that we raise additional funds through collaboration or licensing arrangements, we may be required to relinquish some or all rights to our technologies or product candidates or to grant licenses on terms that are not favorable to us. There can be no assurance that additional financing will be available on acceptable terms, if at all. If adequate funds are not available, we may have to defer certain investments in research, product development, manufacturing, commercialization or business development, or otherwise modify our business strategy, and it could adversely affect our market valuation, results of operations or financial position.

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To be successful, we must attract, retain and motivate key employees, and the inability to do so could seriously harm our operations.

Our ability to compete in the highly competitive biopharmaceutical industry depends in large part upon our ability to attract and retain highly qualified managerial, scientific and medical personnel. In order to induce valuable employees to remain at the Company, in 2006 we created a retention program offering to certain key employees cash and equity incentives that vest over time. Some of these awards fully vested in 2007 and some will fully vest in 2009. The value to the employees of these incentives is significantly affected by movements in our stock price that we cannot control and may at any time be insufficient to counteract more lucrative offers from other companies. Despite our efforts to retain valuable employees, members of our management, manufacturing, research and clinical teams may terminate their employment with us on short notice. The loss of the services of any of our key employees could potentially harm our future business, financial condition and results of operations. Our success also depends on our ability to continue to attract, retain and motivate highly skilled junior, mid-level, and senior managers as well as junior, mid-level, and senior manufacturing, research and clinical personnel. Other biotechnology and pharmaceutical companies with which we compete for qualified personnel have greater financial and other resources, different risk profiles, and a longer history in the industry than we do. They also may provide more diverse opportunities and better chances for career advancement. Some of these characteristics may be more appealing to high quality candidates than what we have to offer. If we are unable to grow our business according to our business plan, including by developing or acquiring additional drug products, we may become a less attractive place to work for our existing employees and for high quality candidates. If we are unable to continue to attract and retain high quality personnel, the rate and success at which we can discover, develop and commercialize drug candidates will be limited.

We will not be able to advance of our Gram-positive infections program without obtaining a commercial partner to fund research, development and commercialization activities.

In March 2006, we determined, based on the conclusions reached by us and an outside advisory panel that reviewed our investigation of the outcome of the StaphVAX confirmatory Phase III clinical study, that we would continue development of our Gram-positive program, led by StaphVAX® [*Staphylococcus aureus* Polysaccharide Conjugate Vaccine] and Altastaph® [*Staphylococcus aureus* Immune Globulin Intravenous (Human)]. There can be no assurance that our assessment and conclusion or the assessment and conclusion of the outside advisory panel is correct. We do not plan to significantly advance development of our Gram-positive program, including our next generation StaphVAX and Altastaph products, or commence a new clinical trial in our Gram-positive program without obtaining a partner to fund research and development and commercialization activities. There can be no assurance that we will be able to successfully collaborate with a partner on terms sufficient to fund or assume our continued research and development activities at the level required to commercialize these products or at all. Even if we are successful in obtaining a partner and/or funding, our collaborative partners may not conduct their activities in a timely or effective manner. Our inability to successfully partner and/or fund the development of our next generation Gram-positive products, or our inability to successfully develop such products, would adversely affect our future business, financial condition or results of operations.

We depend upon third parties to manufacture certain biopharmaceutical products and products that are the subject of milestone and royalty payments we depend upon to fund our operations.

We depend upon third parties to fill and finish certain products manufactured by us, including Nabi-HB and our products in development, to manufacture and fill other products including Aloprim and other products in development and to manufacture, fill and sell products with respect to which we may receive milestone and royalty payments, including a new formulation of PhosLo. At

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times, contract manufacturers and fill and finishers have failed to meet our needs and we have experienced product losses at our contract fill and finisher that have resulted in the loss of product and a resulting delay in supply. During 2006, we lost \$0.9 million of Nabi-HB inventory due to problems at our contract fill and finisher. Our ability to receive milestone or royalty payments, which is a source of funding for our operations, could be adversely affected by the inability of third parties to manufacture products that may generate milestone or royalty revenues due to a lack of manufacturing experience or an inability to receive or delay in receiving licensure of manufacturing facilities for clinical supply or commercial manufacture. Since 2000, our ability to market Aloprim has been adversely affected at certain times by our inability to obtain necessary quantities of this product from our contract manufacturer. The failure of our contract manufacturers or contract fill and finishers to supply us with sufficient amounts of product to meet our clinical or commercial needs, or to renew their contracts with us on commercially reasonable terms or at all, or to manufacture or have manufactured products that may generate milestone or royalty revenues for us, would have a material adverse effect on our future business, financial condition and results of operations.

Our plans to license and commercialize HEBIG in the EU may not be successful.

Using the Mutual Recognition Process, we filed an MAA for Nabi-HB Intravenous, HEBIG, in the EU during 2004. In 2006 we withdrew this MAA based on discussions with regulators to reformulate the product to comply with EU regulations. We plan to resubmit the MAA for HEBIG in the first half of 2007. There can be no assurance that such approval will be timely. If we receive approval to begin commercial sales of HEBIG in any country in the EU, there can be no assurance that such approval is commercially feasible. If we receive approval, we intend to launch HEBIG through a sales distributor or commercialization partner and there can be no assurance that we will be able to find a suitable sales distributor or commercialization partner or a partner on reasonable financial terms, or at all. Following approval in each country, we or our distributor or commercialization partner will then need to seek reimbursement in that country. There can be no assurance that reimbursement approval will be at sufficient levels in each country will be obtained from any of the countries where such approval is sought or that reimbursement is approved at all. Any delays in or failure to obtain licensure or reimbursement approvals, or the failure to obtain reimbursement approvals at sufficient levels, or any delays in commercialization could adversely affect our results of operations and financial position. We have no direct experience in obtaining licensure of these products in the EU or other non-U.S. markets.

The market may not be receptive to our products upon their introduction.

There can be no assurance that any of our products in development will achieve market acceptance. The degree of market acceptance will depend upon a number of factors, including:

- the clinical efficacy and safety of our products
- the potential advantages over existing treatment methods to the medical community;
- results of clinical studies conducted by our competitors;
- regulatory approvals;
- any limitation of indications in regulatory approvals;
- the prices of such products; and
- reimbursement policies of government and third-party payers.

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The failure of our development product pipeline or marketed products to gain market acceptance could have a material adverse effect on our future business, financial condition or results of operations.

We may not be successful in licensing or operating our vaccine manufacturing plant.

We have constructed a vaccine plant in our Boca Raton, Florida manufacturing facility designed to allow us to produce the vaccines in our product pipeline. The plant is designed to process several vaccines on a commercial scale. We have not previously owned or operated such a plant and have no direct experience in commercial, large-scale manufacturing of vaccine products. There can be no assurance that we will be successful in licensing the plant or, if FDA and/or EU licensures are received, that the costs to validate the plant will be reasonable, that we will have or be able to obtain products to manufacture in the plant, or that we can operate the plant efficiently and profitably. Our failure to successfully and profitably operate our new vaccine plant could have a material adverse effect on our future business, financial condition and results of operations.

If we are unable to expand our sales and marketing capabilities in the future or enter into and maintain arrangements with third parties to market and sell our products, our ability to commercialize our products in development may be harmed.

Currently we only have a small sales force. Our sales force was significantly reduced in 2006 following the sale of our PhosLo business to Fresenius. To promote our future biopharmaceutical products in the U.S. and EU, we must develop our sales, marketing and distribution capabilities or make arrangements with third parties to perform these services. Competition for qualified sales personnel is intense. Developing a sales force is expensive and time consuming and could delay any product launch. We may be unable to establish and manage an effective sales force in a timely or cost-effective manner, if at all, and any sales force we do establish may not be capable of generating sufficient demand for our products. To the extent that we enter into arrangements with third parties to perform sales and marketing services, our product revenue may be lower than if we directly marketed and sold our products. We expect to rely on third-party distributors and/or commercial partners for substantially all of our international sales. If we are unable to establish adequate sales and marketing capabilities, we may not be able to generate significant revenue, or revenue at all.

Claims or concerns may arise regarding the safety of our marketed products, which could lead to product withdrawals, reduced sales or product recalls.

Regulatory approvals for any of our marketed products may be withdrawn for a number of reasons, including the later discovery of previously unknown problems with the product, such as a previously unknown safety issue. In addition, post-marketing studies, which may be sponsored by us or our competitors, may present evidence that another product is safer or more effective than one of our products, which could lead to reduced sales of our product. Finally, claims or concerns may arise regarding the safety or efficacy of one of our marketed products, which could lead to a product recall. Product withdrawals, reduced sales, or product recalls could adversely affect our future business, financial condition, and results of operations.

We are not currently able to utilize the full capacity of our Boca Raton, Florida manufacturing facility and we may be unsuccessful in our attempt to optimize the value of our current operations.

We began commercial manufacture of Nabi-HB at our Boca Raton, Florida manufacturing facility in the fourth quarter of 2001. For the foreseeable future, we will not utilize the full manufacturing capacity of the facility and there can be no assurance that we will ever operate the facility efficiently. There can be no assurance that we will have either our own products to manufacture or those of others to offset the cost of the facility's operation. Our failure to fully utilize the capacity of the plant or to manufacture products successfully could require us to write down or write off some or all of the tangible or intangible assets related to the facility and could have a material adverse effect on our future business, financial condition and results of operations.

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A disaster at our sole manufacturing site would interrupt our manufacturing capability for the products produced there.

Currently, Nabi-HB is only manufactured at our manufacturing facility in Boca Raton, Florida. Manufacturing products at a single site presents risks because a disaster, such as a fire or hurricane, may interrupt manufacturing capability. In such an event, we will have to resort to alternative sources of manufacturing, if available at all, that could increase our costs or result in significant product supply delays while required regulatory approvals are obtained. Any such delays or increased costs could have a material adverse effect on our future business, financial condition and results of operations. We also rely on our manufacturing facility in Boca Raton, Florida for the pre-launch manufacture of several of our products in development. If an interruption of our manufacturing capability occurs, we could have to resort to alternative sources of manufacturing that could increase our costs or result in significant product development or launch delays while required regulatory approvals are obtained.

Our BLA license application for Nabi-HB Intravenous may not be approved.

Our BLA license application for Nabi-HB Intravenous that was filed in November 2002 may not be approved by the FDA. Nabi-HB is a human polyclonal antibody product currently indicated to prevent hepatitis B, or HBV, infection following accidental exposure to the virus. We believe the majority of our Nabi-HB sales are used to prevent re-infection with hepatitis B disease in HBV-positive liver transplant patients. Nabi-HB is not currently labeled for this use. In July 2006 the Blood Products Advisory Committee (BPAC) of the FDA rendered a positive opinion of our BLA for Nabi-HB Intravenous, voting to recommend approval of its use for the prevention of recurrence of hepatitis B after liver transplant. The FDA usually follows the recommendations of its Advisory Committees, but it is not obligated to do so. Our inability to obtain licensure from the FDA for Nabi-HB Intravenous could have an adverse effect on our future business, financial condition and results of operations.

Our sales of Nabi-HB are directly related to patient treatment protocols and the small number of liver transplants performed in HBV-positive patients, over which we have no control.

Our sales of Nabi-HB are primarily for the care of HBV-positive liver transplant patients at the time of and for a maintenance period following liver transplant. The number of liver transplants that occur depends on the number of livers available for transplant. The number of livers used for HBV-positive liver transplant candidates as well as the dosing of Nabi-HB may vary from time to time based on the following factors:

- changes in overall organ availability;
- allocations of available organs to eligible potential recipients;
- changes in the treatment protocols applied to HBV-positive patients;
- availability of alternative treatments and competitive products, such as anti-viral drugs products; and
- changes in reimbursement regimes including the Medicare Modernization Act in the U.S., that may provide a negative incentive for the use of certain of our products in future periods.

Each of these factors is outside our control. Sales of Nabi-HB may be adversely affected if patient treatment protocols change or the number of hepatitis B liver transplants decreases. Sales of Nabi-HB Intravenous, if it is licensed, may be similarly affected. This could have an adverse effect on our future results of operations and financial condition.

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A reduction in the availability of specialty antibodies could adversely affect our ability to manufacture an adequate amount of Nabi-HB or our other products under development or to fulfill contractual obligations.

Our ability to manufacture Nabi-HB today and Nabi-HB Intravenous, or HEBIG in the EU, and certain other products under development, will depend upon the availability of specialty antibodies that we primarily obtain from our nine FDA approved antibody collection centers. We also have contractual obligations to supply to third parties other specialty antibodies that we also obtain from our FDA approved antibody collection centers. Specialty antibodies are more difficult to obtain than non-specific antibodies. Reduced availability of the necessary specialty antibodies would adversely affect our ability to manufacture an adequate amount of Nabi-HB, Nabi-HB Intravenous, or HEBIG in the EU or certain other products under development, or to fulfill our contractual obligations, that could have an adverse effect on our future business, financial condition and results of operations.

We sell our products to a small number of customers. The loss of any major customer could have a material adverse effect on our future business results of operations or financial condition.

We sell a significant portion of our biopharmaceutical products to pharmaceutical wholesalers and distributors. In 2006, three such customers accounted for 54% of our total consolidated sales. A loss of any of the customers or a material reduction in such customers' purchases or inventories on hand at their sites could have a material adverse effect on our future business results of operations and financial condition. We also maintain a significant receivable balance with each of these customers. If these customers become unable or unwilling to pay amounts owed to us, our financial condition and results of operations could be adversely affected.

Our non-specific antibody sales in 2006 were primarily to a single customer. The loss of this customer or a material reduction in its purchases of antibodies could have a material adverse effect upon our future business, financial condition and results of operations.

New treatments may reduce the demand for our antibodies and antibody-based biopharmaceutical products.

Most of the antibodies we collect, process and sell to our customers are used in the manufacture of biopharmaceutical products to treat certain diseases. Several companies are marketing and developing monoclonal antibody products to treat some of these diseases based on technology that would reduce or eliminate the need for human antibodies. Such products could adversely affect the demand for antibodies and antibody-based biopharmaceutical products. We are unable to predict the impact of future technological advances on our business.

We may not be able to develop and commercialize new biopharmaceutical products successfully or in a timely manner, which could adversely impact our future operations.

Our future success will depend on our ability to achieve scientific or technological advances and to translate such advances into commercially competitive products on a timely basis. Our biopharmaceutical products under development are at various stages, and substantial further development, pre-clinical testing or clinical trials will be required to determine their technical feasibility and commercial viability. Our proposed development schedules for these products may be affected by a variety of factors, including:

- lack of funding;
- technological difficulties;

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- competition;
- failure to obtain necessary regulatory approvals;
- failure to achieve desired results in clinical trials;
- proprietary technology positions of others;
- positive clinical results for competitive therapies;
- reliance on third parties for manufacturing;
- failure to market effectively; and
- changes in government regulation.

Positive results for a product in a clinical trial do not necessarily assure that positive results will be obtained in future clinical trials or that we will obtain government approval to commercialize the product. In addition, any delay in the development, introduction or marketing of our products under development could result either in such products being marketed at a time when their cost or performance characteristics might not be competitive in the marketplace or in a shortening of their commercial lives. There can be no assurance that our biopharmaceutical products under development will prove to be technologically feasible or commercially viable or that we will be able to obtain necessary regulatory approvals or licenses on a timely basis, if at all. Our failure to develop, obtain necessary regulatory approvals or successfully commercialize our products could have a material adverse effect on our future operations and our market valuation.

We are unable to pass through certain cost increases to our antibody product customers with which we have supply contracts.

A significant amount of our antibodies are sold under contracts that have a remaining term of up to five years. Certain contracts do not permit us to increase prices during the contract term except to reflect changes in customer specifications or new governmental regulations. If our costs of collecting antibodies under these contracts rise for reasons other than changes in customer specifications or new governmental regulations, we are unable to pass on these cost increases to our antibody product contract customers except with the customer's consent and our ability to fund our operations may be adversely affected. Financial results of operations may be adversely affected.

An increase in the supply of or a decrease in the demand for antibody products could materially and adversely affect our future business, financial condition and results of operations.

The worldwide supply of antibodies has fluctuated historically. Future changes in government regulation relating to the collection, fractionation or use of antibodies or any negative public perception about the antibody collection process or the safety of products derived from human blood or antibodies could further adversely affect the overall supply of or demand for antibodies. Increases in supply or decreases in demand of antibody products could have a material adverse effect on our future business, financial condition and results of operations.

If we fail to comply with extensive regulations enforced by the FDA, the EMEA, the Paul Ehrlich Institute in Germany, or PEI, the German Federal Institute for Drugs and Medical Devices, or BfArM, or other agencies, the sale of our current and future products could be prevented or delayed.

Research, pre-clinical development, clinical trials, manufacturing and marketing of our products are subject to extensive regulation by various government authorities. The process of obtaining FDA, EMEA, PEI, BfArM or other required regulatory approvals are lengthy and expensive, and the time required for such approvals is uncertain. The approval process is affected by such factors as:

- the severity of the disease;

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- the quality of submission;
- the clinical efficacy and safety of the product;
- the strength of the chemistry and manufacturing control of the process;
- the compliance record and controls of the manufacturing facility;
- the availability of alternative treatments; and
- the risks and benefits demonstrated in clinical trials.

Regulatory authorities also may require post-marketing surveillance to monitor potential adverse effects of our products or product candidates. The U.S. Congress, or the FDA in specific situations, can modify the regulatory process. Many of our clinical trials are at a relatively early stage and, except for Nabi-HB, Aloprim and certain non-specific and specialty antibody products, no approval from the FDA or any other government agency for the manufacturing or marketing of any other products under development has been granted. There can be no assurance that we will be able to obtain the necessary approvals to manufacture or market any of our pipeline products. Failure to obtain additional regulatory approvals of products currently marketed or regulatory approval for products under development could have a material adverse effect on our future business, financial condition and results of operations. Once approved, a product's failure to comply with applicable regulatory requirements could, among other things, result in warning letters, fines, suspension or revocation of regulatory approvals, product recalls or seizures, operating restrictions, injunctions and criminal prosecutions.

Although we do not have material sales of our biopharmaceutical products outside the U.S. today, our goal is to expand our global presence for these products. Distribution of our products outside the U.S. is subject to extensive government regulation. These regulations, including the requirements for approvals or clearance to market, the time required for regulatory review and the sanctions imposed for violations, vary from country to country. There can be no assurance that we will obtain regulatory approvals in such countries or that we will not be required to incur significant costs in obtaining or maintaining these regulatory approvals. In addition, the exports by us of certain of our products that have not yet been cleared for domestic commercial distribution may be subject to FDA export restrictions. Failure to obtain necessary regulatory approvals, the restriction, suspension or revocation of existing approvals or any other failure to comply with regulatory requirements could have a material adverse effect on our future business, financial condition and results of operations.

Our U.S. manufacturing, antibody collection, labeling, storage and distribution activities also are subject to strict regulation and licensing by the FDA. Our biopharmaceutical manufacturing facility in Boca Raton, Florida is subject to periodic inspection by the FDA and in the future, the EMEA, and other regulatory authorities and from time to time, we may receive notices of deficiencies from these agencies as a result of such inspections. Our antibody collection centers in the U.S. also are subject to periodic inspection by the FDA, the EMEA and other regulatory authorities, and from time to time, we may receive notices of deficiencies from these agencies as a result of such inspections. Our failure, or the failure of our biopharmaceutical manufacturing facility or our antibody collection centers, to continue to meet regulatory standards or to remedy any deficiencies could result in corrective action by the FDA, including closure of our biopharmaceutical manufacturing facility or one or more antibody collection centers and fines or penalties. New regulations may be enacted and existing regulations, their interpretation and enforcement, are subject to change. Therefore, there can

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be no assurance that we will be able to continue to comply with any regulations or that the costs of such compliance will not have a material adverse effect on our future business, financial condition and results of operations.

Heightened concerns over antibody products and screening measures could adversely affect our antibody production.

Our antibody collection centers and our customers for antibody products are subject to extensive regulation by the FDA and non-U.S. regulatory authorities. Concern over the safety of antibody products has in the past resulted and will likely result in the future in the adoption of more rigorous screening procedures by regulatory authorities and manufacturers of antibody products. In prior years, these changes have resulted in significantly increased costs to us in providing non-specific and specialty antibodies to our customers. New procedures, which include a more extensive investigation into a donor's background, as well as more sensitive tests, also have disqualified numerous potential donors and discouraged other donors who may be reluctant to undergo the screening procedures. These more stringent measures could adversely affect our antibody production with a corresponding, adverse effect on our future business, financial condition and results of operations. In addition, our efforts to increase production to meet customer demand may result in higher costs to attract and retain donors.

We may be subject to costly and damaging liability claims relating to antibody contamination and other claims.

Antibodies we collect, antibody-based products we manufacture, antibody-based products we market or are developing, such as Nabi-HB and Civacir, and antibody-based products our customers manufacture run the risk of being contaminated with viruses, prions or other infections or contaminating agents. As a result, suits may be filed against our customers and us claiming that the plaintiffs became infected as a result of using contaminated products. Such suits have been filed in the past related to contaminated antibodies, and in a number of suits we were one of several defendants. There can be no assurance that additional lawsuits relating to infection with viruses, prions or other infections or contaminating agents will not be brought against us by persons who have become infected from antibody-based products.

Pharmaceutical and biotechnology companies are increasingly subject to litigation, including class action lawsuits, and governmental and administrative investigations and proceedings related to product pricing and marketing practices. There can be no assurance that lawsuits will not be filed against us or that we will be successful in the defense of these lawsuits. Defense of suits can be expensive and time consuming, regardless of the outcome, and an adverse result in one or more suits could have a material adverse effect on our future business, financial condition and results of operations.

We use and produce hazardous materials. Any claims relating to improper handling, storage or disposal of these materials could be costly.

Our research and development operations involve the use of hazardous materials. Our operations also produce hazardous waste products. We are currently classified as a large quantity generator of hazardous waste. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of these materials. We could be subject to damages, fines and penalties in the event of an improper or unauthorized release of, or exposure of individuals to, these hazardous materials and waste. Compliance with current and future environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research and development and manufacturing efforts.

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We may not be able to maintain sufficient product liability and directors and officers insurance to cover claims against us.

Product liability and directors and officers insurance for the biopharmaceutical industry is generally expensive to the extent it is available at all. There can be no assurance that we will be able to maintain such insurance on acceptable terms or that we will be able to secure increased coverage if the commercialization of our products progresses, or that existing or future claims against us will be covered by our insurance. Moreover, there can be no assurance that the existing coverage of our insurance policy and/or any rights of indemnification and contribution that we may have will offset existing or future claims. A successful claim against us with respect to uninsured liabilities or in excess of insurance coverage and not subject to any indemnification or contribution could have a material adverse effect on our future business, financial condition and results of operations. Further, if we were unable to obtain directors and officers liability insurance, it could affect adversely our ability to attract and retain directors and senior officers.

We may not be able to maintain sufficient property insurance on our facilities in Florida.

We maintain significant real property assets in Florida. Property insurance for companies with a high concentration of property assets in Florida is generally expensive to the extent it is available at all. There can be no assurance that we will be able to maintain such insurance on acceptable terms or that we will be able to secure increased coverage if the value of our property increases.

Our patents and proprietary rights may not provide sufficient protection, and patents of other companies could prevent us from developing and marketing our products.

The patent positions of biopharmaceutical firms generally are highly uncertain and involve complex legal and factual questions. The ultimate degree of patent protection that will be afforded to biotechnology products and processes, including ours, in the U.S. and in other important markets remains uncertain and is dependent upon the scope of protection decided upon by the patent offices, courts and lawmakers in these countries. There can be no assurance that existing patent applications will result in issued patents, that we will be able to obtain additional licenses to patents of others or that we will be able to develop additional patentable technology of our own. We cannot be certain that we were the first creator of inventions covered by our patents or pending patent applications or that we were the first to file patent applications for such inventions. There can be no assurance that any patents issued to us will provide us with competitive advantages or will not be challenged by others. Furthermore, there can be no assurance that others will not independently develop similar products, or, if patents are issued to us, others may design their patents around our patents.

A number of pharmaceutical companies, biotechnology companies, universities and research institutions have filed patents or patent applications or received patents relating to products or processes competitive with or similar to ours. Some of these applications or patents may compete with our applications or conflict in certain respects with claims made under our applications. Such a conflict could result in a significant reduction of the coverage of our patents, if issued. In addition, if patents that contain competitive or conflicting claims are issued to others and such claims are ultimately determined to be valid, we may be required to obtain licenses to these patents or to develop or obtain alternative technology.

If any licenses are required, there can be no assurance that we will be able to obtain any such licenses on commercially favorable terms, if at all. Our failure to obtain a license to any technology that we may require in order to commercialize our products could have a material adverse effect on our future business, financial condition and results of operations.

We have received correspondence alleging that our research and plans to commercialize NicVAX infringe certain U.S. and European patent rights. Based upon our current plans for NicVAX we do not believe that any valid U.S. or European patent rights will be infringed on, however, there can be no assurance that we will prevail in our belief if challenged.

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Additional litigation may be necessary to enforce any patents issued to us or to determine the scope or validity of third-party proprietary rights or to defend against any claims that our business infringes on third-party proprietary rights. Patent litigation is expensive and could result in substantial cost to us. The costs of patent litigation and our ability to prevail in such litigation will have a material adverse effect on our future business, financial condition and results of operations.

We also rely on secrecy to protect our technology, especially where patent protection is not believed to be appropriate or obtainable. We maintain strict controls and procedures regarding access to and use of our proprietary technology and processes. However, there can be no assurance that these controls or procedures will not be violated, that we would have adequate remedies for any violation, or that our trade secrets will not otherwise become known or be independently discovered by competitors.

We compete with larger, better-financed and more mature pharmaceutical and biotechnology companies, that are capable of developing and marketing products more effectively than we are able to so.

Competition in the development of biopharmaceutical products is intense, both from pharmaceutical and biotechnology companies, and is expected to increase. Many of our competitors have greater financial resources and larger research and development and marketing staffs and budgets than we have, as well as substantially greater experience in developing products and marketing, obtaining regulatory approvals, and manufacturing and marketing biopharmaceutical products. Some of our competitors are able to price their competitive products, at prices that are substantially higher than our product, which provides them with greater gross margins to invest in development and marketing. We compete with our competitors:

- to develop and market products;
- to acquire products and technologies; and
- to attract and retain qualified scientific personnel.

There can be no assurance that our competitors will not succeed in developing or marketing technologies and products that are more effective, affordable or profitable than those that we are developing or marketing. In addition, one or more of our competitors may achieve product commercialization or patent protection for competitive products earlier than us, which would preclude or substantially limit sales of our products. Several companies are attempting to develop and market products to treat certain diseases based upon technology that would lessen or eliminate the need for human antibodies. The successful development, commercialization or marketing by any of our competitors of any such products could have a material adverse effect on our future business, financial condition and results of operations.

There are potential limitations on third-party reimbursement, complex regulations for reimbursement of our products and other pricing-related matters that could reduce the sales of our products or may delay or impair our ability to generate sufficient revenues.

Our ability to commercialize our biopharmaceutical products and related treatments depends in part upon the availability of, and our ability to obtain adequate levels of, reimbursement from government health administration authorities, private healthcare insurers and other organizations. Significant uncertainty exists as to the reimbursement status of newly approved healthcare products, and there can be no assurance that adequate third-party payer coverage will be available, if at all. Inadequate levels of reimbursement may prohibit us from maintaining price levels sufficient for realization of an adequate return on our investment in developing new

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biopharmaceutical products or could result in the termination of production of otherwise commercially viable products. Further, there are high levels of regulatory complexity related to reimbursement from U.S. and government payers that can significantly limit available reimbursement for market products.

In the U.S., government and other third-party payers are increasingly attempting to contain healthcare costs by limiting both the coverage and level of reimbursement for new products approved for marketing by the FDA and by refusing, in some cases, to provide any coverage for disease indications for which the FDA has not granted marketing approval. Also, the trend towards managed healthcare in the U.S. and the concurrent growth of organizations such as HMOs, which could control or significantly influence the purchase of healthcare services and products, as well as legislative proposals to reform healthcare or reduce government insurance programs, may all result in lower prices for our products. The cost containment measures that healthcare providers are instituting or the impact of any healthcare reform could have an adverse effect on our ability to sell our products or may have a material adverse effect on our future business, financial condition and results of operations.

Within the EU, a number of countries use price controls to limit reimbursement for pharmaceutical products. These price control limits are often derived from the chemical entity of the product, the competitive environment for a product and pricing in relation to other products. Further, price increases in these settings in future periods may be significantly restricted or price decreases in future periods may be mandated. Reimbursement for products within the EU is negotiated in each country. There can be no assurance that that we will receive reimbursement approval from any or all of the countries where we seek such approval or that reimbursement, if approved, will be at sufficient levels in each country. Any delays in or failure to obtain licensure or reimbursement approvals, or the failure to obtain reimbursement approvals at sufficient levels, or any delays in commercialization could adversely affect our market valuation, results of operations and our financial position.

There can be no assurance that reimbursement in the U.S., the EU or other markets will be available for our products, or, if available, will not be reduced in the future, or that reimbursement amounts will not reduce the demand for, or the price of, our products. The unavailability of government or third-party reimbursement or the inadequacy of the reimbursement for medical treatments using our products could have a material adverse effect on our future business, financial condition and results of operations. Moreover, we are unable to forecast what additional legislation or regulation, if any, relating to the healthcare industry or third-party coverage or reimbursement may be enacted in the future or what effect such legislation or regulation would have on our future business.

Current healthcare laws and future legislative changes to the healthcare system may affect our ability to distribute our products profitably.

Our operations are also subject to federal and state anti-kickback laws. Certain provisions of the Social Security Act prohibit entities such as us from knowingly and willingly offering, paying, soliciting or receiving any form of remuneration (including any kickbacks, bribe or rebate) in return for the referral of items or services for which payment may be made under a federal health care program, or in return for the recommendation, arrangement, purchase, lease or order of items or services for which payment may be made under a federal health care program. Violation of the federal anti-kickback law is a felony, punishable by criminal fines or imprisonment for up to five years or both. In addition, the DHHS may impose civil penalties or exclude violators from participation in federal health care programs such as Medicare and Medicaid or both. Many states have adopted similar prohibitions against payments intended to induce referrals of products or services paid by Medicaid or other third party payers. Because of the far-reaching nature of these laws and their lack of uniformity, there can be no assurance that the occurrence of one or more violations of these laws would not result in a material adverse effect on our business, financial condition and results of operations.

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Currency exchange rate fluctuations could adversely affect our results from operations.

We may conduct business directly, or with partners, in countries outside of the U.S., which could expose us to fluctuations in foreign currency exchange rates. Fluctuations in foreign currency exchange rates may affect our results of operations, which in turn may adversely affect reported earnings and the comparability of period-to-period results of operations.

We may not have the ability to raise the funds necessary to repay our convertible senior notes upon maturity or to repurchase them.

We have outstanding debt of approximately \$109.6 million as of December 30, 2006. Our annual interest expense, including the interest payable on the notes, is approximately \$3.7 million.

At maturity in 2025, the entire outstanding principal amount of the notes will become due and payable by us. In addition, holders of the notes may require us to repurchase the notes on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020 or upon the occurrence of a fundamental change as described in the indenture governing the notes. If we are unable to generate significant revenue from our products or are unable to raise additional capital we may not be able to make required payments on the notes or our other obligations, resulting in our default under the terms of the notes and the related indenture, which would permit holders of the notes to accelerate maturity. We cannot assure you that we will have sufficient financial resources, or will be able to arrange financing, to pay the principal amount or repurchase price when due. Our failure to pay the principal amount or repurchase price when due would result in an event of default with respect to the notes. Prior to the notes coming due, we may engage in restructuring or other strategic initiatives that could affect the rate at which the notes convert into our common stock, resulting in the issuance of additional shares of common stock upon conversion of the notes that may dilute or be adverse to the value of our common stock.

Conversion of the 2.875% convertible senior notes will dilute the ownership interest of existing stockholders.

The conversion of some or all of the notes will dilute the ownership interests of existing stockholders. Any sales in the public market of the common stock issued upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the notes may encourage short selling by market participants because the conversion of the notes could depress the price of our common stock.

Anti-takeover provisions in our charter documents, under Delaware law and under our stockholder rights plan, could make an acquisition of us more difficult.

Provisions of our certificate of incorporation and bylaws will make it more difficult for a third party to acquire us on terms not approved by our board of directors and may have the effect of deterring hostile takeover attempts. For example, our certificate of incorporation currently contains a fair price provision and also authorizes our board of directors to issue substantial amounts of preferred stock and to fix the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without any further vote or action by the stockholders. The rights of the holders of our common stock will be subject to, and may be harmed by, the rights of the holders of any preferred stock that may be issued in the future. The issuance of preferred stock could reduce the voting power of the holders of our common stock and junior preferred stock and the likelihood that holders of our common stock and junior preferred stock will receive payments upon liquidation.

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We also are subject to provisions of Delaware law that could have the effect of delaying, deferring or preventing a change in control of our company. One of these provisions prevents us from engaging in a business combination with any interested stockholder for a period of three years after the date the person becomes an interested stockholder, unless specified conditions are satisfied.

We also have implemented a stockholder rights plan, or poison pill, that would substantially reduce or eliminate the expected economic benefit to an acquirer from acquiring us in a manner or on terms not approved by our board of directors. These and other impediments to a third-party acquisition or change of control could limit the price investors are willing to pay in the future for our securities.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We own an 87,300 square foot facility that houses our corporate headquarters, our FDA-licensed biopharmaceutical manufacturing facility and our vaccine manufacturing facility in Boca Raton, Florida. We also own a 46,000 square foot facility in Boca Raton, Florida that houses our laboratory and cold storage facility.

We lease office, laboratory, pilot manufacturing and warehouse space in Rockville, Maryland with terms expiring through December 2008 with various options for lease extensions.

We lease a facility in Bray, Ireland with a term through 2030. We have the right to terminate the lease under certain circumstances in 2015. We do not currently occupy this facility and have subleased the facility to an outside third party.

We occupy antibody collection centers ranging in size from approximately 3,200 to 20,800 square feet leased from non-affiliates under leases expiring through 2012. A majority of these leases contain renewal options that permit us to renew the leases for varying periods up to ten years at the then fair rental value. We believe that in the normal course of our business, we will be able to renew or replace our existing leases.

ITEM 3. LEGAL PROCEEDINGS

On September 27, 2005, we filed a lawsuit in the United States District Court for the Southern District of Ohio against Roxane Laboratories, Inc., or Roxane, for infringement of our U.S. Patent Number 6,576,665 for PhosLo GelCaps. We filed this lawsuit under the Hatch-Waxman Act in response to a Paragraph IV Certification notice letter submitted by Roxane to us concerning Roxane's filing of an Abbreviated New Drug Application, or ANDA, with the FDA to market a generic version of PhosLo GelCaps. The lawsuit was filed on the basis that Roxane's submission of its ANDA and its proposed generic product infringe the referenced patent, which expires in 2021. Under the Hatch-Waxman Act, FDA approval of Roxane's proposed generic product would be stayed until the earlier of 30 months or resolution of the patent infringement lawsuit.

On May 25, 2006, we filed an amended complaint in the lawsuit also alleging infringement of U.S. Patent No. 6,875,445. On June 9, 2006, Roxane filed an answer and counterclaims to our amended complaint, in which it denied infringement and asserted several affirmative defenses. Among those defenses, Roxanne has asserted that it does not infringe either patent, that the patents are invalid, and that the patents are unenforceable due to inequitable conduct. In addition, Roxane has asserted a counterclaim for attempted monopolization under the Sherman Act. Roxane seeks unspecified damages incurred and requests that such damages be trebled under the antitrust statute.

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On July 18, 2006, we filed a motion to dismiss Roxane's antitrust counterclaim, as well as to stay and bifurcate discovery on that counterclaim. On October 20, 2006, the Magistrate Judge ruled that discovery on the counterclaim should proceed simultaneously with discovery on the underlying patent claim. The District Judge has not yet ruled on the portion of the motion that seeks to dismiss the counterclaim on the pleadings. The parties are in the deposition phase of discovery.

On November 12, 2006, we completed the sale of PhosLo and related intellectual property, including the patents which are the subject of the Roxane litigation to Fresenius. As a consequence of this sale, Fresenius assumed prosecution of the litigation and the costs associated therewith, however, we remain a defendant in an anti-trust counterclaim and we remain responsible for defense costs associated with the counterclaim and for any liability arising from the counterclaim.

We remain committed to protecting our intellectual property and will take all appropriate steps to vigorously protect our patent rights.

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

No matter was submitted to a vote of security holders in the fourth quarter of the year ended December 30, 2006.

ITEM 4(a). EXECUTIVE OFFICERS OF THE REGISTRANT

The executive officers of Nabi Biopharmaceuticals are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Leslie Hudson, Ph.D.	60	Chief Executive Officer and President
Raafat E.F. Fahim, Ph.D.	53	Senior Vice President, Research, Technical and Production Operations
Jordan I. Siegel	41	Senior Vice President, Finance, Chief Financial Officer, Chief Accounting Officer and Treasurer

Dr. Hudson has been Chief Executive Officer and President since February 2007 and a director of the Company since August 2005. He is the sole proprietor of G&M Princeton Associates, a pharmaceutical commercial development practice. He served as Chief Executive Officer and President of DOV Pharmaceutical, Inc., a biopharmaceutical company from June 2005 to July 2006. Dr. Hudson served as Vice Provost for Strategic Initiatives at the University of Pennsylvania from 2003 to June 2005. From 1995 to 2003, he served in several positions at Pharmacia Corp., including senior vice president of research and exploratory development, senior vice president of emerging technology and commercial development and general manager and group vice president of ophthalmology. From 1988 to 1994, he worked at GlaxoWellcome (now GlaxoSmithKline plc) in several senior research positions including head of cancer, metabolic and hyperproliferative disease and vice president for discovery research, in which he headed the company's genomics program. Dr. Hudson received his bachelor's degree in zoology with first class honors from the Imperial College of Science, Technology and Medicine, at the University of London in 1968. He received his doctorate in immunology from the Imperial College and Middlesex Hospital Medical School, University of London in 1975. Dr. Hudson is also an associate of the Royal College of Science.

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Dr. Fahim has served as Senior Vice President, Research, Technical and Production Operations since May 2003 having been employed as Vice President of Vaccine Manufacturing Operations in March 2003. From 2002 to 2003, Dr. Fahim was an independent consultant, working with Aventis Pasteur and other companies worldwide on projects that included manufacturing, process improvement, quality operations and regulatory issues. From 2001 to 2002, he served as President and Chief Operating Officer of Lorus Therapeutics, Inc., a biopharmaceutical company. From 1987 to 2001, Dr. Fahim was employed by Aventis Pasteur where he was instrumental in developing several vaccines from early research to marketed products. During his employment with Aventis Pasteur, Dr. Fahim held the positions of Vice President, Industrial Operations, Vice President Development, Quality Operations and Manufacturing, Director of Product Development, and head of bacterial vaccines research/research scientist.

Mr. Siegel, has served as Senior Vice President, Finance, Chief Financial Officer and Treasurer since June 2006. From July 1995 to June 2006, Mr. Siegel was employed by IVAX Corporation, in various positions, most recently as Vice President of Finance for its subsidiary, IVAX Pharmaceuticals, Inc. From 1996 until 2000, Mr. Siegel served as a corporate Vice President and Treasurer of IVAX Corporation.

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is quoted on the Nasdaq National Market under the symbol "NABI". The following table sets forth for each period the high and low sale prices for our common stock (based upon intra-day trading) as reported by the Nasdaq National Market.

	<u>High</u>	<u>Low</u>
2006		
First Quarter ended April 1, 2006	\$ 5.80	\$ 3.37
Second Quarter ended July 1, 2006	7.15	4.80
Third Quarter ended September 30, 2006	6.09	4.56
Fourth Quarter ended December 30, 2006	7.36	5.62
2005		
First Quarter ended March 26, 2005	\$15.30	\$11.03
Second Quarter ended June 25, 2005	15.00	10.23
Third Quarter ended September 24, 2005	16.00	12.65
Fourth Quarter ended December 31, 2005	13.64	3.06

The closing price of our common stock on March 7, 2007 was \$4.70 per share. The number of record holders of our common stock on March 7, 2007 was 996.

No cash dividends have been previously paid on our common stock and none are anticipated in 2007.

The following table provides information about purchases made by us of our common stock for each month included in our fourth quarter:

ISSUER PURCHASES OF EQUITY SECURITIES

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)</u>	<u>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (1)</u>
10/01/06-10/28/06	0	N/A	0	\$ 3.1 million
10/29/06-11/25/06	0	N/A	0	3.1 million
11/26/06-12/30/06	0	N/A	0	3.1 million
Total	0	N/A	0	3.1 million

- (1) On September 19, 2001, our Board of Directors approved the buyback of up to \$5.0 million of our common stock in the open market or in privately negotiated transactions. We acquired no shares under this program during 2006 or 2005. We will evaluate market conditions in the future and make decisions to repurchase our common stock on a case-by-case basis. We have acquired 345,883 shares of our common stock for a total of \$1.9 million since the inception of the buyback program. Repurchased shares have been accounted for as treasury stock.

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected consolidated financial data for the five years ended December 30, 2006 that was derived from our audited consolidated financial statements.

The data should be read in conjunction with, and are qualified by reference to, Nabi Biopharmaceuticals' Consolidated Financial Statements and the Notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations." All amounts in the following table are expressed in thousands, except for per share data. For all periods shown, the results from our PhosLo product line have been reclassified as discontinued operations. Refer to Note 3.

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(In thousands, except per share data)	For the Years Ended				
	December 30, 2006	December 31, 2005	December 25, 2004	December 27, 2003	December 28, 2002
Statement of Operations Data:					
Revenues	\$ 89,868	\$ 94,149	\$ 142,183	\$ 163,694	\$ 195,966
Costs and expenses					
Costs of products sold, excluding amortization of intangible assets	61,177	63,642	70,499	79,327	119,170
Royalty expense	1,535	3,623	17,569	18,387	12,883
Gross margin, excluding amortization of intangible assets	<u>27,156</u>	<u>26,884</u>	<u>54,115</u>	<u>65,980</u>	<u>63,913</u>
Selling, general and administrative expense	43,076	51,693	45,667	40,611	38,380
Research and development expense	37,572	60,906	59,551	28,653	21,096
Amortization of intangible assets	273	676	421	1,954	1,116
Other operating expenses, principally freight	495	348	521	477	583
Impairment of vaccine manufacturing facility	—	19,842	—	—	—
Write-off of manufacturing right	—	2,684	—	9,735	—
Operating (loss) income	<u>(54,260)</u>	<u>(109,265)</u>	<u>(52,045)</u>	<u>(15,450)</u>	<u>2,738</u>
Interest income	4,148	4,094	1,628	614	1,287
Interest expense	(3,724)	(2,523)	(971)	(816)	(2,130)
Other (expense) income, net	(38)	(483)	213	204	(157)
(Loss) income from continuing operations before benefit (provision) for income taxes	<u>(53,874)</u>	<u>(108,177)</u>	<u>(51,175)</u>	<u>(15,448)</u>	<u>1,738</u>
Benefit (provision) for income taxes	162	2,610	(4,727)	7,352	(264)
(Loss) income from continuing operations	<u>(53,712)</u>	<u>(105,567)</u>	<u>(55,902)</u>	<u>(8,096)</u>	<u>1,474</u>
Discontinued operations					
(Loss) income from discontinued operations	(4,991)	(21,180)	11,183	3,233	—
Provision for income taxes	—	(1,702)	(5,671)	(1,203)	—
(Loss) income from discontinued operations	<u>(4,991)</u>	<u>(22,882)</u>	<u>5,512</u>	<u>2,030</u>	<u>—</u>
Net (loss) income	<u>\$ (58,703)</u>	<u>\$ (128,449)</u>	<u>\$ (50,390)</u>	<u>\$ (6,066)</u>	<u>\$ 1,474</u>
Basic and diluted (loss) income per share					
Continuing operations	\$ (0.88)	\$ (1.76)	\$ (0.95)	\$ (0.19)	\$ 0.04
Discontinued operations	(0.08)	(0.39)	0.09	0.05	—
Basic and diluted (loss) income per share	<u>\$ (0.96)</u>	<u>\$ (2.15)</u>	<u>\$ (0.86)</u>	<u>\$ (0.14)</u>	<u>\$ 0.04</u>
Balance Sheet Data					
Working capital	\$ 130,226	\$ 185,561	\$ 169,470	\$ 212,628	\$ 74,495
Total assets	265,877	329,336	368,171	387,301	231,595
Notes payable and capital lease obligations, including current maturities	109,604	109,606	555	—	—
Total stockholders' equity	\$ 111,388	\$ 161,827	\$ 284,321	\$ 319,316	\$ 188,263

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OUR STRATEGY

We leverage our experience and knowledge in powering the human immune system to develop and, in certain areas, market products that target serious medical conditions in the areas of transplantation, infectious disease, nicotine addiction, and hematology/oncology. We are a vertically integrated company with marketed products, a pipeline of products in various stages of development, state-of-the-art manufacturing capability and a cash position that will allow us to advance our near-term pipeline products. We have two products on the market today: Nabi-HB[®] [Hepatitis B Immune Globulin (Human)] and Aloprim[™] [Allopurinol sodium (for injection)]. In addition to our biopharmaceutical business, we collect specialty and non-specific antibodies and use specialty antibodies as raw materials in the manufacture of our products and sell excess specialty antibodies and non-specific antibodies to various customers.

Our business model is focused on advancing our technology platforms to develop antibody and vaccine products that we can commercialize ourselves or through partnership opportunities while maximizing net cash flow from our marketed products. Our products in clinical development include vaccines and antibody-based therapies: Civacir[™] [Hepatitis C Immune Globulin (Human)], a polyclonal antibody for preventing re-infection with hepatitis C virus in liver transplant patients, ATG-Fresenius S, an immunosuppressive polyclonal antibody for the prevention of solid organ rejection after transplant, various vaccines and antibody-based therapies that target healthcare-associated and community acquired *S. aureus* and *S. epidermidis* infections, and NicVAX[™] (Nicotine Conjugate Vaccine), a vaccine to treat nicotine addiction.

Our operating focus is directed toward generating cash returns from our operations and using that cash to invest in the enhancement of key product development programs. These efforts are aligned with our multi-year strategic plan. In order to accomplish this goal we are pursuing three major objectives:

- Optimizing the value of current operations and reducing our cost structure;
- Building value through strategic partnerships and commercial alliances; and
- Proving value and mitigating risk in key research and development programs through “proof-of-concept” clinical studies.

We have retained Banc of America Securities LLC to assist with our exploration of the full range of strategic alternatives available to us to further enhance shareholder value. These alternatives may include, but are not limited to, licensing or development arrangements, joint ventures, strategic alliances, a recapitalization, and the sale or merger of all or part of the company. There can be no assurance that the exploration of strategic alternatives will result in any agreements or transactions.

KEY OPERATING ACTIVITIES

In March 2006, we entered into an agreement with Fresenius Biotech to develop and market ATG-Fresenius S in North America. ATG-Fresenius S is an immunosuppressive polyclonal antibody product used for the prevention and treatment of organ rejection following transplantation, as well as potentially for the use against graft-versus-host reaction following allogeneic stem cell transplantation. The product, which Fresenius currently markets in more than 60 countries worldwide, has been shown to significantly reduce transplant failure and substantially improve survival rates. Under the terms of the agreement, Fresenius Biotech granted us exclusive sales and distribution rights to ATG-Fresenius S in the U.S. and Canada for up to 15 years following the first commercial sale of the product after licensure in the U.S. Fresenius Biotech will manufacture and supply the product from its European facility in

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exchange for a royalty, and we are responsible for the clinical development, regulatory approval process, marketing and sales of ATG-Fresenius S in the U.S. and Canada. We also assumed oversight of an ongoing randomized, double-blind, placebo-controlled Phase III clinical study that is being conducted in lung transplant patients in the U.S. and Europe. ATG-Fresenius S is an important strategic addition to our transplant franchise, as it will enable us to leverage our expertise and strength in marketing specialized antibody products.

In June 2006, we entered into an agreement with Kedrion S.p.A. (“Kedrion”) to co-develop and commercialize Civacir. Under the terms of the agreement, we will pursue a common strategy with Kedrion to develop and commercialize Civacir in both the U.S. and European markets. This agreement validates our development efforts, bolsters our cash position, and aligns us with an important commercial partner for Europe.

In addition, we signed an agreement with Sanofi Pasteur, part of the Sanofi-Aventis Group, to fractionate human plasma used for the production of Imogam[®] Rabies-HT (Rabies Immune Globulin [Human] USP Heat Treated). The agreement affirms Nabi Biopharmaceuticals' core competency as a leading provider of non-specific and specialty antibody products and reflects the company's proven experience in the fractionation of immune globulins in its state-of-the-art biologicals manufacturing facility.

During 2006, we initiated two “proof-of-concept” clinical trials for our development programs. In May 2006, we initiated a Phase IIB clinical trial for NicVAX. This trial was fully enrolled in September 2006, three months ahead of schedule and paving the way for release of trial results during the second quarter of 2007. In early 2007, we began enrollment in a Phase IIB clinical trial for Civacir in the U.S.

In 2006, we also advanced our Gram-positive program, part of our infectious disease franchise, which we believe has the potential to provide a multi-faceted solution to preventing and treating the most dangerous hospital acquired Gram positive pathogens. In February, we announced positive Phase I clinical safety results from our *S. epidermidis* PS-1 and *S. aureus* Type 336 vaccine trials and demonstrated that these antigens elicited the production of specific antibodies in a dose-dependent manner. Together, these bacteria account for two-thirds of healthcare-associated infections reported annually. Both vaccines are the first-of-their kind in development to prevent *S. epidermidis* and *S. aureus* Type 336 in patients, including those undergoing certain types of invasive surgery, patients in intensive care or shock-trauma units, patients receiving cancer chemotherapy or other immune suppressive treatments, dialysis patients and patients in long-term care facilities. Based on these results, our goal is to advance a multi-valent anti-*S.aureus* vaccine and corresponding antibody programs in collaboration with a partner.

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Results of Operations

The following discussion and analysis of our financial condition and results of operations for each of the three years ended December 30, 2006, December 31, 2005 and December 25, 2004, should be read in conjunction with the Consolidated Financial Statements and Notes thereto and with the information contained under "Risk Factors" in Item 1. All amounts are expressed in thousands, except for per share and percentage data. For all periods shown, the results from our PhosLo product line have been reclassified as discontinued operations. Refer to Note 3.

Information concerning our sales by industry segment, for the respective periods, is set forth in the following table:

<u>(In thousands, except percentages)</u>	<u>For the Years Ended</u>					
	<u>December 30,</u>		<u>December 31,</u>		<u>December 25,</u>	
<u>Segment Revenues</u>	<u>2006</u>		<u>2005</u>		<u>2004</u>	
Biopharmaceutical Products:						
- Nabi-HB	\$32,665	36.3%	\$39,185	41.5%	\$ 40,176	28.3%
- WinRho SDF	—	0.0	6,172	6.6	47,882	33.7
- Other Biopharmaceuticals	7,428	8.3	2,874	3.1	6,175	4.3
	<u>40,093</u>	<u>44.6</u>	<u>48,231</u>	<u>51.2</u>	<u>94,233</u>	<u>66.3</u>
Antibody Products:						
- Specialty antibodies	26,945	30.0	22,936	24.4	23,270	16.4
- Non-specific antibodies	22,830	25.4	22,982	24.4	24,680	17.3
	<u>49,775</u>	<u>55.4</u>	<u>45,918</u>	<u>48.8</u>	<u>47,950</u>	<u>33.7</u>
Total	<u>\$89,868</u>	<u>100.0%</u>	<u>\$94,149</u>	<u>100.0%</u>	<u>\$142,183</u>	<u>100.0%</u>

2006 as Compared to 2005

Revenues. Total revenues for 2006 were \$89.9 million compared to revenues of \$94.1 million for 2005.

Biopharmaceutical revenues. Biopharmaceutical revenues for 2006 were \$40.1 million compared to \$48.2 million for 2005.

Nabi-HB. [Hepatitis B Immune Globulin (Human)]. Sales of Nabi-HB were \$32.7 million in 2006 compared to \$39.2 million in 2005. During 2006, a significant wholesaler customer reduced its inventory level of Nabi-HB by approximately five months, resulting in decreased total sales of Nabi-HB. We believe this customer completed its inventory reduction during the third quarter of 2006 and purchased product at our estimate of its customers' demand during the fourth quarter of 2006. Revenue for Nabi-HB is impacted by the number of hepatitis B positive liver transplants and the dosing schedules that those patients undergo. According to our internal tracking methods, we believe patients undergoing liver transplant were treated with increased dosing schedules that resulted in an overall increase in patient utilization of Nabi-HB. However, we believe the number of hepatitis B liver transplants during 2006 were below 2005 levels partially offsetting the increased dosing schedules. Sales reported for 2005 benefited from product backorders of \$3.8 million at December 25, 2004, that were filled in 2005.

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WinRho SDF [Rho (D) Immune Globulin Intravenous (Human)]. There were no sales of WinRho SDF in 2006 compared to \$6.2 million in 2005. The decrease is due to the expiration of our agreement to distribute this product on March 24, 2005.

Other biopharmaceutical products. Other biopharmaceutical products, which include contract manufacturing services, Aloprim [(Allopurinol Sodium) for injection], intermediate products manufactured in our plant, and Autoplex T [Anti-Inhibitor Coagulant Complex, Heat Treated], which generated revenues of \$7.4 million in 2006 compared to \$2.9 million in 2005. Revenues in 2006 included a \$4.5 million arbitration award related to the cancellation of a customer agreement.

Antibody products. Total antibody product sales for 2006 were \$49.8 million compared to \$45.9 million for 2005.

Specialty antibodies. Specialty antibody sales were \$27.0 million for 2006 compared to \$22.8 million for the comparable period of 2005. The increase in specialty antibodies primarily reflects increased sales of anti-HBs and Rh₀D antibodies partially offset by decreased sales of tetanus, anti-CMV and rabies antibodies. Anti-HBs antibodies produced at our antibody collection centers primarily support the manufacture of Nabi-HB, which limits the amount of these antibodies available for sale. During 2006, we increased our collection of anti-HBs antibodies allowing us to realize increased sales to third parties during this period.

Non-specific antibodies. Total non-specific antibody sales were \$22.8 million in 2006 compared to \$23.0 million in 2005. In September 2006, we extended a long-term supply contract for the sale of non-specific antibodies, which is expected to continue to generate a consistent cash flow from the excess non-specific antibody production in our centers. During 2006, unit sales of non-specific antibodies increased by approximately 7%. However, this increase was offset by decreased pricing as a result of reduced requirements for testing which we pass on at cost to the customer.

Gross margin. Gross margin for 2006 was \$27.2 million, or 30% of sales, compared to \$26.9 million, or 29% of sales, for 2005. During 2006, we recorded \$6.8 million in excess plant capacity expenses and a \$3.3 million penalty imposed on a customer for the cancellation of a contract manufacturing agreement, which was the result of binding arbitration. During 2005, we recorded \$2.8 million in excess plant expenses and write-offs of:

- \$4.9 million of pre-launch StaphVAX inventory following the withdrawal of the MAA for StaphVAX;
- \$1.0 million of Nabi-HB inventory damaged at our contract fill and finisher; and
- \$0.8 million of Nabi-HB pre-launch inventory due to our assessment of pre-launch inventory shelf life not being sufficient compared to our projected timing for sales of the product.

The gross margin related to antibody sales increased to \$8.9 million in 2006 compared to \$6.3 million in 2005, primarily reflecting the impact of product mix. Offsetting these increases in gross margin were decreased sales of Nabi-HB in 2006. In addition, gross margin in the 2005 period benefited from sales of WinRho SDF, which we did not sell after March 24, 2005.

Royalty expense was \$1.5 million, or 4% of biopharmaceutical sales, for 2006 compared to \$3.6 million, or 8% of biopharmaceutical sales, for 2005. The decrease in royalty expense reflects the expiration of the WinRho SDF distribution agreement and an associated royalty obligation based on product sales. Royalty expense for both periods includes royalties related to sales of Aloprim and to the manufacturing process used for Nabi-HB.

Selling, general and administrative expense. Selling, general and administrative expense was \$43.1 million for 2006 compared to \$51.7 million for 2005. During 2005, we incurred expenses associated with preparing for the commercialization of StaphVAX, including market research, pre-launch marketing activities and the establishment of European operations prior to our decision to close

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our European operations in December 2005. The decrease in selling, general and administrative expenses was partially offset by expenses related to activist shareholders of \$1.7 million, \$1.8 million related to government pricing reporting compliance programs, \$0.9 million related to our review of our historical equity grants and \$1.3 million in employee retention costs.

Research and development expense. Research and development expense was \$37.6 million for 2006 compared to \$60.9 million for 2005. This decrease is primarily the result of the reduction of activities supporting our Gram-positive programs, following the conclusion of the StaphVAX Phase III clinical trial during 2005. This decrease was partially offset by costs related to our ongoing Phase III clinical trial for ATG Fresenius S, to our Phase Ib clinical trial for NicVAX and to the manufacture of clinical trial materials for our Anti-D program. We also incurred expenses during 2006 related to initiating our Phase Ib clinical trial of Civacir. In addition, research and development expense during the third quarter of 2006 included a reversal of \$1.1 million of previously recorded depreciation expense.

During 2006, we incurred expenses related to our NicVAX program, including initiation and completion of enrollment into a 300- patient Phase Ib “proof-of-concept” study, the manufacture of material in our vaccine manufacturing facility in Boca Raton, Florida, which was used in our ongoing Phase Ib clinical trial, as well as completion of our open-labeled Phase II dose ranging clinical trial. During 2005, we initiated and completed enrollment of our open-labeled Phase II dose ranging clinical trial for NicVAX in the EU. In addition during 2005, we were granted a \$4.1 million grant from NIDA for the further development of NicVAX. In 2006 and 2005, \$2.2 million and \$0.3 million, respectively, of the grant was utilized to offset NicVAX clinical trials expense and \$1.6 million remains available to offset future NicVAX clinical trials expense. We expect to utilize the remaining grant during 2007.

We also incurred expenses in 2006 and 2005 to support the development of next generation Gram-positive programs and the assessment of our Phase III clinical trial for StaphVAX. During 2005, our primary activities were to support StaphVAX and Altastaph as well as our next generation Gram-positive products. These activities included our Phase III clinical trial for StaphVAX that concluded during the third quarter of 2005, efforts to establish StaphVAX vaccine manufacturing capability, supporting our MAA filed for StaphVAX in the EU, immunogenicity studies in orthopedic patients in both the U.S. and United Kingdom, the completion of a cardiac immunogenicity study, bridging and consistency lot studies, initiation of Phase I clinical trials for an *S. aureus* Type 336 vaccine and a *S. epidermidis* vaccine and a study evaluating the ability for StaphVAX to provide long-term protection against *S. aureus* during 2005.

Amortization of intangible assets. Amortization expense was \$0.3 million for 2006 compared to \$0.7 million for 2005. Amortization expense decreased because we are no longer amortizing a manufacturing right which we wrote off completely in 2005. The remaining amortization expense is primarily related to the intangible assets recorded as part of the acquisition of Nabi-HB and Aloprim.

Impairment of vaccine manufacturing facility. We incurred \$21.5 million in total costs to construct our vaccine manufacturing plant in Boca Raton, Florida in support of the anticipated global launch of StaphVAX. This plant was placed into service and depreciation of this facility for financial reporting purpose began in February 2005. As a result of not meeting the primary end point of our Phase III clinical trial for StaphVAX, we concluded that the carrying value of the \$20.3 million asset was impaired and should be reduced to \$0.5 million, its current fair market value as determined by an outside valuation firm. As a result, we recorded a \$19.8 million impairment charge during 2005. The remaining balance continues to depreciate over its useful life.

Write-off of Manufacturing Right. In connection with our decision in November 2005 to cancel our contract relationship to manufacture StaphVAX in a facility owned by Cambrex Bio Science Baltimore, Inc. we wrote-off the unamortized intangible asset balance at that date totaling \$2.7 million.

Interest income. Interest income was \$4.1 million in both 2006 and 2005. Interest income is earned from investing cash and cash equivalents on hand in money market funds and marketable securities with maturities or reset periods of three months or less. Although our average cash balance decreased in 2006, the average interest rate we earned on our available cash balances increased.

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Interest expense. Interest expense for 2006 was \$3.7 million compared to \$2.5 million for 2005. Included in interest expense for 2006 and 2005 were \$3.2 million and \$2.3 million respectively associated with our 2.875% Convertible Senior Notes due April 2025. There was no capitalized interest during 2006, however, 2005 included capitalized interest relating to construction of our vaccine manufacturing facility of \$0.1 million.

Equity based compensation. In January 2006 we adopted Statement of Financial Accounting Standards, or SFAS, No. 123R *Share-based Payments*, or SFAS No. 123R. As a result, during 2006 we recorded compensation expense of \$2.8 million related to our equity-based compensation plans, of which \$0.1 million has been reclassified to discontinued operations, and will have additional expense during succeeding years. As additional equity-based awards are granted, we anticipate that this expense will continue to increase. In addition, during 2006, the Audit Committee of the Board of Directors initiated a voluntary review of our historical and current year equity grant programs and the accounting for these programs. The review identified errors in the determination of the measurement date for certain stock option grants in prior years. This resulted in additional cumulative non-cash compensation expense recorded during 2006 totaling \$2.6 million, of which \$0.2 million has been reclassified to discontinued operations.

Loss from Discontinued Operations. The loss from discontinued operations reflects the reclassification of the results related to our PhosLo product line to assets and liabilities of discontinued operations. The loss from discontinued operations of \$5.0 million in 2006 compares to a loss of \$22.9 million in 2005. The components of the loss from discontinued operations for both periods include net revenue from PhosLo, the related cost of goods sold and amortization of acquired product rights, as well as certain research and development expenses, selling, general and administrative expenses and interest expense specific to PhosLo. The decrease in loss from discontinued operations is primarily related to an increase in gross margin during 2006 as compared to 2005 due to the relative sales levels of \$28.0 million in 2006 and \$13.9 million in 2005 and the achievement of certain milestones paid by the purchaser of the product line during 2006.

Income taxes. We had an income tax benefit of \$0.2 million in 2006 all from continuing operations. In 2005, we had an income tax benefit of \$0.9 million composed of a benefit of \$2.6 million from continuing operations and a provision of \$1.7 million from discontinued operations. Beginning December 31, 2005, we recorded a valuation allowance against our deferred tax assets in the amount of \$78.6 million as of December 31, 2005 and \$103.3 million as of December 30, 2006 because there is not sufficient evidence to conclude that we would “more likely than not” realize all or a portion of those assets prior to their expiration. The valuation allowance reflects the total net carrying value of all of our deferred tax assets, primarily composed of net operating losses and research and development tax credits.

Fiscal year periods. Our fiscal year ends on the last Saturday of December. Consequently, we will periodically have a 53-week fiscal year. The fiscal year ended December 31, 2005 was a 53-week year with the additional week included in the fourth quarter of 2005. The fiscal year ended December 30, 2006 was a 52-week year.

2005 as Compared to 2004

Revenues. Total revenues for 2005 were \$94.1 million compared to \$142.2 million for 2004.

Biopharmaceutical revenues. Biopharmaceutical revenues for 2005 were \$48.2 million compared to \$94.2 million for 2004.

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Nabi-HB. [Hepatitis B Immune Globulin (Human)] Sales of Nabi-HB were \$39.2 million in 2005 compared to \$40.2 million in 2004. Based on our review of internal tracking data, we believed that HBV liver transplant activity for HBV-positive patients during the 2005 was below 2004 levels and was reflected in reduced sales of Nabi-HB. The effect of lower HBV liver transplant activity in 2005 had been partially offset by increased use of Nabi-HB among patients who received maintenance therapy following liver transplant. Patient use of Nabi-HB in 2005, as reported in our internal tracking data, was consistent with reported sales to wholesalers and distributors. Sales of Nabi-HB in 2004 benefited from an initial buy-in of product from Novation LLC, or Novation, under a contract entered into during the first quarter of 2004. Under the terms of the agreement, we supplied finished Nabi-HB product to Novation for distribution through their Novaplus[®] Private Label Program. Sales reported for 2005 benefited from product backorders of \$3.8 million at December 25, 2004, that were filled in 2005.

WinRho SDF [Rho (D) Immune Globulin Intravenous (Human)]. Sales of WinRho SDF were \$6.2 million in 2005 compared to \$47.9 million in 2004. The decrease was due to the expiration of our agreement to distribute this product on March 24, 2005.

Other biopharmaceutical products. Other biopharmaceutical products, which include Aloprim [(Allopurinol Sodium) for injection], Autoplex T [Anti-Inhibitor Coagulant Complex, Heat Treated], intermediate products manufactured in our plant and contract manufacturing, generated sales of \$2.9 million in 2005 compared to \$6.2 million in 2004. Sales of Aloprim were lower in 2005 compared to 2004 due to the impact from the introduction of a new competitive product. Sales of Autoplex T were lower in 2005 due to our contract with the manufacturer of Autoplex T ending on May 11, 2004 and sales subsequent to that date being limited to existing inventory on hand. Contract manufacturing revenue increased in 2005 compared to 2004 due to sales under a new contract manufacturing agreement. Sales of intermediate products, which were not a strategic focus for us, were lower in 2005 compared to 2004.

Antibody products. Total antibody product sales for 2005 were \$45.9 million compared to \$48.0 million for 2004.

Specialty antibodies. Specialty antibody sales were \$22.9 million for 2005 compared to \$23.3 million for 2004. The decrease in specialty antibodies primarily reflects decreased sales of Rh o D antibodies substantially offset by increased sales of tetanus, rabies and anti-HBs antibodies. Throughout 2004 we had a contractual commitment to supply substantial quantities of Rh o D antibodies to the purchaser of the majority of our antibody collection and laboratory testing business at a low gross margin. This contract ended on December 31, 2004. Hepatitis B antibodies produced at our antibody collection centers were primarily retained by us to support the manufacture of Nabi-HB, limiting the amount of these antibodies available for sale. Hepatitis B antibodies are the primary raw material in the manufacture of Nabi-HB.

Non-specific antibodies. Total non-specific antibody sales were \$23.0 million in 2005 compared to \$24.7 million in 2004. In December 2003, we entered into a long-term supply contract for the sale of non-specific antibodies, which was expected to generate a consistent cash flow from the excess non-specific antibody production in our centers.

Gross margin. Gross margin for 2005 was \$26.9 million, or 29% of sales, compared to \$54.1 million, or 38% of sales, for 2004. The decrease in gross margin for 2005 compared to 2004 reflected decreased biopharmaceutical product sales in 2005, primarily WinRho SDF. As well, during 2005 we wrote-off \$4.9 million of pre-launch StaphVAX inventory following the withdrawal of our MAA for StaphVAX, \$1.0 million of Nabi-HB inventory damaged at our contract fill and finisher, \$0.8 million of Nabi-HB pre-launch inventory due to our assessment of pre-launch inventory shelf life not being sufficient compared to our projected timing for sales of the product. In 2004, we reserved Nabi-HB inventory valued at \$3.0 million due to certain units of product falling outside compliance with our product specifications. Gross margin related to antibody sales increased to \$6.3 million in 2005 compared to \$3.7 million in 2004, primarily reflecting increased gross margin on specialty antibody product sales following expiration of the low gross margin

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Rho D supply contract in December 2004. During 2005, we had \$2.8 million in excess plant capacity compared to \$6.6 million in 2004 when our manufacturing facility underwent renovations related to compliance with EU regulations and routine maintenance that limited utilization of the facility. Gross margin for 2004 benefited from a non-performance penalty from the manufacturer of Autoplex T of \$2.0 million.

Royalty expense was \$3.6 million, or 8% of biopharmaceutical sales, for 2005 compared to \$17.6 million, or 19% of biopharmaceutical sales, for 2004. The decrease in royalty expense as a percentage of biopharmaceutical sales reflected the decrease in total biopharmaceutical sales, as well as the expiration of the WinRho SDF distribution agreement and an associated royalty obligation based on product sales. Royalty expense included a 4% patent usage royalty related to the manufacturing process of Nabi-HB and a royalty related to Aloprim that was set at 15% of net Aloprim sales.

Selling, general and administrative expense. Selling, general and administrative expense was \$51.7 million for 2005 compared to \$45.7 million for 2004. Increased selling, general and administrative expenses for 2005 was primarily related to the planned launch of StaphVAX, including market research, costs incurred to establish commercial operations in Europe prior to our decision to close our European operations in December 2005 and pre-launch marketing activities.

Research and development expense. Research and development expense was \$60.9 million for 2005 compared to \$59.6 million for 2004. The majority of research and development expense in 2005 and 2004 was incurred to support our Gram-positive infections program primarily composed of StaphVAX and Altastaph as well as our next generation Gram-positive products. In 2005, these activities included our Phase III clinical trial for StaphVAX that concluded during the third quarter of 2005, seeking to establish StaphVAX vaccine manufacturing capability, supporting our MAA filed for StaphVAX in the EU, immunogenicity studies in orthopedic patients in both the U.S. and the UK, the completion of an immunogenicity study among cardiac surgery patients, bridging and consistency lot studies, initiation of Phase I clinical trials for an *S. aureus* Type 336 vaccine and an *S. epidermidis* vaccine and a study evaluating the ability of StaphVAX to provide long-term protection against *S. aureus*. During 2005 and 2004, we incurred approximately \$14.2 million and \$17.9 million, respectively, in outside clinical trial costs for the Phase III clinical trial for StaphVAX.

Within our NicVAX program, during 2005 we completed enrollment of our open-labeled Phase II dose ranging clinical trial for NicVAX in the EU. In addition during 2005, we were granted a \$4.1 million grant from the National Institute on Drug Addiction for the further development of NicVAX. In 2005, \$0.3 million of the grant was utilized to offset NicVAX clinical trials expense.

Research and development expense during 2005 and 2004 also included costs to support our currently marketed products as well as the other products in our development pipeline. In addition, during 2005 we incurred ongoing expenses to support our MAA's filed during 2004 in the EU for HEBIG. And we incurred costs to support our Biologics License Application, or BLA, filed for Nabi-HB Intravenous seeking an indication for the prevention of re-infection with hepatitis B in HBV-positive liver transplant patients in the U.S.

Amortization of intangible assets. Amortization expense was \$0.7 million for 2005 compared to \$0.4 million for 2004.

Impairment of vaccine manufacturing facility: We incurred \$21.5 million in total costs to construct our vaccine manufacturing plant in Boca Raton, Florida in support of the anticipated global launch of StaphVAX. This plant was placed into service in February 2005 and depreciation of this facility for financial reporting purpose began on that date. As a result of not meeting the primary end point of the Phase III clinical trial for StaphVAX, we concluded that the carrying value of the asset was impaired and should be reduced to \$0.5 million, its estimated current fair market value as determined by an outside valuation firm. As a result, we recorded a \$19.8 million impairment charge during 2005.

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Write-off of Manufacturing Right. In connection with our decision in December 2005 to cancel our contract manufacturing relationship to manufacture StaphVAX in a facility owned by Cambrex Bio Science Baltimore, Inc. we wrote-off the unamortized asset balance at that date totaling \$2.7 million.

Interest income. Interest income for 2005 was \$4.1 million compared to \$1.6 million for 2004. Interest income is earned from investing cash and cash equivalents on hand in money market funds and marketable securities with maturities or reset periods of three months or less. The increase in interest income in 2005 compared to 2004 is due to higher average cash balances in 2005 as a result of the issuance of \$112.4 million of our 2.875% Convertible Senior Notes due 2025 during the second quarter of 2005.

Interest expense. Interest expense for 2005 was \$2.5 million compared to \$1.0 million for 2004. Included in interest expense for 2005 was \$2.3 million of interest expense associated with our 2.875% Convertible Senior Notes due 2025. On March 26, 2004, we terminated our credit agreement with Wells Fargo Foothill, Inc. in order to avoid future costs for unused credit fees and other service charges. As a result of terminating the credit agreement, we incurred an early termination fee of \$0.6 million and wrote off previously capitalized loan origination costs of \$0.5 million. Capitalized interest relating to construction of our vaccine manufacturing facility and our laboratory and cold storage facility that was completed in 2004 was \$0.1 million in 2005 and \$0.3 million for 2004.

Equity based compensation. On December 20, 2005, the Compensation Committee of our Board of Directors approved the acceleration of vesting of all unvested options to purchase our common stock having an exercise price of \$6.00 or higher, effective for all outstanding options as of December 20, 2005 to avoid compensation expense as a result of the adoption of SFAS No. 123R. The closing price of our common stock on December 20, 2005 was \$3.35 per share.

(Loss) income from Discontinued Operations. The (loss) income from discontinued operations reflects the reclassification of the results related to our PhosLo product line to assets and liabilities of discontinued operations. The loss from discontinued operations was \$22.9 million in 2005 compared to income of \$5.5 million during 2004. The components of the (loss) income from discontinued operations for both periods include net revenue from PhosLo, the related cost of goods sold and amortization of acquired product rights, as well as certain research and development expense, selling, general and administrative expense and interest expense specific to PhosLo. The loss from discontinued operations in 2005 is primarily related to the relative sales levels of PhosLo during that period as compared to 2004, an increase in research and development expense and an increase in sales and marketing efforts. During 2004, our sales and marketing efforts were allocated to more products than in 2005, increasing in 2005 the proportion of expense allocated to PhosLo.

Income taxes. In 2005, we had an income tax benefit of \$0.9 million composed of a benefit of \$2.6 million from continuing operations and a provision of \$1.7 million from discontinued operations. In 2004, we had an income tax provision of \$10.4 million composed of a provision of \$4.7 million from continuing operations and a provision of \$5.7 million from discontinued operations. As of December 31, 2005, we had a valuation allowance of \$78.6 million against all our deferred tax assets because there was not sufficient evidence to conclude that we would “more likely than not” realize all or a portion of those assets prior to their expiration. The valuation allowance is equal to the total net carrying value of all of our deferred tax assets, primarily composed of net operating losses and research and development tax credits. In 2004, as a result of licensing the right to market StaphVAX and PhosLo in the EU to one of our foreign subsidiaries and in recognition of the value of the product rights developed and acquired by us, we realized a gain for

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U.S. tax reporting purposes of approximately \$55 million. Although we recognized a consolidated operating loss on a GAAP basis during 2004, we nevertheless incurred income tax expense due to the U.S. taxable gain arising from licenses of these product rights to our non-U.S. subsidiary. We realized deferred tax assets related to net operating loss carryforwards incurred in prior periods and the exercise of employee stock options to offset cash payment of income taxes on the reported U.S. taxable gain in 2004.

Fiscal year periods. Our fiscal year ends on the last Saturday of December. Consequently, we will periodically have a 53-week fiscal year. The fiscal year ended December 31, 2005 was a 53-week year with the additional week included in the fourth quarter of 2005. The fiscal year ended December 25, 2004 was a 52-week year.

Liquidity and Capital Resources

The total of our cash and cash equivalents and marketable securities balances at December 30, 2006 was \$118.7 million compared to cash and cash equivalents of \$106.9 million at December 31, 2005. The increase in cash, cash equivalents and marketable securities is a result of the sale of the PhosLo product line that generated \$73.0 million in up-front and milestone payments during 2006. Cash used by operations for the year ended December 30, 2006 was \$43.9 million reflecting our net loss in 2006, partially offset by non-cash expenses related to our equity grants under SFAS No. 123R, depreciation and amortization.

On April 19, 2005, we issued \$100.0 million of 2.875% Convertible Senior Notes due 2025. The Convertible Senior Notes were issued through a private offering to qualified institutional buyers as defined under Rule 144A of the Securities Act. On May 13, 2005, the initial purchasers exercised \$12.4 million of their option to purchase additional Convertible Senior Notes to cover over allotments. A \$3.4 million discount was granted to the initial purchasers and an additional \$0.3 million in deferred charges were recorded for professional fees related to the issuance. Net cash proceeds from the offering totaled \$108.7 million. Interest on the Convertible Senior Notes is payable on each April 15 and October 15, beginning October 15, 2005. We can redeem the Convertible Senior Notes at 100% of their principal amount, or \$112.4 million, plus accrued and unpaid interest, any time on or after April 18, 2010. Holders of Convertible Senior Notes may require us to repurchase the Convertible Senior Notes for 100% of their principal amount, plus accrued and unpaid interest, on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, or following the occurrence of a fundamental change as defined in the indenture agreement governing the Convertible Senior Notes.

In conjunction with the acquisition of PhosLo in August 2003, we entered into an obligation to pay the seller \$30.0 million over the period ending March 1, 2007. As of December 30, 2006, our remaining obligation, included in liabilities of discontinued operations and net of discount, was \$10.8 million. We paid the entire outstanding amount of this obligation in January 2007. In connection with the sale of the PhosLo product line, we entered into an escrow agreement with Braintree Laboratories in December 2006 placing the remaining \$10.8 million due to them in an escrow account. During 2006, we repaid \$3.1 million of the original obligation.

Capital expenditures were \$2.6 million for 2006. Capital expenditures were primarily related to replacement of certain equipment in our immune globulin manufacturing facility and investments in expansion of our antibody collection centers. During 2007, we expect capital expenditures to be between \$2 million to \$4 million, primarily for maintenance of our facilities, to support research and development activities and information technology systems.

During 2006, we received \$2.3 million from the exercise of employee stock options including \$0.3 million from discontinued operations.

On December 7, 2004, we filed a shelf registration statement on Form S-3 with the U.S. Securities and Exchange Commission. This registration statement will permit us, from time to time, to offer and sell up to \$175 million of equity or debt securities. If we elect to

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sell securities under this registration statement, we anticipate using net proceeds from such sales to provide additional funds for general corporate purposes, including but not limited to clinical trials, research, development and marketing expenses, and new acquisition and licensing costs.

On September 19, 2001, our Board of Directors approved the expenditure of up to \$5.0 million to repurchase shares of our common stock in the open market or in privately negotiated transactions. Repurchases will allow us to have treasury stock available to support our stock option and stock purchase programs. We acquired no shares under this program during the past five years. We will evaluate market conditions in the future and make decisions to repurchase additional shares of our common stock on a case-by-case basis in accordance with our Board of Directors' approval. We have acquired 345,883 shares of our common stock for a total of \$1.9 million since the inception of this buy back program. We also may seek approval of our Board of Directors to repurchase from time to time our Convertible Senior Notes in the open market or in privately negotiated transactions.

We believe cash and cash equivalents and marketable securities on hand at December 30, 2006 will be sufficient to meet our anticipated cash requirements for operations and debt service for at least the next 12 months.

The following table provides information as of December 30, 2006 with respect to the amounts and timing of our known contractual obligations as specified below.

<u>Contractual Obligations</u> <u>(in thousands)</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>After</u> <u>2012</u>	<u>Total</u>
Open purchase orders	\$ 6,633	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 6,633
Operating leases	2,677	2,585	715	433	386	262	7,058
Capital leases	401	—	—	—	—	—	401
Contractual obligations to purchase inventory	300	300	300	—	—	—	900
Convertible Senior Notes	—	—	—	112,400	—	—	112,400
Total	<u>\$ 10,011</u>	<u>\$ 2,885</u>	<u>\$ 1,015</u>	<u>\$ 112,833</u>	<u>\$ 386</u>	<u>\$ 262</u>	<u>\$ 127,392</u>

The preceding table does not include information with respect to the following contractual obligations because the amounts of the obligations are currently not determinable: contractual obligations in connection with clinical trials, which are payable on a per-patient basis, royalty obligations, which are payable based on the sales levels of some of our biopharmaceutical products and milestone payments which are payable upon the achievement of certain conditions. While the Convertible Senior Notes are not due until 2025, in 2010 the holders of the Convertible Senior Notes can require us to repurchase them.

Critical Accounting Policies

Accounting Estimates

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

Accounts Receivable and Revenue Recognition

In the year ended December 30, 2006, we had revenues of \$89.9 million. At December 30, 2006, we had \$20.4 million of accounts receivable including \$15.8 million from biopharmaceuticals sales.

Our primary customers for biopharmaceutical products are pharmaceutical wholesalers. In accordance with our revenue recognition policy, revenue from product sales is recognized when title and risk of loss are transferred to the customer. Reported sales are net of contractual allowances in accordance with managed care agreements known as chargebacks, rebates, estimated customer prompt pay discounts, customer returns and other wholesaler fees. At December 30, 2006, we had \$2.8 million recorded in other current liabilities and \$7.2 million included in liabilities of discontinued operations related to these items as accrued sales deductions. Our policy regarding sales to customers is that we do not recognize revenue from, or the cost of, such sales when we believe the customer has more than a demonstrably reasonable level of inventory. We make this assessment based on historical demand, historical customer ordering patterns for purchases, business considerations for customer purchases and estimated customer inventory levels. If our actual experience is different than our assumptions, we record the impact of such differences in the appropriate period.

We estimate allowances for revenue dilution items using a combination of information received from third parties, including market data, inventory reports from our major U.S. wholesaler customers, historical information and analysis that we perform. The key assumptions used to arrive at our best estimate of revenue dilution reserves are estimated customer inventory levels, contractual prices and related terms. Our estimates of inventory at wholesaler customers and in the distribution channels are subject to the inherent limitations of estimates that rely on third-party data, as certain third-party information may itself rely on estimates, and reflect other limitations. Provisions for estimated rebates and other allowances, such as discounts, promotional and other credits are estimated based on historical payment experience, historical relationship to revenues, estimated customer inventory levels, contract terms and actual discounts offered. We believe that such provisions are determinable due to the limited number of assumptions involved and the consistency of historical experience. Provisions for chargebacks involve more subjective judgments and are more complex in nature. This provision is discussed in further detail below.

Chargebacks. The provision for chargebacks is a significant and complex estimate used in the recognition of revenue. We market products directly to wholesalers, distributors and homecare companies. We also market products to group purchasing organizations, managed care organizations, physician practice management groups and hospitals, collectively referred to as indirect customers. We enter into agreements with indirect customers to establish contract pricing for certain products. The indirect customers then select wholesalers from which to actually purchase the products at these contracted prices. Under this arrangement, we will provide credit to the wholesaler to the extent the contracted price with the indirect party is less than the wholesaler's invoice price. Such credit is called a chargeback. The provision for chargebacks is based on our historical chargeback experience and estimated wholesaler inventory levels, as well as expected sell-through levels by our wholesaler customers to indirect customers. Our estimates of inventory at

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wholesaler customers and in the distribution channels are subject to inherent limitations of estimates that rely on third-party data, as certain third-party information may itself rely on estimates, and reflect other limitations. We continually monitor our provision for chargebacks and make adjustments when we believe that actual chargebacks may differ from established reserves. Excluded from the \$2.8 million and \$3.9 million recorded as accrued sales deductions at December 30, 2006 and December 31, 2005, respectively, are \$7.2 million and \$7.5 million of accrued sales deductions that have been reclassified to discontinued operations. During the second quarter of 2006, we refined our methodology for determining our chargeback liability using more specific information. This resulted in a \$0.8 million, or \$0.01 per share, increase in sales and reduction of our chargeback liability. Of the \$0.8 million adjustment, \$0.6 million was related to PhosLo and had been reclassified to discontinued operations.

The following table represents the amounts we have accrued for sales deductions included in continuing operations:

(In thousands)	Accrued chargebacks	Accrued rebates	Accrued sales discounts	Other accrued sales deductions	Total sales deductions
Balance at December 25, 2004	\$ 2,728	\$ 403	\$ 733	\$ 294	\$ 4,158
Provision for sales	2,049	1,714	5,182	839	9,784
Actual credits utilized during 2005	(3,602)	(865)	(4,743)	(780)	(9,990)
Balance at December 31, 2005	1,175	1,252	1,172	353	3,952
Provision for sales	2,185	30	2,016	560	4,791
Actual credits utilized during 2006	(2,664)	(348)	(2,389)	(565)	(5,966)
Balance at December 30, 2006	<u>\$ 696</u>	<u>\$ 934</u>	<u>\$ 799</u>	<u>\$ 348</u>	<u>\$ 2,777</u>

The following table represents the amounts we have accrued for sales deductions of discontinued operations:

(In thousands)	Accrued chargebacks	Accrued rebates	Accrued sales discounts	Other accrued sales deductions	Total sales deductions
Balance at December 25, 2004	\$ 1,688	\$ 2,177	\$ 334	\$ 195	\$ 4,394
Provision for sales	2,287	6,589	667	188	9,731
Actual credits utilized during 2005	(3,070)	(2,662)	(824)	(104)	(6,660)
Balance at December 31, 2005	905	6,104	177	279	7,465
Provision for sales	3,720	5,606	2,112	910	12,348
Actual credits utilized during 2006	(4,024)	(6,329)	(1,851)	(429)	(12,633)
Balance at December 30, 2006	<u>\$ 601</u>	<u>\$ 5,381</u>	<u>\$ 438</u>	<u>\$ 760</u>	<u>\$ 7,180</u>

Inventory and Reserves for Slow Moving or Obsolete Inventory

At December 30, 2006, we had net inventory of \$19.3 million. As of December 30, 2006, we recorded an inventory valuation allowance of \$13.6 million including \$6.8 million of Nabi-HB, \$4.9 million of StaphVAX, \$1.0 million of Nabi-HB Intravenous, \$0.6 million from Aloprim and paste and \$0.3 million from plasma. We review inventory on hand at each reporting period to assess whether inventory is stated at the lower of cost or market and that inventory on hand is saleable. Our assessment of inventory includes review of selling price compared to inventory carrying cost, recent sales trends and our expectations for sales trends in future periods, ongoing validation that inventory is maintained within established product specifications and product shelf life expiration. Based on these assessments, we provide for an inventory valuation allowance in the period in which the requirement is identified. If our actual experience is different than our assumptions we will record the impact of such differences in the appropriate period.

The scale-up and commercial production of pre-launch inventories involves the risk that such products may not be approved for marketing by the governmental agencies on a timely basis, or ever. This risk notwithstanding, we plan to continue to scale-up and

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build pre-launch inventories of certain products that have not yet received final governmental approval once these products have attained a stage in the development process of having been subject to a Phase III clinical trial or its equivalent, and if a regulatory filing has been made for licensure for marketing the product and the review of that filing has progressed to a point that we have an objective and persuasive evidence that regulatory approval is probable and the product has a well characterized manufacturing process. In addition, we must have an internal sales forecast that includes an assessment that sales will exceed the manufacturing costs plus the expected cost to distribute the product. Finally, product stability data must exist so that we can assert that capitalized inventory is anticipated to be sold, based on the sales projections noted above, prior to anticipated expiration of a product's shelf life. If approval for these product candidates is not received, or approval is not received timely compared to our estimates for product shelf life, we will write-off the related amounts of pre-launch inventory in the period of that determination.

As of December 30, 2006 and December 31, 2005, we had fully reserved all pre-launch inventories of certain products that have not yet received final governmental approval.

During 2006, we reserved \$1.0 million of Nabi-HB due to the product not meeting our manufacturing specifications and \$0.9 million due to the product being damaged in-transit to our contract fill and finisher.

Property, Plant and Equipment and Depreciation

We incurred costs of \$90.3 million to construct our biopharmaceutical manufacturing facility in Florida and received approval to manufacture our own antibody-based biopharmaceutical product, Nabi-HB, at this facility from the FDA in October 2001. In constructing the facility for its intended use, we incurred approximately \$26.8 million in direct costs of acquiring the building, building systems, manufacturing equipment and computer systems. We also incurred a total of \$63.5 million of costs related to validation of the facility to operate in an FDA approved environment and capitalized interest. Costs related to validation and capitalized interest, have been allocated to the building, building systems, manufacturing equipment and computer systems. Buildings and building systems are depreciated on a straight-line basis over 39 years and 20 years, respectively, the estimated useful lives of these assets. The specialized manufacturing equipment and computer systems are depreciated using the units-of-production method of depreciation subject to a minimum level of depreciation based on straight-line depreciation. The units-of-production method of depreciation is based on management's estimate of production levels. Management believes the units-of-production method is appropriate for these specialized assets. Use of the units-of-production method of depreciation may result in significantly different financial results of operation than straight-line depreciation in periods of lower than average or higher than average production levels. However, this differential is limited in periods of lower than average production, as we record a minimum of 60% of the depreciation that would have otherwise been recorded had we used the straight-line method. We have recorded depreciation expense utilizing the 60% minimum in every period since placing this facility into service. In 2006, 2005 and 2004, we recorded additional depreciation of \$2.6 million, \$2.1 million and \$2.5 million, respectively, under this policy.

We incurred \$21.5 million in total costs to construct our vaccine manufacturing facility in Boca Raton, Florida in support of the anticipated global launch of StaphVAX. This facility was placed into service and began depreciating in February 2005. As a result of the Phase III clinical trial for StaphVAX not meeting its primary end-point, we impaired the carrying value to its current fair market value as determined by an outside valuation firm to \$0.5 million. As a result, we recorded a \$19.8 million impairment charge during 2005.

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Equity-Based Compensation

Effective January 1, 2006, we adopted, using the modified prospective application, the fair value recognition provisions of SFAS No. 123R and related interpretations, or SFAS No. 123R. SFAS No. 123R covers a wide range of share-based compensation arrangements including stock options, restricted share plans, and employee stock purchase plans.

In applying SFAS No. 123R, the value of each equity-based award is estimated on the date of grant using the Black-Scholes option-pricing model. The Black-Scholes model takes into account volatility in the price of our stock, the risk-free interest rate, the estimated life of the equity-based award, the closing market price of our stock and the exercise price. We base our estimates of our stock price volatility on our historical stock price over the most recent period commensurate with the expected term of the equity-based award; however, this estimate is neither predictive nor indicative of the future performance of our stock. The estimates utilized in the Black-Scholes calculation involve inherent uncertainties and the application of management judgment. In addition, we are required to estimate the expected forfeiture rate and only recognize expense for those options expected to vest.

During 2006, we recorded \$2.6 million of additional cumulative non-cash compensation expense as a result of our review of stock option granting practices from January 1, 1997 through September 30, 2006. The expense principally arose from adjustments in measurement dates arising from a lack of certain supporting documentation for the earlier years in the period being incomplete, alternative documentation including contemporaneous memorandums, e-mail and interviews of current and former employees were required to make judgments as to the appropriate measurement dates and the related compensation expense.

New Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board, or FASB, announced that SFAS No. 151, *Inventory Costs*, or SFAS No. 151, is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. SFAS No. 151 clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). SFAS No. 151 requires that those items be recognized as current-period charges regardless of whether they meet the criterion of “so abnormal”, as defined in Accounting Principles Board, or APB, No. 43. In addition, SFAS No. 151 requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The adoption of SFAS No. 151 in 2006 did not have a material impact on our financial condition or results of operations.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*, or SFAS No. 154. SFAS No. 154 replaces APB Opinion No. 20, “*Accounting Changes*,” or APB No. 20, and SFAS No. 3, “*Reporting Accounting Changes in Interim Financial Statements*.” SFAS No. 154 requires retrospective application to prior periods’ financial statements of a voluntary change in accounting principle unless it is impractical. APB No. 20 previously required that most voluntary changes in accounting principle be recognized by including the cumulative effect of changing to the new accounting principle in net income in the period of the change. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The adoption of SFAS No. 154 in 2006 did not have a material impact on our financial condition or results of operations.

In November 2005, the FASB issued FASB Staff Position Nos. FAS 115-1 and FAS 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*, or FSP Nos. 115-1 and 124-1. The guidance in FSP Nos. 115-1 and 124-1 amends SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, or SFAS No. 115, and SFAS No. 124, *Accounting for Certain Investments Held by Not-for-Profit Organizations*, or SFAS No. 124, and adds a footnote to APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, or APB No. 18. FSP Nos. 115-1 and 124-1 address the

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determination of when an investment is considered impaired, whether that impairment is other than temporary, and the measurement of an impairment loss. In addition, FSP Nos. 115-1 and 124-1 include accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The guidance in FSP Nos. 115-1 and 124-1 is effective for reporting periods beginning after December 15, 2005. The implementation of FSP Nos. 115-1 and 124-1 in 2006 did not have a material impact on our financial position or results of operations.

Effective January 1, 2006, we adopted the fair value recognition provisions of SFAS No. 123R, *Share-Based Payment*, or SFAS No. 123R, using the modified-prospective transition method. In accordance with the provisions of SFAS No. 123R, we are recognizing share-based compensation expense in the Consolidated Statements of Operations for the year ended December 30, 2006. For additional information related to the adoption of SFAS No. 123R, refer to Note 12.

In July 2006, the FASB issued Interpretation Number, or FIN, No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN No. 48. FIN No. 48 applies to all tax positions within the scope of SFAS No. 109, applies a “more likely than not” threshold for tax benefit recognition, identifies a defined methodology for measuring benefits and increases the disclosure requirements for companies. FIN No. 48 is mandatory for years beginning after December 15, 2006; accordingly, we will adopt FIN No. 48 effective January 1, 2007. We do not anticipate the adoption of FIN No. 48 will have a material impact on our financial position or results of operations.

In September 2006, the FASB issued SFAS Statement No. 157, *Fair Value Measurements*, or SFAS No. 157. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement applies to other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute. Accordingly, this Statement does not require any new fair value measurements. SFAS No. 157 is effective for fiscal years beginning after December 15, 2007. We plan to adopt SFAS No. 157 beginning in the first quarter of fiscal 2008. We are currently evaluating the impact the adoption of SFAS No. 157 will have on our financial position or results of operations.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin, or SAB No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB No. 108, which provides interpretive guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB No. 108 is effective for fiscal years ending after November 15, 2006. The adoption of SAB No. 108 in 2006 did not have a material impact on our financial position or results of operations.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined effective could provide only reasonable assurance with respect to financial statement preparation and presentation.

An internal control significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the company's ability to initiate, authorize, record, process, or report external financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the company's annual or interim financial statements that is more than inconsequential will not be prevented or detected. An internal control material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

Our management assessed the effectiveness of our internal control over financial reporting as of December 30, 2006, and this assessment identified no material weaknesses in our internal control over financial reporting as of that date.

Based on our evaluation under the framework in Internal Control, Integrated Framework, our management concluded that our internal control over financial reporting was effective as of December 30, 2006.

Our management's assessment of the effectiveness of our internal control over financial reporting as of December 30, 2006 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included herein.

Changes in Internal Control Over Financial Reporting

There has been no change in our internal control over financial reporting that occurred during our fiscal quarter ended December 30, 2006 that has materially affected, or is reasonably likely to materially affect our internal control over financial reporting.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or “other than trading” instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price or equity price risk.

Foreign Currency Exchange Risk. We have two wholly-owned Irish subsidiaries, one United Kingdom subsidiary and one Luxembourg subsidiary. We have liquidated these subsidiaries from a U.S. income tax perspective and plan to liquidate these subsidiaries during 2007 and as a result, we do not expect to continue to be subject to foreign current exchange risk. During the year ended December 30, 2006, we did not record any sales by our foreign subsidiaries. One subsidiary incurred expenses during this period, primarily relating to the discontinuation of its operating activities. If the U.S. dollar weakens relative to a foreign currency, any losses generated in the foreign currency will, in effect, increase when converted into U.S. dollars and vice versa. We do not speculate in the foreign exchange market and do not manage exposures that arise in the normal course of business related to fluctuations in foreign currency exchange rates by entering into offsetting positions through the use of foreign exchange forward contracts. We also do not engage in derivative activities.

Interest Rate Risk. At December 30, 2006, we had cash and cash equivalents and marketable securities in the amount of \$86.2 million and \$32.5 million, respectively. In addition, we had outstanding Convertible Senior Notes that incur interest at 2.875% with a face value of \$112.4 million, notes payable for the acquisition of PhosLo of \$10.8 million, net of imputed discount, and capital lease obligations of \$0.3 million.

Cash equivalents consist of money market funds and qualified purchaser funds with maturities of three months or less placed with major financial institutions. Marketable securities consist of auction rate securities placed with major financial institutions.

Our exposure to market risk relates to our cash and investments and to our borrowings. We maintain an investment portfolio of money market funds, qualified purchaser funds, and auction rate securities. The securities in our investment portfolio are not leveraged, and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a change in market rates would have a significant negative impact on the value of our investment portfolio. The notes payable related to the PhosLo acquisition were discounted at our estimated interest rate under our credit facility on August 4, 2003, the closing date of the acquisition.

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest our excess cash in debt instruments of the U.S. Government and its agencies, bank obligations, repurchase agreements and high-quality corporate issuers, and, by policy, restrict our exposure to any single corporate issuer by imposing concentration limits. To minimize the exposure due to adverse shifts in interest rates, we maintain investments at an average maturity of generally less than one month.

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The table below presents the estimated fair value and the weighted-average interest rates of our investment and debt portfolio:

(In millions, except for percentages)	Estimated Fair Value at December 30, 2006	
Assets:		
Cash, cash equivalents and marketable securities	\$	118.7
Average interest rate		5.2%
Liabilities:		
2.875% Convertible Senior Notes due 2025	\$	101.1
Notes payable included in discontinued operations and capital lease obligations	\$	11.1
Average interest rate		3.2%

Report of Independent Registered Public Accounting Firm

The Board of Directors
and Stockholders of Nabi Biopharmaceuticals

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting on page 63, that Nabi Biopharmaceuticals maintained effective internal control over financial reporting as of December 30, 2006, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Nabi Biopharmaceuticals' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit 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 effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Nabi Biopharmaceuticals maintained effective internal control over financial reporting as of December 30, 2006, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Nabi Biopharmaceuticals maintained, in all material respects, effective internal control over financial reporting as of December 30, 2006, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Nabi Biopharmaceuticals and subsidiaries as of December 30, 2006 and December 31, 2005, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the three years in the period ended December 30, 2006 and our report dated March 9, 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
Certified Public Accountants

Fort Lauderdale, Florida
March 9, 2007

Report of Independent Registered Public Accounting Firm

The Board of Directors
and Stockholders of Nabi Biopharmaceuticals

We have audited the accompanying consolidated balance sheets of Nabi Biopharmaceuticals and subsidiaries as of December 30, 2006 and December 31, 2005, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 30, 2006. Our audits also included the financial statement schedule listed in the index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule 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. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as 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 Nabi Biopharmaceuticals and subsidiaries at December 30, 2006 and December 31, 2005, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 30, 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 12 to the consolidated financial statements, the Company adopted SFAS No. 123(R), "Share-Based Payment," applying the modified prospective method effective January 1, 2006.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Nabi Biopharmaceuticals' internal control over financial reporting as of December 30, 2006, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 9, 2007 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP
Certified Public Accountants

Fort Lauderdale, Florida
March 9, 2007

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

**Nabi Biopharmaceuticals
CONSOLIDATED BALANCE SHEETS**

Amounts in thousands, except share and per share data	December 30, 2006	December 31, 2005
Assets		
Current assets:		
Cash and cash equivalents	\$ 86,227	\$ 101,762
Marketable securities	32,500	5,172
Restricted cash	805	816
Trade accounts receivable, net	20,377	19,688
Inventories, net	19,260	20,500
Prepaid expenses and other current assets	2,654	3,449
Assets of discontinued operations	13,341	81,215
Total current assets	175,164	232,602
Property, plant and equipment, net	88,329	93,865
Other assets:		
Intangible assets, net	1,683	1,955
Other, net	701	914
Total assets	\$ 265,877	\$ 329,336
Liabilities and stockholders' equity		
Current liabilities:		
Trade accounts payable	\$ 7,998	\$ 12,377
Accrued expenses	16,095	17,475
Capital lease obligations, net	291	223
Current liabilities of discontinued operations	20,554	16,966
Total current liabilities	44,938	47,041
2.875% convertible senior notes, net	109,313	109,145
Capital lease obligations, net	—	238
Non-current liabilities of discontinued operations	—	10,707
Other liabilities	238	378
Total liabilities	154,489	167,509
Commitments and contingencies		
Stockholders' equity:		
Convertible preferred stock, par value \$.10 per share: 5,000 shares authorized; no shares outstanding	—	—
Common stock, par value \$.10 per share: 125,000,000 shares authorized; 61,485,615 and 60,322,763 shares issued, respectively	6,149	6,032
Capital in excess of par value	327,228	318,910
Treasury stock, 805,769 shares, at cost	(5,321)	(5,321)
Accumulated deficit	(216,668)	(157,965)
Other accumulated comprehensive income	—	171
Total stockholders' equity	111,388	161,827
Total liabilities and stockholders' equity	\$ 265,877	\$ 329,336

See accompanying notes to consolidated financial statements.

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In thousands, except per share data	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Revenues	\$ 89,868	\$ 94,149	\$ 142,183
Costs and expenses			
Costs of products sold, excluding amortization of intangible assets	61,177	63,642	70,499
Royalty expense	1,535	3,623	17,569
Gross margin, excluding amortization of intangible assets	27,156	26,884	54,115
Selling, general and administrative expense	43,076	51,693	45,667
Research and development expense	37,572	60,906	59,551
Amortization of intangible assets	273	676	421
Other operating expenses, principally freight	495	348	521
Impairment of vaccine manufacturing facility	—	19,842	—
Write-off of manufacturing right	—	2,684	—
Operating loss	(54,260)	(109,265)	(52,045)
Interest income	4,148	4,094	1,628
Interest expense	(3,724)	(2,523)	(971)
Other (expense) income, net	(38)	(483)	213
Loss from continuing operations before benefit (provision) for income taxes	(53,874)	(108,177)	(51,175)
Benefit (provision) for income taxes	162	2,610	(4,727)
Loss from continuing operations	(53,712)	(105,567)	(55,902)
Discontinued operations			
(Loss) income from discontinued operations	(4,991)	(21,180)	11,183
Provision for income taxes	—	(1,702)	(5,671)
(Loss) income from discontinued operations	(4,991)	(22,882)	5,512
Net loss	\$ (58,703)	\$ (128,449)	\$ (50,390)
Basic and diluted loss per share			
Continuing operations	\$ (0.88)	\$ (1.76)	\$ (0.95)
Discontinued operations	(0.08)	(0.39)	0.09
Basic and diluted loss per share	\$ (0.96)	\$ (2.15)	\$ (0.86)
Basic and diluted weighted average shares outstanding	60,936	59,862	58,800

See accompanying notes to consolidated financial statements.

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Nabi Biopharmaceuticals
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

In thousands	Common Stock		Common Stock Warrants		Capital in Excess of Par Value	Treasury Stock		Retained Earnings (Accumulated Deficit)	Other accumulated comprehensive income (loss)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount		Shares	Amount			
Balance at December 27, 2003	57,723	\$5,773	133	\$ —	\$297,909	(800)	\$(5,240)	\$ 20,874	\$ —	\$ 319,316
Comprehensive loss										
- Net loss for the year	—	—	—	—	—	—	—	(50,390)	—	(50,390)
- Currency translation adjustment	—	—	—	—	—	—	—	—	(303)	(303)
Comprehensive loss	—	—	—	—	—	—	—	—	—	(50,693)
Stock options and warrants exercised	1,534	153	—	—	9,667	—	—	—	—	9,820
Delivery of shares upon exercise of options	6	1	—	—	44	(4)	(57)	—	—	(12)
Compensation expense related to modified stock options	—	—	—	—	150	—	—	—	—	150
Stock issued under Employee Stock Purchase Plan	91	9	—	—	950	—	—	—	—	959
Tax benefit of stock option exercises	—	—	—	—	4,761	—	—	—	—	4,761
Warrants exercised	74	7	(133)	—	(7)	—	—	—	—	—
Directors fees paid in stock	1	—	—	—	20	—	—	—	—	20
Balance at December 25, 2004	59,429	5,943	—	—	313,494	(804)	(5,297)	(29,516)	(303)	284,321
Comprehensive loss										
- Net loss for the year	—	—	—	—	—	—	—	(128,449)	—	(128,449)
- Currency translation adjustment	—	—	—	—	—	—	—	—	474	474
Comprehensive loss	—	—	—	—	—	—	—	—	—	(127,975)
Stock options exercised	717	71	—	—	4,547	—	—	—	—	4,618
Delivery of shares upon exercise of options	8	1	—	—	23	(2)	(24)	—	—	—
Compensation expense related to modified stock options	—	—	—	—	62	—	—	—	—	62
Stock issued under Employee Stock Purchase Plan	167	17	—	—	765	—	—	—	—	782
Tax benefit of stock option exercises	—	—	—	—	—	—	—	—	—	—
Warrants exercised	—	—	—	—	—	—	—	—	—	—
Directors fees paid in stock	2	—	—	—	19	—	—	—	—	19
Balance at December 31, 2005	60,323	6,032	—	—	318,910	(806)	(5,321)	(157,965)	171	161,827
Comprehensive loss										
- Net loss for the year	—	—	—	—	—	—	—	(58,703)	—	(58,703)
- Currency translation adjustment	—	—	—	—	—	—	—	—	(171)	(171)
Comprehensive loss	—	—	—	—	—	—	—	—	—	(58,874)
Stock options exercised	477	48	—	—	2,293	—	—	—	—	2,341
Recognition of option related expense, net of tax benefit	—	—	—	—	2,434	—	—	—	—	2,434
Compensation expense under SFAS No. 123R stock options	—	—	—	—	2,831	—	—	—	—	2,831
Stock issued under Employee Stock Purchase Plan	224	23	—	—	734	—	—	—	—	757
Restricted stock awards	450	45	—	—	(45)	—	—	—	—	—
Directors fees paid in stock	12	1	—	—	71	—	—	—	—	72
Balance at December 30, 2006	<u>61,486</u>	<u>\$6,149</u>	<u>—</u>	<u>\$ —</u>	<u>\$327,228</u>	<u>(806)</u>	<u>\$(5,321)</u>	<u>\$ (216,668)</u>	<u>—</u>	<u>\$ 111,388</u>

See accompanying notes to consolidated financial statements.

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Nabi Biopharmaceuticals
CONSOLIDATED STATEMENTS OF CASH FLOWS

In thousands	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Cash flow from operating activities:			
Net loss from continuing operations	\$ (53,712)	\$ (105,567)	\$ (55,902)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	7,940	10,707	9,919
Write-off of manufacturing right	—	2,684	—
Write down of vaccine plant	—	19,842	—
Write-off of loan origination fees	—	—	539
Accretion of discount on Convertible Senior Notes	168	117	—
Interest expense on non-interest bearing notes	41	150	109
Gain on sale of assets	(2)	(74)	(119)
Provision for doubtful accounts	7	9	428
Provision for slow moving or obsolete inventory	1,689	8,215	3,950
Non-cash compensation	5,978	864	1,129
Deferred income taxes	—	(2,534)	1,560
Tax benefit of stock option exercises	(162)	—	4,761
Write-off of fixed assets	452	438	259
Other, primarily foreign currency translation	(173)	400	(303)
Changes in assets and liabilities:			
Trade accounts receivable	(695)	5,923	5,711
Inventories	(449)	(9,393)	(80)
Prepaid expenses and other assets	806	6,611	2,503
Other assets	197	(178)	(2,429)
Accounts payable and accrued expenses	(5,939)	(21,571)	15,680
Total adjustments	9,858	22,210	43,617
Net cash used in operating activities from continuing operations	(43,854)	(83,357)	(12,285)
Net cash (used in) provided by operating activities from discontinued operations	(58)	(6,357)	21,139
Net cash (used in) provided by operating activities	(43,912)	(89,714)	8,854
Cash flow from investing activities:			
Purchases of marketable securities	(82,325)	(203,297)	(83,950)
Proceeds from sales of marketable securities	54,997	206,475	75,600
Proceeds from sale of assets, net of closing costs	8	74	179
Capital expenditures	(2,575)	(8,543)	(22,549)
Expenditures for Aloprim	—	—	(750)
Expenditures for other assets – Cambrex Bio Science	—	(216)	(2,668)
Net cash used in investing activities from continuing operations	(29,895)	(5,507)	(34,138)
Net cash provided by (used in) investing activities from discontinued operations	59,159	(169)	(84)
Net cash provided by (used in) investing activities	29,264	(5,676)	(34,222)
Cash flow from financing activities:			
Repayments of notes payable and capital leases	(169)	(189)	(117)
Proceeds from exercise of employee stock options	2,022	4,162	9,447
Proceeds from issuance of convertible debt, net	—	108,730	—
Net cash provided by financing activities from continuing operations	1,853	112,703	9,330
Net cash used in financing activities from discontinued operations	(2,740)	(10,310)	(4,959)
Net cash (used in) provided by financing activities	(887)	102,393	4,371
Net (decrease) increase in cash and cash equivalents	(15,535)	7,003	(20,997)
Cash and cash equivalents at beginning of year	101,762	94,759	115,756
Cash and cash equivalents at end of year	\$ 86,227	\$ 101,762	\$ 94,759

See accompanying notes to consolidated financial statements.

Nabi Biopharmaceuticals

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 BUSINESS AND ORGANIZATION

We leverage our experience and knowledge in powering the human immune system to develop and, in certain areas, market products that target serious medical conditions in the areas of transplantation, infectious disease, nicotine addiction, and hematology/oncology. We are a vertically integrated company with marketed products, a pipeline of products in various stages of development, state-of-the-art manufacturing capability and a cash position that will allow us to advance our near-term pipeline products. We have two products on the market today: Nabi-HB[®] [Hepatitis B Immune Globulin (Human)] and Aloprim[™] [Allopurinol sodium (for injection)]. In addition to our biopharmaceutical business, we collect specialty and non-specific antibodies for the strategic use as raw materials in the manufacture of our products and sell excess production to various customers. During 2006, we reclassified the results of the PhosLo product line as discontinued operations. Refer to Note 3.

We are incorporated in Delaware. We maintain our commercial and manufacturing operations in Boca Raton, Florida, a network of nine antibody collection centers in seven states, and our research and development operations in Rockville, Maryland.

NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of consolidation: The consolidated financial statements include the accounts of Nabi Biopharmaceuticals and our wholly-owned subsidiaries. All significant inter-company accounts and transactions are eliminated in consolidation.

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

Basis of presentation: Certain items in the 2005 and 2004 consolidated financial statements have been reclassified to conform to the current year's presentation. As discussed in Note 3, the results of operations and the assets and the liabilities related to PhosLo have been accounted for as discontinued operations in accordance with Statement of Financial Accounting Standards, or SFAS, No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, or SFAS No. 144. Accordingly, results of the operations related to PhosLo from prior periods have been reclassified to discontinued operations. There was also a reclassification between prepaid expenses and accrued expenses of \$0.9 million as of December 31, 2005 for workers' compensation reimbursement that was originally classified as a reduction of prepaid assets.

Correction of errors: During the third quarter of 2006, the Audit Committee of the Board of Directors initiated a voluntary review of our historical and current-year equity grant programs and the accounting for these programs. The Audit Committee engaged independent legal counsel and forensic accountants to assist in a review of our equity grant programs for the period January 1, 1997 through September 30, 2006. The investigation was completed on November 13, 2006. No fraud, back dating, or spring loading issues were identified. However, the investigation did identify errors in the determination of the measurement date for certain stock option grants in prior years. As certain of the supporting documentation for the earlier years in the period was incomplete or unavailable, alternative documentation including contemporaneous memoranda, e-mails and interviews of current and former employees were

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required in reaching judgments as to the appropriate measurement dates. Changes in measurement dates resulted in additional cumulative non-cash compensation expense recorded during the third quarter of 2006 totaling \$2.6 million, or \$0.04 per share, over the period reviewed, including \$0.2 million, or \$0.00 per share, that has been reclassified to discontinued operations. The remaining adjustment amount was recorded to increase cost of products sold, selling, general and administrative expense and research and development expense. On an individual year basis, \$0.5 million related to the year ended December 31, 2005, which was the greatest compensation expense in any individual year.

In addition, we identified an unrelated error in the calculation of depreciation expense on certain research and development assets that overstated depreciation expense from 2000 through 2005. An aggregate adjustment of \$1.1 million, or \$0.02 per share, was recorded to reduce research and development expense during the third quarter of 2006.

Fiscal year periods. Our fiscal year ends on the last Saturday of December. Consequently, we will periodically have a 53-week fiscal year. The fiscal year ended December 31, 2005 was a 53-week year with the additional week included in the fourth quarter of 2005. The fiscal years ended December 30, 2006 and December 25, 2004 were 52-week years.

Revenue recognition: Our primary customers for biopharmaceutical products are pharmaceutical wholesalers. In accordance with our revenue recognition policy, revenue is recognized when title and risk of loss are transferred to the customer. Reported revenue is net of estimated customer prompt pay discounts, contractual allowances in accordance with managed care agreements known as chargebacks, rebates, customer returns and other wholesaler fees. Our policy regarding sales to customers is that we do not recognize revenue from, or the cost of, such sales, where we believe the customer has more than a demonstrably reasonable level of inventory. We make this assessment based on historical demand, historical customer ordering patterns for purchases, business considerations for customer purchases and estimated inventory levels. If our actual experience proves to be different than our assumptions we would then adjust such allowances accordingly.

We estimate allowances for revenue dilution items using a combination of information received from third parties, including market data, inventory reports from our major U.S. wholesaler customers, when available, historical information and analysis that we perform. The key assumptions used to arrive at our best estimate of revenue dilution reserves are estimated customer inventory levels, contractual prices and related terms. Our estimates of inventory at wholesaler customers and in the distribution channels are subject to the inherent limitations of estimates that rely on third-party data, as certain third-party information may itself rely on estimates, and reflect other limitations. Provisions for estimated rebates and other allowances, such as discounts, promotional and other credits are estimated based on historical payment experience, historical relationship to revenues, estimated customer inventory levels and contract terms and actual discounts offered. We believe that such provisions are reasonably ascertainable due to the limited number of assumptions involved and the consistency of historical experience. Provisions for chargebacks involve more subjective judgments and are more complex in nature. These provisions are discussed in further detail below.

Chargebacks: The provision for chargebacks is a significant and complex estimate used in the recognition of revenue. We market products directly to wholesalers, distributors and homecare companies. We also market products indirectly to group purchasing organizations, managed care organizations, physician practice management groups and hospitals, collectively referred to as "indirect customers." We enter into agreements with indirect customers to establish contract pricing for certain products. The indirect customers then select wholesalers from which to actually purchase the products at these contracted prices. Under this arrangement, we will provide credit to the wholesaler for any difference between the contracted price with the indirect party and the wholesaler's invoice price. Such credit is called a chargeback. The provision for chargebacks is based on our historical chargeback experience and

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estimated wholesaler inventory levels, as well as expected sell-through levels by our wholesale customers to indirect customers. Our estimates of inventory at wholesale customers and in the distribution channels are subject to the inherent limitations of estimates that rely on third-party data, as certain third-party information may itself rely on estimates, and reflect other limitations. We continually monitor our provision for chargebacks and make adjustments when we believe that actual chargebacks may differ from established reserves. During the second quarter of 2006, we refined our methodology for determining our chargeback liability using more specific information. This resulted in a \$0.8 million, or \$0.01 per share, increase in sales and reduction of our chargeback liability. Of the \$0.8 million adjustment, \$0.6 million, or \$0.01 per share, was related to PhosLo and had been reclassified to discontinued operations.

Research and development expense: Research and development costs are expensed as incurred. Amounts payable to third parties under collaborative product development agreements are recorded at the earlier of the milestone achievement or as payments become contractually due.

Advertising expenses: Advertising costs are expensed as incurred as set forth in Statement of Position 93-7, *Reporting on Advertising Costs*. Advertising expenses for the years ended December 30, 2006, December 31, 2005 and December 25, 2004 amounted to \$2.7 million, \$4.1 million and \$3.8 million, respectively. Advertising expenses for the years ended December 30, 2006, December 31, 2005 and December 25, 2004 related to discontinued operations amounted to \$2.7 million, \$3.6 million and \$2.1 million, respectively.

Shipping and Handling Costs: We report costs related to the shipment of our product as part of other operating expenses, principally freight. We incurred \$0.5 million, \$0.3 million and \$0.5 million of such costs, in the years ended December 30, 2006, December 31, 2005 and December 25, 2004, respectively.

Comprehensive Loss: We follow SFAS, No. 130, *Reporting Comprehensive Income*, which computes comprehensive income as the total of net income and all other non-owner changes in shareholders' equity. We did not have any comprehensive loss recorded for the year ended December 30, 2006. For the year ended December 31, 2005, comprehensive loss included our net loss and the effect of foreign currency translation adjustments. As of December 30, 2006, we determined that our intercompany debt will not be repaid as a result of the development and commercialization plans for StaphVAX and the divestiture of the PhosLo product line and as a result, recorded \$0.5 million as foreign exchange loss in the accompanying consolidated statements of operations. At December 31, 2005, \$0.2 million of foreign currency income (loss) was included on our balance sheet in addition to net loss. The foreign currency loss primarily related to intercompany balances we had classified as intercompany debt. It was our intent for the amounts paid on behalf of our subsidiaries to be repaid once we began generating revenue in the markets the subsidiaries operate in, primarily Europe.

Loss per share: Basic loss per share is computed by dividing consolidated net loss by the weighted average number of common shares outstanding during the year. Diluted loss per share is computed by dividing consolidated net loss by the weighted average number of common shares outstanding, and the impact of all potential dilutive common shares, primarily stock options. The dilutive impact of stock options is determined by applying the treasury stock method. In 2006, 2005 and 2004, we did not apply this method as there would have been an anti-dilutive effect on loss per share. There were 1,706,202, 1,844,087 and 2,101,279 potential dilutive shares excluded in the calculation of diluted weighted average shares outstanding in 2006, 2005 and 2004, respectively.

Financial instruments: The carrying amounts of financial instruments including cash equivalents, marketable securities, accounts receivable and accounts payable approximated fair value as of December 30, 2006 and December 31, 2005, because of the relatively short-term maturity of these instruments. Total debt and capital leases obligations were \$109.6 million as of December 30, 2006 and December 31, 2005. The carrying value of our Convertible Senior Notes at December 30, 2006 and December 31, 2005 were \$109.3 million and \$109.1 million, respectively, compared to the approximate fair value of \$101.1 million and \$90.1 million, respectively, based on then current market rates. The carrying amounts of our Convertible Senior Notes and capital lease obligations approximate the fair value and are calculated using an interest rate consistent with our current borrowing rates. Information regarding long-term debt is included in Note 10. We had an immaterial amount of unrealized loss on our investments.

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Cash and cash equivalents: Cash equivalents consist of money market funds and qualified purchaser funds with maturities of three months or less placed with major financial institutions.

Marketable securities: Short-term investments in marketable debt securities consist of auction rate securities with final maturities longer than three years, but with interest rate auctions occurring every 28 or 35 days. These short-term marketable securities consist primarily of taxable municipal bonds, corporate bonds, government agency securities and commercial paper. It is our intent to maintain a liquid portfolio to take advantage of investment opportunities; therefore, these securities are deemed short-term, are classified as available for sale securities and are recorded at market value using the specific identification method. Realized gains and losses are included in "Other (expense) income, net" in the accompanying Consolidated Statements of Operations using the specific identification method. Unrealized gains and losses would be included in "Other accumulated comprehensive income" in the accompanying Consolidated Balance Sheet and Consolidated Statement of Changes in Stockholders' Equity, however, there were none at December 30, 2006 or December 25, 2005.

Restricted cash: Restricted cash consists of certificates of deposits required in accordance with letters of credit for certain of our worker's compensation policies.

Trade Accounts Receivable: We sell a significant portion of our products through pharmaceutical wholesalers and distributors and to major pharmaceutical companies and, as a result, maintain individually significant receivable balances with major customers. Those customers include Amerisource/Bergen, Inhibitex, Inc., Talecris Biotherapeutics, and McKesson Drug Co., representing 31%, 22%, 11% and 11% of our total accounts receivable, respectively at December 30, 2006. At December 31, 2005, those customers include AmerisourceBergen, Talecris Biotherapeutics, Greencross Corporation and McKesson Drug Co., representing 39%, 13%, 12% and 8% of our total accounts receivable, respectively. If the financial condition or operations of these customers were to deteriorate, our results could be adversely affected. Credit terms to these customers generally range from 30 to 60 days. We evaluate and monitor the credit worthiness of each customer on a case-by-case basis and do not require collateral on specific accounts receivable. Allowances are maintained for potential credit losses. Accounts receivable allowances are recorded in the segment operating results in which the applicable sale was originally reported.

Inventories: Inventories are stated at the lower of cost or market with cost determined on the first-in first-out or FIFO method.

The scale-up and commercial production of pre-launch inventories involves the risk that such products may not be approved for marketing by the governmental agencies on a timely basis, or ever. This risk notwithstanding, we plan to continue to scale up and build pre-launch inventories of certain products that have not yet received final governmental approval once these products have attained a stage in the development process of having been subject to a Phase III clinical trial or its equivalent, and if a regulatory filing has been made for licensure for marketing the product and the review of that filing has progressed to a point that we have an objective and persuasive evidence that regulatory approval is probable and the product has a well characterized manufacturing process. In addition, we must have an internal sales forecast that includes an assessment that sales will exceed the manufacturing costs plus the expected cost to distribute the product. Finally, product stability data must exist so that we can assert that capitalized inventory is anticipated to be sold, based on the sales projections noted above, prior to anticipated expiration of a product's shelf life. If approval for these product candidates is not received, or approval is not received timely compared to our estimates for product shelf life, we will write-off the related amounts of pre-launch inventory in the period of that determination.

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Property, plant and equipment: Property, plant and equipment are carried at cost. Depreciation is generally recognized on the straight-line method over the estimated useful lives of the assets.

Depreciation for certain specialized production equipment in our Florida biopharmaceutical manufacturing facility is calculated over its remaining useful life using the units-of-production method. In quarters of lower production, we record a minimum of 60% of the depreciation that would have otherwise been recorded had we used the straight-line method. We have recorded depreciation expense utilizing the 60% minimum in every period since placing this facility into service. We evaluate the remaining life and recoverability of this equipment periodically based on the appropriate facts and circumstances.

Depreciable lives of non-UOP property and equipment are as follows:

Asset	Initial Useful Life
Buildings	39 years
Building systems	20 years
Furniture and fixtures	8 years
Information systems	3 – 7 years
Machinery and equipment	3 – 8 years
Leasehold improvements and capital leases	Lesser of lease term or economic life

Intangible assets: Intangible assets represent the fair values of certain assets acquired in product acquisitions including trademarks and trademark registrations. The carrying costs of intangible assets are amortized ratably from the date acquired over periods ranging from 3 to 25 years.

Impairment of Long-Lived Assets: Pursuant to the provisions of Statement of Financial Accounting Standards, or SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we review long-lived assets for impairment at least annually, or whenever events or changes in circumstances indicate that the carrying amount of such assets may not be fully recoverable. If this review reveals indications of impairment, as generally determined based on estimated undiscounted cash flows, the carrying amount of the related long-lived assets are adjusted to fair value. We incurred \$21.5 million in total costs to construct our vaccine manufacturing facility in Boca Raton, Florida in support of the anticipated global launch of StaphVAX. This facility was placed into service and began depreciating in February 2005. As a result of the Phase III clinical trial for StaphVAX not meeting its primary end-point, we wrote down the carrying value to its estimated fair market value as determined by an outside valuation firm to \$0.5 million and recorded a \$19.8 million impairment charge during 2005.

Stock-Based Compensation: We currently account for stock-based compensation under the fair value recognition provisions of SFAS No. 123R, *Share-Based Payment*, and related interpretations using the modified-prospective method. Prior to January 1, 2006, we accounted for these plans under the recognition and measurement provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, or ABP No. 25, and related Interpretations, as permitted by SFAS No. 123. Compensation cost recorded for our stock plans (as defined in Note 12) approximated \$2.8 million, \$0.1 million and \$0.2 million in 2006, 2005 and 2004, respectively. In addition, during 2006, the Audit Committee of the Board of Directors initiated a voluntary review of our historical and current year equity grant programs and the accounting for these programs. The review identified errors in the determination of the measurement date for certain stock option grants in prior years. This resulted in additional cumulative non-cash compensation expense recorded under APB No. 25 during 2006 totaling \$2.6 million, of which \$0.2 million has been reclassified to discontinued operations.

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Income Taxes: We follow SFAS No. 109, *Accounting for Income Taxes*, or SFAS No. 109, which requires, among other things, recognition of future tax benefits and liabilities measured at enacted rates attributable to temporary differences between financial statement and income tax bases of assets and liabilities and to tax net operating loss carryforwards to the extent that realization of these benefits is more likely than not. We periodically evaluate the realizability of our net deferred tax assets. Our tax accruals are analyzed periodically and adjustments are made as events occur to warrant such adjustment.

Foreign Currency Translation. In accordance with SFAS No. 52, *Foreign Currency Translation*, assets and liabilities denominated in foreign currencies are translated into U.S. dollars at the rate of exchange at the balance sheet date, while revenue and expenses are translated at the weighted average rates prevailing during the respective years. Components of stockholders' equity are translated at historical rates. Translation adjustments are recorded in the accompanying consolidated statements of operations as other operating expenses. Our foreign subsidiaries use the Euro and U.S. dollar as their functional currencies. Gains and losses resulting from changes in exchange rates from year to year are included in the accompanying consolidated statements of operations as other operating expenses.

New accounting pronouncements: In December 2004, the Financial Accounting Standards Board, or FASB, announced that SFAS No. 151, *Inventory Costs*, or SFAS No. 151, is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. SFAS No. 151 clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). SFAS No. 151 requires that those items be recognized as current-period charges regardless of whether they meet the criterion of "so abnormal", as defined in Accounting Principles Board, or APB, No. 43. In addition, SFAS No. 151 requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The adoption of SFAS No. 151 in 2006 did not have a material impact on our financial condition or results of operations.

In May 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*, or SFAS No. 154. SFAS No. 154 replaces APB Opinion No. 20, *Accounting Changes*, or APB No. 20, and SFAS No. 3, *Reporting Accounting Changes in Interim Financial Statements*. SFAS No. 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. APB No. 20 previously required that most voluntary changes in accounting principle be recognized by including the cumulative effect of changing to the new accounting principle in net income in the period of the change. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The adoption of SFAS No. 154 in 2006 did not have a material impact on our financial condition or results of operations.

In November 2005, the FASB issued FASB Staff Position Nos. FAS 115-1 and FAS 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*, or FSP Nos. 115-1 and 124-1. The guidance in FSP Nos. 115-1 and 124-1 amends SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, or SFAS No. 115 and SFAS No. 124, *Accounting for Certain Investments Held by Not-for-Profit Organizations*, or SFAS No. 124, and adds a footnote to APB Opinion No. 18, *The Equity Method of Accounting for Investments in Common Stock*, or APB No. 18. FSP Nos. 115-1 and 124-1 address the determination of when an investment is considered impaired, whether that impairment is other than temporary, and the measurement of an impairment loss. In addition, FSP Nos. 115-1 and 124-1 include accounting considerations subsequent to the recognition of an other-than-temporary impairment and requires certain disclosures about unrealized losses that have not been recognized as other-than-temporary impairments. The guidance in FSP Nos. 115-1 and 124-1 is effective for reporting periods beginning after December 15, 2005. The implementation of FSP Nos. 115-1 and 124-1 in 2006 did not have a material impact on our financial position or results of operations.

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Effective January 1, 2006, we adopted the fair value recognition provisions of SFAS No. 123R using the modified-prospective transition method. In accordance with the provisions of SFAS No. 123R, we are recognizing share-based compensation expense in the Consolidated Statements of Operations for the year ended December 30, 2006. For additional information related to the adoption of SFAS No. 123R, refer to Note 12.

In July 2006, the FASB issued Interpretation Number, or FIN, No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN No. 48. FIN No. 48 applies to all tax positions within the scope of SFAS No. 109, applies a “more likely than not” threshold for tax benefit recognition, identifies a defined methodology for measuring benefits and increases the disclosure requirements for companies. FIN No. 48 is mandatory for years beginning after December 15, 2006; accordingly, we will adopt FIN No. 48 effective December 31, 2006. We do not anticipate the adoption of FIN No. 48 will have a material impact on our financial position or results of operations.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, or SFAS No. 157. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. This Statement applies to other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute. Accordingly, this Statement does not require any new fair value measurements. SFAS No. 157 is effective for fiscal years beginning after December 15, 2007. We plan to adopt SFAS No. 157 beginning in the first quarter of our 2008 fiscal year. We are currently evaluating the impact the adoption of SFAS No. 157 will have on our financial position or results of operations.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin, or SAB No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB No. 108, which provides interpretive guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB No. 108 is effective for fiscal years ending after November 15, 2006. The adoption of SAB No. 108 in 2006 did not have a material impact on our financial position or results of operations.

NOTE 3 DISCONTINUED OPERATIONS

In December 2005, we began a review of strategic alternatives for our nephrology franchise based on the results of the StaphVAX clinical trial announced during November 2005. As part of this review, we considered several alternatives including the in-licensing of additional products, alternative commercial models, distribution arrangements and the sale of PhosLo. On October 12, 2006, we executed a definitive agreement, or the PhosLo Agreement, to sell certain assets related to our PhosLo operations. Under the terms of the PhosLo Agreement, we received \$65 million in cash at closing and we earned and collected \$8 million of milestone payments and earned an additional \$2.5 million during 2006. We will receive up to an additional \$10.0 million upon successful completion of additional milestones. In addition, the purchaser acquired product rights to a new product formulation and we are entitled to royalties on sales of the new product formulation over a base amount for 10 years after the closing date until total consideration paid in the transaction reaches \$150 million.

The assets and liabilities related to PhosLo have been accounted for as held for sale for all periods presented based on the following criteria: the PhosLo assets have identifiable cash flows that are largely independent of the cash flows of other groups of assets and liabilities, we will not have a significant continuing involvement with the product beyond one year after the closing of the transaction,

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the cash milestone and royalty payments to be received upon achievement of certain events are considered to be indirect cash flows, and we will not continue any significant active revenue-producing or active cost-generating activities related to PhosLo. In addition, as part of the close of the transaction, we executed a transition services agreement under which we will be reimbursed for services rendered and expenses incurred related to PhosLo marketing and research and development activities as requested by the purchaser. These transition services are not expected to be material to the PhosLo cash flows. Therefore in accordance with SFAS, No. 144, the accompanying Consolidated Balance Sheets report the assets and liabilities related to PhosLo as discontinued operations in all periods presented, and the results of operations related to PhosLo have been classified as discontinued operations in the accompanying Consolidated Statements of Operations for all periods presented.

An impairment loss of \$2.9 million, or \$0.05 per share, was recorded during the third quarter of 2006 within discontinued operations to adjust the assets held for sale to their estimated fair value less costs to sell the product.

Under the terms of our purchase agreement to acquire PhosLo in August 2003, we agreed to pay \$30 million in cash consideration over the period ending March 1, 2007. The discounted value of the future payment obligation was \$10.5 million and was reported as notes payable, net within liabilities of discontinued operations as of that date. The future payment obligation was discounted at 4.5%, our estimated rate of interest under our credit facility in effect on August 4, 2003, the date of the closing of the agreement. As this payment obligation was directly associated with our PhosLo assets, the associated interest expense for current and prior periods has been allocated to discontinued operations in the accompanying financial statements.

All of the assets and liabilities of discontinued operations are related to our biopharmaceutical segment.

The following table presents the major classes of assets that have been presented as Assets of discontinued operations and Liabilities of discontinued operations in the accompanying Consolidated Balance Sheets:

<u>(In thousands)</u>	<u>December 30, 2006</u>	<u>December 31, 2005</u>
Inventories, net	\$ —	\$ 1,823
Restricted cash	10,841	—
Milestone receivable and prepaid expenses	2,500	162
Property and equipment, net	—	219
Intangible assets, net	—	76,377
Trade accounts receivable, net	—	2,634
Total assets of discontinued operations	\$ 13,341	\$ 81,215

<u>(In thousands)</u>	<u>December 30, 2006</u>	<u>December 31, 2005</u>
Trade accounts payable	\$ 2,291	\$ 5,207
Accrued expenses	7,505	9,370
Note payable, net	10,758	2,389
Total current liabilities of discontinued operations	20,554	16,966
Note payable, net	—	10,707
Total liabilities of discontinued operations	\$ 20,554	\$ 27,673

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The following table presents summarized financial information for the discontinued operations presented in the Consolidated Statements of Operations:

(In thousands)	For the Year Ended		
	December 30, 2006	December 31, 2005	December 24, 2004
Total revenues	\$ 27,984	\$ 13,906	\$ 37,580
Operating (loss) income	(4,332)	(20,605)	12,411
(Loss) income before benefit (provision) for income taxes	(4,991)	(21,180)	11,183
Net (loss) income	\$ (4,991)	\$ (22,882)	\$ 5,512

NOTE 4 TRADE ACCOUNTS RECEIVABLE

Trade accounts receivable are composed of the following:

(In thousands)	December 30, 2006	December 31, 2005
Trade accounts receivable	\$ 20,301	\$ 19,694
Allowance for doubtful accounts	(21)	(6)
Total	\$ 20,377	\$ 19,688

NOTE 5 INVENTORIES

The components of inventories, stated at the lower of cost or market with cost determined on the first-in first-out (FIFO) method, are as follows:

(In thousands)	December 30, 2006	December 31, 2005
Finished goods	\$ 13,392	\$ 11,940
Work in process	4,830	7,531
Raw materials	1,038	1,029
Total	\$ 19,260	\$ 20,500

The net inventory balances include provisions or write-offs against inventory that have been recorded in accordance with our stated accounting policy.

Work in process inventory at December 30, 2006 and at December 31, 2005, primarily consisted of Nabi-HB for which manufacture was in process or that was awaiting release to the market from the U.S. Food and Drug Administration, or FDA, in accordance with the normal course of our business.

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We have made and anticipate in future periods that we will scale-up and make commercial quantities of certain of our product candidates prior to the date we anticipate that such products will receive final European Medicines Agency, or EMEA, approval in the EU or FDA approval in the U.S. (i.e., pre-launch inventories). We record pre-launch inventory once the product has attained a stage in the development process of having been subject to a Phase III clinical trial or its equivalent, or if a regulatory filing has been made for licensure for marketing the product and the product has a well characterized manufacturing process. In addition, we must have an internal sales forecast that includes an assessment that sales will exceed the manufacturing costs plus the expected cost to distribute the product. Finally, product stability data must exist so that we can assert that capitalized inventory is anticipated to be sold, based on the sales projections noted above, prior to anticipated expiration of a product's shelf life. The scale-up and commercial production of pre-launch inventories involves the risk that such products may not be approved for marketing by the governmental agencies on a timely basis, or ever.

As of December 30, 2006 and December 31, 2005, we had fully reserved all pre-launch inventories of certain products that have not yet received final governmental approval.

During 2006, we reserved \$1.0 million of Nabi-HB due to the product not meeting our manufacturing specifications and \$0.9 million due to the product being damaged in-transit to our contract fill and finisher. During 2005, we reserved \$4.9 million of StaphVAX pre-launch inventory based on the outcome of our Phase III clinical trial for StaphVAX that did not meet its primary end point and our withdrawal of our MAA for StaphVAX from consideration by the European Medicines Agency, or EMEA. In addition, reserved \$0.8 million of Nabi-HB Intravenous during 2005 as a result of its shelf life being inadequate compared to the timing of our sales projections.

NOTE 6 PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment and related accumulated depreciation are summarized below:

<u>(In thousands)</u>	<u>December 30,</u> <u>2006</u>	<u>December 31,</u> <u>2005</u>
Information systems	\$ 29,069	\$ 26,758
Leasehold improvements	7,927	7,004
Machinery and equipment	53,191	57,095
Land and buildings	51,486	44,929
Building systems	8,324	10,017
Furniture and fixtures	3,024	3,302
Capital leased property	539	539
Asset retirement obligation	193	193
Construction in progress	809	2,098
Property, plant and equipment	154,562	151,935
Less accumulated depreciation	(66,233)	(58,070)
Property, plant and equipment, net	\$ 88,329	\$ 93,865

We received FDA licensure to manufacture Nabi-HB at our biopharmaceutical manufacturing facility in Florida in October 2001. Capitalization of interest and other costs ceased at that time, which was the point at which the facility was ready for the manufacture of Nabi-HB in an FDA approved environment, its intended use, and the facility was placed into service. Total costs of construction of

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the Florida facility, including the building, building systems, plant equipment and information systems were approximately \$90.3 million. Validation costs and capitalized interest related directly to preparing the facility for its intended use totaled \$63.5 million.

Depreciation expense of property, plant and equipment during 2006, 2005 and 2004 was \$7.6 million, \$10.0 million and \$9.5 million, respectively. During 2006, we recorded an adjustment to reduce depreciation expense by \$1.1 million adjusting acquisition costs of \$0.7 million and accumulated depreciation of \$0.4 million. This correction of an error was recorded during 2006 as it was not material to the current year, or any other period that would have been impacted. Depreciation expense related to the initial operation of our biopharmaceutical manufacturing facility in Florida commenced in October 2001. In accordance with our depreciation policy for certain specialized equipment in our biopharmaceutical facility, we recorded additional depreciation expense of \$2.6 million, \$2.1 million and \$2.5 million in 2006, 2005 and 2004, respectively, due to the units-of-production method of depreciation resulting in depreciation less than at least 60% of depreciation expense that would be recorded using the straight-line method of depreciation for this equipment. In addition, depreciation expense included depreciation of assets under capital leases of \$0.2 million for 2006, \$0.2 million for 2005 and \$0.1 million for 2004.

Pursuant to the provisions of Statement of Financial Accounting Standards, or SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we review long-lived assets for impairment at least annually, or whenever events or changes in circumstances indicate that the carrying amount of such assets may not be fully recoverable. If this review reveals indications of impairment, as generally determined based on estimated undiscounted cash flows, the carrying amount of the related long-lived assets are adjusted to fair value.

Following completion of our vaccine manufacturing plant within our Florida facility in April 2005, we placed the asset into service. The primary commercial purpose of the vaccine facility was for the manufacture of our StaphVAX vaccine. In November 2005, we announced that the Phase III clinical trial of StaphVAX did not meet its defined clinical end point and our StaphVAX clinical development program was placed on clinical hold. Following the outcome of this clinical trial and in accordance with the provisions of Statement of Financial Accounting Standards, or SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, we reviewed the carrying value of the vaccine plant of \$20.3 million for impairment. As a result of not having financial projections in the near term that support the carrying value, we have written down the facility to its fair market value of \$0.5 million as of December 31, 2005 and reported a charge of \$19.8 million during 2005.

At December 31, 2005, construction in progress primarily consisted of costs related to the development of an information technology system. Interest capitalized in connection with construction in progress was zero and \$0.1 million in 2006 and 2005, respectively.

NOTE 7 INTANGIBLE ASSETS

Intangible assets consist of the following:

<u>(In thousands)</u>	<u>December 30,</u> <u>2006</u>	<u>December 31,</u> <u>2005</u>
Intangible assets	\$ 4,389	\$ 4,389
Less accumulated amortization	(2,706)	(2,434)
Total intangible assets	\$ 1,683	\$ 1,955

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Amortization of intangible assets during 2006, 2005 and 2004 was \$0.3 million, \$0.7 million and \$0.4 million, respectively. Amortization expense for intangible assets currently subject to amortization is expected to be \$0.3 million, \$0.3 million, \$0.2 million, \$0.1 million, and \$0.1 million in each of the five fiscal years subsequent to December 30, 2006, respectively.

In October 2003, we entered into a contract manufacturing agreement with Cambrex Bio Science Baltimore, Inc., or Cambrex Bio Science. We commenced amortization of the manufacturing right in 2004. In December 2005, we determined that the manufacture of StaphVAX would not occur at Cambrex Bio Science's facility as a result of the Phase III clinical trial for StaphVAX not meeting its primary end point and our MAA for StaphVAX being withdrawn from consideration by EMEA. In accordance with our stated accounting policy, we wrote-off the unamortized intangible asset amount of \$2.7 million during 2005.

NOTE 8 ACCRUED EXPENSES

Accrued expenses consist of the following:

(In thousands)	December 30, 2006	December 31, 2005
Sales deductions		
Accrued chargebacks	\$ 696	\$ 1,175
Accrued rebates	934	1,252
Accrued discounts	799	1,172
Other accrued sales deductions	348	353
Total accrued sales deductions	2,777	3,952
Employee compensation and benefits	7,844	4,029
Accrued royalties and product costs	510	483
Accrued clinical trial expenses	2,096	2,863
Accrued European expenses	114	2,402
Accrued interest payable	708	717
Accrued severance	406	1,589
Other	1,640	1,440
Total	\$ 16,095	\$ 17,475

NOTE 9 CREDIT FACILITIES

On March 26, 2004, we terminated our credit agreement with Wells Fargo Foothill, Inc., part of Wells Fargo & Company. The credit agreement had an original term through June 2006. As a result of terminating the credit agreement, we incurred an early termination penalty of \$0.6 million that has been included in interest expense in the accompanying consolidated statement of operations for 2004. By terminating the credit agreement we avoided unused credit fees and other credit charges that would have been incurred during the remaining term of the agreement through June 2006. In addition, included in interest expense in the accompanying statement of operations for 2004 is the write-off of previously capitalized loan origination fees of approximately \$0.5 million recorded at the time of entering into the credit agreement.

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NOTE 10 DEBT

Debt consists of the following:

<u>(In thousands)</u>	<u>December 30,</u> <u>2006</u>	<u>December 31,</u> <u>2005</u>
Current maturities		
Capital lease obligations	\$ 291	\$ 223
Total current maturities	291	223
Long-term debt, net of current maturities		
Capital lease obligations	—	238
Long-term capital lease obligations, net	—	238
2.875% convertible senior notes, net	109,313	109,145
Total long-term debt	109,313	109,383
Total debt	\$ 109,604	\$ 109,606

On April 19, 2005, we issued \$100.0 million of our 2.875% convertible senior notes, or the Notes, due 2025 through a private offering to qualified institutional buyers as defined in Rule 144A under the Securities Act. On May 13, 2005, the initial purchasers exercised \$12.4 million of their option to purchase additional Notes to cover over allotments.

The Notes were issued pursuant to an indenture between U.S. Bank National Association, as trustee, and us. The Notes are convertible, at the option of the holders, into shares of our common stock at a rate of 69.8348 shares per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$14.32 per share, subject to adjustment upon the occurrence of certain events. The initial implied conversion price represents a 30% premium over the closing sale price of our common stock on April 13, 2005, which was \$11.015 per share. The Notes, which represent our general, unsecured obligations, will be redeemable by us at 100% of their principal amount, or \$112.4 million, plus accrued and unpaid interest, any time on or after April 18, 2010. Holders of Notes may require us to repurchase them for 100% of their principal amount, plus accrued and unpaid interest, on April 15, 2010, April 15, 2012, April 15, 2015 and April 15, 2020, or following the occurrence of a fundamental change as defined in the indenture agreement.

The following table reconciles the net proceeds received from the sale of the Notes:

<u>(In thousands)</u>	
Cash received:	
Proceeds from issuance	\$ 112,400
Professional fees paid:	
Discount granted to initial purchasers	(3,372)
Legal and accounting fees	(256)
Other	(42)
	<u>(3,670)</u>
Net proceeds	\$ 108,730

Interest on the Notes is payable on each April 15 and October 15, beginning October 15, 2005. Accrued and unpaid interest related to the Notes was \$0.7 million and \$0.7 million at December 30, 2006 and December 31, 2005 respectively. The \$3.4 million discount granted to the initial purchaser of the Notes and the \$0.3 million of deferred costs are being amortized to interest expense through April 15, 2020, the maturity date of the Notes.

NOTE 11 STOCKHOLDERS' EQUITY

Warrants

In July 2000, we issued a warrant to purchase 133,333 shares of common stock to our agent in connection with the private placement of common stock for which we realized proceeds of \$9.3 million, net of issuance costs. On April 15, 2004, the holder of a warrant to purchase 133,333 shares of our common stock at \$7.50 per share exercised the warrant using the net exercise provision of the warrant. As a result of the net exercise, we issued 74,070 shares of our common stock to the holder of the warrant. The estimated fair value of the warrant at the date of grant was \$0.9 million. This fair value was calculated using the Black-Scholes model with the following assumptions: expected term of five years, expected volatility of 104% and expected risk-free interest rate of 6%.

Treasury Stock

In September 2001, our Board of Directors approved the expenditure of up to \$5.0 million to purchase our common stock in the open market or in privately negotiated transactions. We acquired no shares under this program during 2006 or 2005. To date, we have acquired 345,883 shares of our common stock for a total of \$1.9 million since the inception of this buy back program. Repurchased shares have been accounted for as treasury stock.

In various transactions, a member of our Board of Directors exercised stock options for 7,500 shares in 2005 and a former officer of the Company exercised stock options for 6,250 shares in 2004. These purchases were paid for by delivery of 1,958 shares of common stock in 2005 and 3,496 shares of common stock in 2004, which were valued at \$24 thousand and \$57 thousand for each of the respective transactions. In each of the transactions, the shares delivered had been acquired more than six months earlier. These shares have been accounted for as treasury stock.

Stock Options

We maintain five stock option plans for our employees. Under these plans, we have granted options to certain employees entitling them to purchase shares of common stock within seven to ten years. The options vest over periods ranging from zero to five years from the date of grant and have generally been granted at exercise prices equal to the fair market value of the underlying common stock on the date of grant.

On December 20, 2005, the Compensation Committee of our Board of Directors approved the acceleration of vesting of all unvested options to purchase our common stock having an exercise price of \$6.00 or higher, effective for all outstanding options as of December 20, 2005. The closing price of our common stock on December 20, 2005 was \$3.35 per share. All other terms and conditions applicable to such options, including the exercise prices, remain unchanged. The affected options were previously granted to our employees, including our executive officers, under our 2000 Equity Incentive Plan and our 1998 Non-Qualified Employee Stock Option Plan. Options to purchase 3,962,159 shares of our common stock, or 96% of our outstanding unvested

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options, were subject to this acceleration and such options have exercise prices ranging from \$6.00 to \$17.15 per share and a weighted average exercise price of \$12.51 per share. Of the accelerated options, approximately 778,099 were held by our Named Executive Officers included in the Summary Compensation Table in our 2005 Definitive Proxy Statement filed with the Securities and Exchange Commission on April 8, 2005.

Our decision to accelerate the vesting of the affected options was based primarily upon the issuance by the Financial Accounting Standards Board of SFAS No. 123R, which required us to treat all unvested stock options as compensation expense effective January 1, 2006. The Compensation Committee concluded that the acceleration of vesting of the affected options will enable us to avoid recognizing stock-based compensation expense associated with these options in future periods.

During 2005 and 2004, we modified stock options for certain of our employees and, as a result, incurred charges of \$0.1 million and \$0.2 million, respectively.

In May 2004, our shareholders approved the 2004 Stock Plan for Non-Employee Directors, or the Directors Plan, that succeeded the Stock Plan for Non-Employee Directors that was then in effect. Under the Directors Plan we have granted options to certain directors entitling them to purchase shares of common stock within ten years, vesting six months after the date of grant, at an exercise price equal to the fair market value of the underlying common stock at the date of grant. Under the plan, non-employee directors may also elect to be paid their annual retainer as a director in whole or in part in shares of our common stock if approved in advance by our Board of Directors. The number of shares issued if this election is made is the annual retainer divided by the market value of a share of common stock on the date the annual retainer is paid. In 2006, four directors elected to receive their annual retainer in common shares, receiving a total of 14,738 shares of common stock. In 2005, one director elected to receive his annual retainer in common shares, receiving 1,776 shares of common stock. In 2004, one director elected to receive his annual retainer in common shares, receiving 1,201 shares of common stock.

In May 2004, our shareholders approved an amendment to our 2000 Equity Incentive Plan adding 4,500,000 shares of our common stock to the plan.

At December 30, 2006, there were options outstanding under our various stock plans to acquire a total of 7.9 million shares of our common stock of which options for 6.5 million shares were then exercisable. Additionally, 2.8 million shares of common stock are reserved for future grants under the plans mentioned above.

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Stock option activity is discussed below:

	<u>Options</u> (In thousands)	<u>Exercise Price</u> <u>per Share</u>	<u>Weighted</u> <u>Average</u> <u>Exercise Price</u>
Balance at December 27, 2003	7,114	\$ 2.63 - 13.75	\$ 6.68
Granted	2,567	8.88 - 17.15	15.04
Exercised	(1,540)	2.69 - 13.75	6.40
Canceled	(150)	4.69 - 17.08	9.13
Balance at December 25, 2004	7,991	2.63 - 17.15	9.38
Granted	1,979	3.10 - 15.14	11.70
Exercised	(725)	2.69 - 14.85	6.41
Canceled	(546)	2.69 - 16.54	12.39
Balance at December 31, 2005	8,699	2.63 - 17.15	9.96
Granted	2,063	3.44 - 7.25	5.29
Exercised	(477)	2.69 - 7.06	4.91
Canceled	(2,341)	3.10 - 17.14	10.04
Balance at December 30, 2006	7,944	\$ 2.63 - 17.15	\$ 9.03

<u>Exercise Price Range</u>	<u>Outstanding</u>			<u>Exercisable</u>	
	<u>Options</u> (In thousands)	<u>Average</u> <u>Years</u> <u>Remaining</u>	<u>Average</u> <u>Exercise</u> <u>Price</u>	<u>Options</u> (In thousands)	<u>Average</u> <u>Exercise</u> <u>Price</u>
\$2.63 - \$4.25	759	5.8	\$ 3.48	348	\$ 3.03
\$4.35 - \$7.47	3,318	6.2	5.97	2,317	6.07
\$8.00 - \$11.25	904	4.8	9.82	904	9.82
\$11.69 - \$17.15	2,963	7.8	13.65	2,963	13.65
	<u>7,944</u>			<u>6,532</u>	

Employee Stock Purchase Plan

In May 2000, the stockholders approved the Nabi Employee Stock Purchase Plan, or the ESPP. The terms of the ESPP, as amended, allow for qualified employees as defined therein to participate in the purchase of up to 1,000,000 shares of our common stock at a price equal to 85% of the lower of the closing price at the beginning or end of each semi-annual stock purchase period. We issued 224,353, 167,413 and 90,382 shares of common stock during 2006, 2005 and 2004, respectively, pursuant to this plan at an average price per common share of \$3.37, \$4.85 and \$10.60, respectively.

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Nabi Savings and Retirement Plan

In May 2000, the stockholders approved the issuance of up to 425,000 shares of our common stock to our employees participating in the Nabi Savings and Retirement Plan. To date, no shares have been issued under this plan.

Shareholders Rights Plan

Effective July 1997, our Board of Directors adopted a shareholders rights plan under which a dividend of one preferred share purchase right, or Right, was distributed for each outstanding share of common stock. Each Right entitles the holder to purchase one one-hundredth of a share of Series One Preferred Stock at a price of \$70, subject to adjustment. The Rights expire in August 2007, and are exercisable only if an individual or group has acquired or obtained the right to acquire, or has announced a tender or exchange offer that if consummated would result in such individual or group acquiring beneficial ownership of 15% or more of our common stock. Such percentage may be lowered at the Board's discretion. If the Rights become exercisable, the holder (other than the individual or group who triggered the exercisability) may be entitled to receive upon exercise shares of our common stock having a market value of two times the exercise price of the Rights, or the number of shares of the acquiring company which have a market value of two times the exercise price of the Rights. The Rights separate from the common stock if they become exercisable. We are entitled to redeem the Rights in whole for \$0.01 per Right under certain circumstances.

Shares of Common Stock

In May 2004, our shareholders approved an amendment to our Restated Certificate of Incorporation increasing the number of authorized common stock to 125 million shares from 75 million shares.

As of December 30, 2006, a total of 11.2 million shares of common stock in the aggregate were reserved for issuance under our stock options and employee benefit plans.

NOTE 12 SHARE-BASED COMPENSATION

We maintain incentive stock plans that provide for grants of stock options and restricted stock to our directors, officers and key employees. The stock plans are described more fully below.

Adoption of New Accounting Guidance and Transition

Prior to January 1, 2006, we accounted for these plans under the recognition and measurement provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations, or APB No. 25, as permitted by SFAS No. 123, *Accounting for Stock-Based Compensation*, or SFAS No. 123. Under APB No. 25, when the exercise price of our employee stock options equaled or exceeded the market price of the underlying stock on the date of grant, no compensation cost was recognized.

Effective January 1, 2006, we adopted the fair value recognition provisions of SFAS No. 123R, *Share-Based Payment*, and related interpretations, or SFAS No. 123R, which is a revision of SFAS No. 123, using the modified-prospective transition method. Under that method, compensation cost recognized in the year ended December 30, 2006 includes (a) compensation cost for all share-based payments granted prior to, but not yet vested as of, January 1, 2006 based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123 and (b) compensation cost for all share-based payments granted on or subsequent to January 1, 2006, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R. Compensation

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cost related to stock awards granted prior to, but not vested as of, January 1, 2006 is being recognized on a straight-line basis over the requisite remaining service period for the entire award in accordance with the provisions of SFAS No. 123R. Results for the prior periods have not been restated.

Prior to the adoption of SFAS No. 123R, we presented the tax benefit of deductions arising from the exercise of stock options as operating cash flows in the Consolidated Statement of Cash Flows. SFAS No. 123R requires that we classify the cash flows resulting from the tax benefit that arises when the tax deductions exceed the compensation cost recognized for those options (excess tax benefits) as financing cash flows. There were no excess tax benefits for the year ended December 30, 2006, and had we had excess tax benefits, they would have been classified as an operating cash inflow if we had not adopted SFAS No. 123R.

During the third quarter of 2006, the Audit Committee of the Board of Directors initiated a voluntary review of our historical and current year equity grant programs and the accounting for these programs. The review identified errors in the determination of the measurement date for certain stock option grants in prior years. This resulted in additional cumulative non-cash compensation expense recorded during the third quarter of 2006 totaling \$2.6 million, or \$0.04 per share, of which \$0.2 million, or \$0.00 per share, has been reclassified to discontinued operations. Refer to Note 12.

Pro Forma Information Under SFAS No. 123 for Periods Prior to Fiscal 2006

The fair value of each stock option on the date of grant and the fair value of shares issuable pursuant to the Company's Employee Stock Purchase Plan, or ESPP, in the years ended December 31, 2005 and December 25, 2004 were estimated using a Black-Scholes option-pricing formula applying the following assumptions, and amortized over the respective option's vesting period or ESPP plan purchase period, or six months, using the straight-line attribution approach, as shown in the following table:

Stock Options:

	Year Ended December 31, 2005	Year Ended December 25, 2004
Expected term (in years)	4.0–4.7	2.3–5.0
Risk-free interest rate	3.92%–4.96%	2.73%–4.15%
Expected volatility	47.9%–87.3%	60.8%–67.2%
Expected dividend yield	0%	0%

ESPP:

	Year Ended December 31, 2005	Year Ended December 25, 2004
Expected term (in years)	0.5	0.5
Risk-free interest rate	2.41%–3.26%	0.96%–1.49%
Expected volatility	41.6%–58.3%	45.4%–56.2%
Expected dividend yield	0%	0%

Expected Term: The expected term represents the period over which the share-based awards are expected to be outstanding.

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Risk-Free Interest Rate: We based the risk-free interest rate used in our assumptions on the implied yield currently available on U.S. Treasury zero-coupon issues with a remaining term equivalent to the stock option award's expected term.

Expected Volatility: The volatility factor used in our assumptions is based on the historical price of our stock over the most recent period commensurate with the expected term of the award for stock options and over the six-month plan purchase period for ESPP shares.

Expected Dividend Yield: We do not intend to pay dividends on our common stock for the foreseeable future. Accordingly, we use a dividend yield of zero in our assumptions.

We estimated the expected term and expected volatility of the instruments based upon historical data.

The weighted-average fair value of options granted during 2005 and 2004 was \$6.01 and \$8.31, respectively. Forfeitures were recognized as they occurred. The weighted-average fair value of shares issuable pursuant to the ESPP during 2005 and 2004 was \$4.53 and \$4.87, respectively, per share.

The table below illustrates the effect on net loss and loss per share during 2005 and 2004 if we had applied the fair value recognition provisions of SFAS No. 123. The estimated fair value is amortized to expense over each option grant's respective vesting period and over the six-month plan purchase period for shares issuable under the ESPP.

<u>(In thousands, except per share data)</u>	<u>Year Ended December 31, 2005</u>	<u>Year Ended December 25, 2004</u>
Net loss, as reported	\$ (128,449)	\$ (50,390)
Total share-based employee compensation cost included in reported net loss, net of tax	62	150
Total share-based employee compensation cost determined under SFAS No. 123 for all awards, net of tax	<u>(35,970)</u>	<u>(4,659)</u>
Pro forma net loss	<u>\$ (164,357)</u>	<u>\$ (54,899)</u>
Net loss per share:		
Basic and diluted net loss— as reported	<u>\$ (2.15)</u>	<u>\$ (0.86)</u>
Basic and diluted net loss— pro forma	<u>\$ (2.75)</u>	<u>\$ (0.93)</u>

Valuation and Expense Information under SFAS No. 123R

As a result of the adoption of SFAS No. 123R, we recorded compensation costs of \$2.8 million, for the year ended December 30, 2006. Of the \$2.8 million recorded as compensation costs, \$0.1 million was reclassified into discontinued operations for the year ended December 30, 2006. In addition, of the \$2.8 million recorded as compensation costs, \$0.1 million was capitalized into the cost of inventories for the year ended December 30, 2006, and the remainder has been included in the associated operating expense line item. As a result of the adoption of SFAS No. 123R, our net loss, loss before benefit for income taxes, and operating loss for the year ended December 30, 2006 increased by \$2.8 million, than if we had continued to account for share-based compensation under APB No. 25. As of December 30, 2006, there was \$4.7 million of total unrecognized compensation cost related to non-vested stock options,

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restricted stock, and shares issuable under the ESPP, which will be expensed over a weighted-average period of 2.7 years, of which \$0.1 million is related to discontinued operations. We did not recognize a tax benefit for share-based compensation arrangements during the year ended December 30, 2006.

As required by SFAS No. 123R, we now estimate forfeitures of stock options and restricted stock awards and recognize compensation cost only for those awards expected to vest. Forfeiture rates are determined for three groups of non-employee directors, senior management and all other employees-based on historical experience. Estimated forfeiture rates are adjusted from time to time based on actual forfeiture experience.

Stock Options

In connection with the adoption of SFAS No. 123R, we estimate the fair value of each stock option on the date of grant using a Black-Scholes option-pricing formula, applying the following assumptions, and amortized to expense over the option's vesting period using the straight-line attribution approach:

	Year Ended December 30, 2006
Expected term (in years)	2.15 – 8.12
Risk-free interest rate	4.47% - 5.70%
Expected volatility	81.4% - 98.4%
Expected dividend yield	0%

Expected Term: The expected term represents the period over which the share-based awards are expected to be outstanding based on the historical exercise behavior and forfeiture experience of our employees, as adjusted for certain events that management deemed to be non-recurring and/or non-indicative of future events.

Risk-Free Interest Rate: The Company based the risk-free interest rate used in the assumptions on the implied yield currently available on U.S. Treasury zero-coupon issues with a remaining term equivalent to the stock option award's expected term.

Expected Volatility: The volatility factor used in the assumptions is based on the historical price of our stock over the most recent period commensurate with the expected term of the stock option award.

Expected Dividend Yield: We do not intend to pay dividends on common stock for the foreseeable future. Accordingly, we used a dividend yield of zero in the assumptions.

We maintain incentive stock plans that provide for the grants of stock options and restricted stock awards to our directors, officers and employees. As of December 30, 2006, there were 2,769,835 shares of common stock reserved for issuance under our stock plans. We intend to issue new shares upon the exercise of options. Stock options granted under these plans have been granted at an option price equal to the closing market value of the stock on the date of the grant. Options granted under these plans, prior to January 1, 2006, to employees typically become exercisable over four years in equal annual installments after the date of grant, and to non-employee directors become exercisable in full after six months after the grant date, subject to, in each case, continuous service with the Company. During the year ended December 30, 2006, we granted options to purchase our common stock which become exercisable over various vesting periods as follows: 26,500 options vested immediately, 1,461,638 options that vest ratably over four years on the anniversary of each award, 138,000 options granted to outside directors and the corporate secretary that vest at the end of six months

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and 437,260 options (granted as part of a retention program authorized by the Compensation Committee of our Board of Directors) that vest at the end of three years subject to continuous service with the Company and to acceleration in certain circumstances. A summary of option activity under our stock plans as of December 30, 2006 and the changes during the year is presented below:

Options	Number of Options	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (\$000's)
Outstanding at December 31, 2005	8,699,323	\$ 9.96		
Granted	2,063,398	5.29		
Exercised	(477,215)	4.91		
Forfeited	(828,607)	7.61		
Expired	(1,512,937)	11.36		
Outstanding at December 30, 2006	<u>7,943,962</u>	<u>\$ 9.03</u>	<u>6.62</u>	<u>\$ 5,431</u>
Vested and expected to vest at December 30, 2006	<u>7,514,838</u>	<u>\$ 9.25</u>	<u>6.47</u>	<u>\$ 4,772</u>
Exercisable at December 30, 2006	<u>6,531,652</u>	<u>\$ 9.86</u>	<u>6.05</u>	<u>\$ 3,170</u>

The amount of compensation costs recorded in 2006 related to stock options awards is \$1.8 million. Of the \$1.8 million of compensation costs recorded, \$0.1 million has been reclassified to discontinued operations. As of December 30, 2006, there was \$3.4 million of unrecognized compensation cost related to the stock options granted under our stock plans, of which \$0.1 million is related to discontinued operations. That cost is expected to be recognized over a weighted-average period of 2.9 years. The weighted-average fair value of stock options granted during 2006 was \$3.48 million. The total intrinsic value of stock options exercised was \$0.8 million during 2006 and was \$4.9 million and \$14.5 million in 2005 and 2004, respectively.

Cash received from the exercise of stock options under our stock plans for 2006, 2005 and 2004 was \$2.3 million, \$4.6 million and \$9.8 million, respectively including \$0.3 million, \$0.5 million and \$0.4 million from discontinued operations, respectively.

Restricted Stock

During 2006, we granted 60,000 shares of restricted stock that vest at the end of three years, and 80,000 and 20,000 shares of restricted stock that vest ratably over three and four years, respectively, subject to continuous service with the Company and to acceleration in certain circumstances. In addition, as part of the retention program, during 2006, we granted 50,000 and 304,610 shares of restricted stock that vest at the end of one and three years, respectively, subject to continuous service with the Company and to acceleration in certain circumstances.

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A summary of the status of our restricted stock awards as of December 30, 2006 and changes during fiscal 2006 is presented below:

	Number of Shares	Weighted- Average Fair Value at Grant Date
Nonvested at December 31, 2005	—	
Granted	514,610	\$ 4.46
Vested	—	
Forfeited	(64,831)	3.83
Nonvested at December 30, 2006	<u>449,779</u>	<u>\$ 4.55</u>

The amount of compensation costs recorded in 2006 related to restricted stock awards is \$0.5 million, none of which has been reclassified to discontinued operations. As of December 30, 2006, there was \$1.2 million of total unrecognized compensation cost related to restricted stock awards granted under our stock plans, none of which is related to discontinued operations. That cost is expected to be recognized over a weighted-average period of 2.3 years. No restricted stock awards vested during 2006.

Employee Stock Purchase Plan (ESPP)

The terms of the ESPP, as amended, allow for qualified employees, as defined therein, to participate in the purchase of up to 1,000,000 shares of our common stock at a price equal to 85% of the lower of the closing price at the beginning or end of each semi-annual stock purchase period.

In connection with the adoption of SFAS No. 123R, we estimate the fair value of each share of stock which may be issued under our ESPP based upon our stock prices on December 1, 2005, June 1, 2006, and December 1, 2006, using a Black-Scholes option-pricing formula, applying the following assumptions, and amortize that value to expense over the plan purchase period using the straight-line attribution approach:

	Year Ended December 30, 2006
Expected term (in years)	0.5
Risk-free interest rate	4.21% - 4.91%
Expected volatility	41.08% - 181.0%
Expected dividend yield	0%
Fair value at grant date	\$2.21 - \$2.36

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The amount of compensation costs recorded in 2006 related to participation in the ESPP is \$0.5 million based upon the anticipated purchase of 148,890 shares, 80,023 shares, and 43,778 on May 31, 2006, November 30, 2006, and May 31, 2007, respectively. Of the \$0.5 million of compensation costs recorded, \$0.1 million has been reclassified to discontinued operations. As of December 30, 2006, there was \$0.1 million of total unrecognized compensation cost related to shares that may be issued under the ESPP, none of which is related to discontinued operations. That cost is expected to be fully recognized during the first half of 2007.

NOTE 13 OFFERING REGISTRATIONS

On December 7, 2004, we filed a Form S-3 with the Securities and Exchange Commission, or SEC, to register the offer and sale of equity or debt securities up to \$175 million from time to time. We plan to use any net proceeds from sales of securities under this shelf registration statement to provide additional funds for general corporate purposes, including but not limited to clinical trials, research, development and marketing expenses, and new acquisition and licensing costs.

NOTE 14 PRODUCT ACQUISITIONS

In a transaction dated June 29, 2004, we exercised our right under our distribution agreement to acquire Aloprim from DSM Pharmaceuticals, Inc., or DSM. We paid a total of \$1.0 million for the acquisition of Aloprim including payment of \$0.8 million for the Aloprim product license at the closing of the purchase. We had previously paid \$0.2 million in the fourth quarter of 2003. As a result of acquiring the Aloprim product license, further product royalties were set at 15% of net sales for five years. Previously, we were obligated to share net profits, as defined, equally with DSM from net sales of Aloprim up to \$4.0 million and to pay DSM 30% of net profits from net sales in excess of \$4.0 million.

In conjunction with acquiring Aloprim, we entered into a manufacturing agreement with DSM to continue to supply product to us for a term of up to five years. We were obligated to purchase \$3.0 million of Aloprim product under this agreement. During July 2006, we amended our agreement with DSM. Under the terms of the amended agreement, though the period ending June 29, 2009 we have a remaining minimum requirement to pay DSM \$1.4 million. We had a remaining commitment of \$1.2 million at December 30, 2006. Refer to Note 22.

NOTE 15 DISTRIBUTION AGREEMENT

On July 15, 2004, Cangen Corporation informed us that it would not renew the WinRho SDF license and distribution agreement with us at its expiration in March 2005. On March 24, 2005 our agreement to distribute WinRho SDF ended and we ceased distribution of that product. There were no sales of WinRho SDF during 2006 and \$6.2 million and \$47.9 million for the years ended December 31, 2005 and December 25, 2004, respectively.

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NOTE 16 INCOME TAXES

Income before income taxes was taxed domestically only.

The (benefit) provision for income taxes consists of the following:

(In thousands)	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Current:			
Federal	\$ (162)	\$ —	\$ 3,009
State	—	(76)	158
Subtotal	(162)	(76)	3,167
Deferred:			
Federal	(17,611)	(70,142)	1,482
State	(927)	(3,692)	78
Subtotal	(18,538)	(73,834)	1,560
Total	(18,700)	(73,910)	4,727
Valuation allowance	18,538	71,300	—
Total	\$ (162)	\$ (2,610)	\$ 4,727

Deferred tax assets and liabilities as of December 30, 2006 and December 31, 2005 are comprised of the following and include net deferred tax assets related to discontinued operations of \$7.8 million and \$4.9 million, respectively:

(In thousands)	For the Years Ended	
	December 30, 2006	December 31, 2005
Deferred tax assets:		
Net operating loss carryforwards	\$ 64,280	\$ 29,939
Research and development tax credit	16,866	16,340
Inventory reserve and capitalization	5,725	4,957
Amortization	5,091	2,477
Bad debt reserve	8	2
Inter-company bad debt reserve	4,830	29,670
Depreciation	—	1,296
Alternative minimum tax credit	1,182	1,187
Accrued retirement	67	468
Vaccine facility impairment	6,834	7,401
Other (including IRC 59(e) & SFAS No. 123R)	17,585	4,804
Deferred tax assets	122,468	98,541
Deferred tax liability:		
Depreciation	(19,173)	(19,985)
Net deferred tax assets	103,295	78,556
Valuation allowance	(103,295)	(78,556)
Net deferred tax assets	\$ —	\$ —

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We have net operating loss carryforwards of approximately \$189.5 million that expire at various dates through 2026. Approximately \$17.2 million of our net operating loss carryforwards are related to the exercise of employee stock options, and we will record a tax benefit of approximately \$6.4 million through capital in excess of par value when such losses are realized. A portion of our deferred tax assets relate to a tax planning transaction that took place during 2004. As a result of our change in strategy for distributing products in Europe, those assets could be limited in their use and, once liquidated, could be deemed capital losses that would expire with a 5 year limitation.

We have research and development tax credit carryforwards of \$16.8 million that expire in varying amounts through 2026. We have alternative minimum tax credit carryforwards of \$1.2 million that are available to offset future regular tax liabilities and do not expire.

We anticipated the tax planning strategy we had in place at the end of 2004 and throughout 2005 would be able to generate sufficient future taxable income to utilize our deferred tax assets at those dates, however after the November 1, 2005 announcement regarding the StaphVAX clinical trial, we determined that a full valuation allowance would be required against all of our deferred tax assets that we do not expect to be utilized by deferred tax liabilities. Refer to Note 14. As a result, we recorded a \$103.3 million and \$78.6 million valuation allowance as of December 30, 2006 and December 31, 2005, respectively.

Under Section 382 of the Internal Revenue Code, certain significant changes in ownership may restrict the future utilization of our tax loss carryforwards and tax credit carryforwards. The annual limitation is equal to the value of our stock immediately before the ownership change, multiplied by the long-term tax-exempt rate (i.e., the highest of the adjusted Federal long-term rates in effect for any month in the three-calendar-month period ending with the calendar month in which the change date occurs). Based upon preliminary calculations, we estimate that the utilization of \$86.1 million of tax losses for federal tax purposes would be limited to an annual limitation of approximately \$14.2 million per year. This limitation may be increased under the IRC§ 338 Approach (IRS approved methodology for determining recognized Built-In Gain) by an amount up to \$15.2 million per year through 2011 not to exceed our Net Unrealized Built-In Gain of \$78.9 million. As a result, federal net operating losses and tax credits may expire before we are able to fully utilize them. As we have recorded a full valuation allowance against our net deferred tax assets, there is no current impact of this limitation for financial reporting purposes. A more detailed calculation will be prepared once we have taxable income for federal and state purposes.

The following table reconciles our losses from continuing operations before income taxes by jurisdiction:

(In thousands)	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Pre-tax loss:			
U.S.	\$ (52,470)	\$ (94,715)	\$ (38,522)
Ex-U.S.	(1,404)	(13,462)	(12,653)
Total	\$ (53,874)	\$ (108,177)	\$ (51,175)

Our ex-U.S. losses are primarily in zero-tax jurisdictions, and as such, we did not record income taxes on those losses.

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The significant elements contributing to the difference between the federal statutory tax rate and the effective tax rate are as follows:

	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Federal statutory rate	(34.00)%	(34.00)%	(34.00)%
State income taxes, net of federal benefit	(3.30)	(3.30)	(3.30)
Foreign tax rate differential	0.97	4.64	9.22
Foreign sales benefit and nondeductible items	(0.11)	—	0.06
Intercompany bad debt	—	(27.43)	—
Tax credits	(1.48)	(6.28)	(0.91)
Gain on sale of intellectual property	—	—	36.44
Valuation allowance	34.41	65.91	—
Other	3.21	(1.96)	1.73
Total	<u>(0.30)%</u>	<u>(2.41)%</u>	<u>9.24%</u>

NOTE 17 EARNINGS PER SHARE

The following table reconciles basic and diluted loss per share for net loss for the years ended December 30, 2006, December 31, 2005 and December 25, 2004:

Amounts in thousands, except per share data	Basic Loss Earning Per Share	Effect of Dilutive Securities:	
		Stock options and other dilutive securities	Diluted Loss Earnings Per Share
2006			
Loss from continuing operations	\$ (53,712)	\$ —	\$ (53,712)
Loss from discontinued operations	(4,991)	—	(4,991)
Net loss	(58,703)	—	(58,703)
Shares	60,936	—	60,936
Loss from continuing operations per share	(0.88)	—	(0.88)
Net loss per share	<u>\$ (0.96)</u>	<u>\$ —</u>	<u>\$ (0.96)</u>
2005			
Loss from continuing operations	\$(105,567)	\$ —	\$ (105,567)
Loss from discontinued operations	(22,882)	—	(22,882)
Net loss	(128,449)	—	(128,449)
Shares	59,862	—	59,862
Loss from continuing operations per share	(1.76)	—	(1.76)
Net loss per share	<u>\$ (2.15)</u>	<u>\$ —</u>	<u>\$ (2.15)</u>
2004			
Loss from continuing operations	\$ (55,902)	\$ —	\$ (55,902)
Income from discontinued operations	5,512	—	5,512
Net loss	(50,390)	—	(50,390)
Shares	58,800	—	58,800
Loss from continuing operations per share	(0.95)	—	(0.95)
Net loss per share	<u>\$ (0.86)</u>	<u>\$ —</u>	<u>\$ (0.86)</u>

[Table of Contents](#)**NOTE 18 EMPLOYEE BENEFIT PLANS**

Effective January 1, 2003, the Nabi Savings and Retirement Plan, or the Plan, permits employees to contribute up to 92% of pre-tax annual compensation up to annual statutory limitations. The discretionary company match for employee contributions to the Plan is 100% of up to the first 4% of the participant's earnings contributed to the Plan. Our matching contributions to the plan were approximately \$1.4 million in 2006, \$1.4 million in 2005 and \$1.4 million in 2004, respectively.

NOTE 19 LEASES

We conduct certain of our operations under operating lease agreements. The majority of these lease agreements contain renewal options, which enable us to renew the leases for periods of two to ten years at the then fair rental value at the end of the initial lease term.

Rent expense was approximately \$3.3 million, \$3.5 million and \$3.5 million for the years ended December 30, 2006, December 31, 2005 and December 25, 2004, respectively.

As of December 30, 2006, the aggregate future minimum lease payments under all non-cancelable operating leases with initial or remaining lease terms in excess of one year are as follows:

<u>Year Ending</u>	<u>(In thousands)</u>
2007	\$ 2,677
2008	2,585
2009	715
2010	433
2011	386
Thereafter	262
Total minimum lease commitments	<u>\$ 7,058</u>

The following schedule summarizes future minimum lease payments under capital leases with terms greater than one year as of December 30, 2006:

<u>Year Ending</u>	<u>(In thousands)</u>
2007	\$ 401
Total minimum lease payments	401
Less imputed interest	93
Present value of net minimum lease payments	308
Current portion including accrued interest of \$17,000	308
Long-term portion	<u>\$ —</u>

We entered into a lease agreement dated June 29, 2005 for a new expanded research and development facility in Gaithersburg, Maryland. Our obligation to pay rent under this agreement was to commence January 1, 2006, however, we terminated this lease on October 31, 2005 by written notice accompanied by a \$0.8 million termination fee.

NOTE 20 RELATED PARTY TRANSACTIONS

On June 20, 2003, we entered into a retirement agreement with David J. Gury, our former Chief Executive Officer. As a result we incurred a charge of \$3.3 million comprising approximately \$3.0 million in future cash payments and \$0.3 million of costs related to modification of certain of his outstanding stock options. The liability was fully paid as of December 30, 2006.

There are no amounts receivable from corporate officers at December 30, 2006 or December 31, 2005.

NOTE 21 STRATEGIC ALLIANCES, LICENSES AND ROYALTY AGREEMENTS

We enter into strategic alliances for the manufacture and commercialization of some of our marketed and pipeline products. Our current material strategic alliances are discussed below.

Public Health Services/National Institutes of Health

Under a license agreement with the Public Health Services/National Institute of Health, or PHS/NIH, we have the exclusive, worldwide right to use their patented conjugation process to manufacture vaccines against *staphylococcal* infections including StaphVAX.

During the term of the license we are obligated to pay PHS/NIH a royalty based on net sales of products, if any, made using this technology. This agreement remains in effect until the earlier of the expiration of the last-to-expire licensed patent, which is April 20, 2010, and no further royalties will be due to PHS/NIH for use of the subject technology after that date. In addition to our license with PHS/NIH, we own an extensive global portfolio of issued patents and pending patent applications directed to our novel vaccine products and methods of using such products as described in further detail below under "Patents and Proprietary Rights."

Novartis

We have an agreement with Novartis, that grants us an exclusive supply agreement for four vaccines, including the vaccine for hepatitis C. In addition, we have rights to 10 additional Novartis vaccines for use in humans to produce immunotherapeutic products. The agreement may also grant us access to a vaccine adjuvant, MF 59.

This agreement may be important to the development of the next generation of our investigational product, Civacir.

We will be responsible for all development, manufacturing and worldwide distribution of these products. We may terminate the agreement on a product-by-product basis in which event we must transfer to Novartis all of our rights with respect to the product as to which the agreement has been terminated. Similarly, Novartis may terminate its obligations to supply immunizing agents to us on a product-by-product basis, in which event Novartis shall grant to us a license of the technology necessary for us to manufacture the applicable immunizing agent and the financial arrangements in the Novartis Agreement with respect to such agent shall continue.

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Talecris Biotherapeutics

In 2006, we extended our long-term supply agreement for non-specific antibodies with Talecris. The agreement guarantees sale of our non-specific antibodies at a predetermined price and protects our product from possible market downturns.

We are responsible for supplying Talecris with an annual minimum amount of non-specific antibodies until the end of 2011 and Talecris is responsible for testing the plasma.

ProMetic

In 2006, we signed an agreement with ProMetic of Montreal, Canada for the exclusive worldwide use of their technology in the purification of immunoglobulins for several hyperimmune products including Altastaph and Civacir. The ProMetic technology promises a higher yield of immunoglobulin from a liter of plasma, which we believe may thereby reduce the cost of production and improve manufacturing efficiency.

Fresenius Biotech

During 2006, we signed an agreement with Fresenius Biotech to advance the development of ATG-Fresenius S in the U.S. and Canada. ATG-Fresenius S is an immunosuppressive polyclonal antibody product used for the prevention and treatment of acute rejection following organ transplantation. The product, which Fresenius currently markets in more than 60 countries worldwide, has been shown to significantly reduce transplant failure and substantially improve survival rates.

Under the terms of the agreement, Fresenius Biotech has granted us exclusive sales and distribution rights to ATG-Fresenius S in the U.S. and Canada for up to 15 years following the first commercial sale of the product after licensure in the U.S. We are required to make aggregate milestone payments of \$1 million to Fresenius Biotech during development and a \$4 million payment upon approval by the U.S. Food and Drug Administration (FDA). Fresenius Biotech will manufacture and supply the product from its European facility in exchange for a royalty. We will be responsible for the clinical development, regulatory approval process, marketing and sales of ATG-Fresenius S in the U.S. and Canada.

NOTE 22 COMMITMENTS AND CONTINGENCIES

During 2006 we recorded \$4.5 million of other biopharmaceutical revenue for contract manufacturing. This revenue consists of \$1.2 million for product manufactured under a manufacturing agreement with Inhibitex, Inc., or Inhibitex, and \$3.3 million for penalties in conjunction with the termination of this agreement. Inhibitex disputed the amounts due to us and we arbitrated this dispute during January 2007. On February 9, 2007, we received a favorable ruling from the arbitrator awarding us the full \$4.5 million. According to the ruling, Inhibitex must pay us within 30 days of the ruling or interest will accrue at 9%.

During July 2006, we amended our agreement with DSM Pharmaceuticals, Inc., or DSM, pursuant to which we acquired rights to Aloprim. Under the terms of the amended agreement, we have a remaining minimum requirement to pay DSM \$1.4 million over the period ending June 29, 2009. We paid \$0.5 million in December 2006. Our remaining purchase commitment requires us to pay \$0.3 million in 2007, \$0.3 million in 2008 and \$0.3 million in 2009.

During 2006, we engaged an outside consultant to assess our pricing programs under Medicaid and other governmental pricing programs during the period from 2003 to 2005, including amounts owing to the DVA and PHS. During 2005, we originally estimated accrual of approximately \$5.0 million, or \$0.09 per share. During 2006, we completed our review of those programs and reduced the

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estimated amount accrued by approximately \$1.3 million, or \$0.03 per share for those rebates, of which \$1.0 million, or \$0.02 per share, was included in the results from discontinued operations. This amount represents our best estimate of the extent to which we underpaid amounts due. We expect to make the requisite payments once rebilled, most of which we expect to repay in 2007. The amount also assumes that we will be successful in rebilling ineligible entities that improperly received best prices. We believe we have properly estimated the underpaid amounts due under Medicaid and other governmental pricing programs. However, if we are unable to effectively rebill and collect proper prices from ineligible entities we may be required to make additional payments to Medicaid and other similarly affected governmental pricing programs, all of which could have a material adverse effect on our future business, operating results and financial condition.

As of December 30, 2006, we had open purchase order commitments of approximately \$6.6 million.

On September 27, 2005, we filed a lawsuit in the United States District Court for the Southern District of Ohio against Roxane Laboratories, Inc., or Roxane, for infringement of our U.S. Patent Number 6,576,665 for PhosLo GelCaps. We filed this lawsuit under the Hatch-Waxman Act in response to a Paragraph IV Certification notice letter submitted by Roxane to us concerning Roxane's filing of an Abbreviated New Drug Application, or ANDA, with the FDA to market a generic version of PhosLo GelCaps. The lawsuit was filed on the basis that Roxane Laboratories' submission of its ANDA and its proposed generic product infringe the referenced patent, which expires in 2021. Under the Hatch-Waxman Act, FDA approval of Roxane Laboratories' proposed generic product would be stayed until the earlier of 30 months or resolution of the patent infringement lawsuit.

On May 25, 2006, we filed an amended complaint in the lawsuit also alleging infringement of U.S. Patent No. 6,875,445. On June 9, 2006, Roxane filed an answer and counterclaims to the amended complaint, in which it denied infringement and asserted several affirmative defenses. Among those defenses, Roxane has asserted that it does not infringe either patent, that the patents are invalid, and that the patents are unenforceable due to inequitable conduct. In addition, Roxane has asserted a counterclaim for attempted monopolization under the Sherman Act. Roxane seeks unspecified damages incurred and requests that such damages be trebled under the antitrust statute.

On July 18, 2006, we filed a motion to dismiss Roxane's antitrust counterclaim, as well as to stay and bifurcate discovery on that counterclaim. On October 20, 2006, the Magistrate Judge ruled that discovery on the counterclaim should proceed simultaneously with discovery on the underlying patent claim. The District Judge has not yet ruled on the portion of the motion that seeks to dismiss the counterclaim on the pleadings. The parties are in the deposition phase of discovery.

On November 12, 2006, we completed the sales of the PhosLo product line and related intellectual property, including the patents which are the subject of this litigation to a U.S. subsidiary of Fresenius Medical Care. As a consequence of this sale, we are no longer the plaintiff in this litigation. However, we remain a defendant with the purchaser in relation to an anti-trust claim filed by Roxane in this litigation. The anti-trust counterclaim is based on allegations that we should not have initiated litigation and have continued to maintain the litigation after the sale. Consequently, we remain responsible for all litigation costs in connection with the anti-trust counterclaim for as long as the counterclaim remains a part of this litigation.

See lease commitments discussed at Note 19 for other commitments.

We have employment agreements with certain members of our senior management that include certain cash payments in the event of termination of employment, and cash payments and stock option modifications in the event of a change in control of the Company.

NOTE 23 INDUSTRY SEGMENT INFORMATION

We currently manage our operations in two reportable segments, the biopharmaceutical products and antibody products segments. The biopharmaceutical products segment consists of the production and sale of proprietary biopharmaceutical products and research and development efforts for the biopharmaceutical product lines. During 2006, we have recorded \$4.5 million of other biopharmaceutical revenue for contract manufacturing. This revenue consisted of \$1.2 million for product manufactured under this agreement and \$3.3 million for penalties recorded in conjunction with the termination of the agreement. The counterparty of this agreement disputed the amounts due to us and we underwent mediation during January 2007. On February 9, 2007, we received a favorable ruling from the arbitrator awarding us the full \$4.5 million. According to the ruling, the counterparty must pay us within 30 days of the ruling. The write-off of the manufacturing right related to the contract manufacturer of StaphVAX of \$2.7 million, the impairment charge of \$19.8 million related to the write down of the vaccine manufacturing facility, the write off of \$4.9 million of StaphVAX pre-launch inventory and the \$1.2 million of costs related to the closure of our European office are all included in the biopharmaceutical products segment for the year ended December 31, 2005. The antibody products segment consists of the collection and sale of non-specific and specialty antibody products to other biopharmaceutical manufacturers and the production and sale of antibody-based control products.

The accounting policies for each of the segments are the same as those described in the summary of significant accounting policies. There are no inter-segment sales. Antibody product used to manufacture Nabi-HB is transferred from our antibody segment to our biopharmaceutical segment at cost. We evaluate the performance of each segment based on operating profit or loss. There is no inter-segment allocation of interest expense and income taxes.

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Information regarding our operations and assets for the two industry segments is as follows:

(In thousands)	December 30, 2006	December 31, 2005	December 25, 2004
Revenues:			
Biopharmaceutical products	\$ 40,093	\$ 48,231	\$ 94,233
Antibody products	49,775	45,918	47,950
	<u>\$ 89,868</u>	<u>\$ 94,149</u>	<u>\$ 142,183</u>
Gross margin:			
Biopharmaceutical products	\$ 18,305	\$ 20,593	\$ 50,352
Antibody products	8,851	6,291	3,763
	<u>\$ 27,156</u>	<u>\$ 26,884</u>	<u>\$ 54,115</u>
Operating loss:			
Biopharmaceutical products	\$ (48,645)	\$ (104,669)	\$ (46,880)
Antibody products	(5,615)	(4,596)	(5,165)
	<u>\$ (54,260)</u>	<u>\$ (109,265)</u>	<u>\$ (52,045)</u>
Depreciation and amortization expense:			
Biopharmaceutical products	\$ 6,111	\$ 8,589	\$ 7,426
Antibody products	1,497	1,795	2,176
	<u>\$ 7,608</u>	<u>\$ 10,384</u>	<u>\$ 9,602</u>
Capital expenditures:			
Biopharmaceutical products	\$ 1,475	\$ 4,779	\$ 20,190
Antibody products	460	372	450
	<u>\$ 1,935</u>	<u>\$ 5,151</u>	<u>\$ 20,640</u>
Assets:			
Biopharmaceutical products	\$ 155,796	\$ 161,514	\$ 209,052
Antibody products	87,681	78,509	58,811
	<u>\$ 243,477</u>	<u>\$ 240,023</u>	<u>\$ 267,863</u>

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A reconciliation of reportable segment selected financial information to the total combined amounts of the selected financial information is as follows:

(In thousands)	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Loss from continuing operations before income taxes:			
Reportable segment operating (loss) income	\$ (54,260)	\$ (109,265)	\$ (52,045)
Unallocated interest expense	(3,724)	(2,523)	(971)
Unallocated other income and expense, net	4,110	3,611	1,841
Consolidated loss from continuing operations before income taxes	<u>\$ (53,874)</u>	<u>\$ (108,177)</u>	<u>\$ (51,175)</u>
Depreciation and amortization expense:			
Reportable segment depreciation and amortization expense	\$ 7,608	\$ 10,384	\$ 9,602
Unallocated corporate depreciation and amortization expense	332	323	317
Consolidated depreciation and amortization expense	<u>\$ 7,940</u>	<u>\$ 10,707</u>	<u>\$ 9,919</u>
Capital expenditures:			
Reportable segment capital expenditures	\$ 1,935	\$ 5,151	\$ 20,640
Unallocated corporate capital expenditures	640	3,392	1,909
Consolidated capital expenditures	<u>\$ 2,575</u>	<u>\$ 8,543</u>	<u>\$ 22,549</u>
Assets:			
Reportable segment assets	\$ 243,477	\$ 240,023	\$ 267,863
Unallocated corporate assets	22,400	89,313	100,308
Consolidated assets	<u>\$ 265,877</u>	<u>\$ 329,336</u>	<u>\$ 368,171</u>

Information concerning our revenues by industry segment, for the respective periods, is set forth in the following table:

(In thousands, except percentages)	For the Years Ended					
	December 30, 2006		December 31, 2005		December 25, 2004	
Segment Revenues						
Biopharmaceutical Products:						
-Nabi-HB	\$32,665	36.3%	\$39,185	41.5%	\$ 40,176	28.3%
-WinRho SDF	—	0.0	6,172	6.6	47,882	33.7
-Other Biopharmaceuticals	7,428	8.3	2,874	3.1	6,175	4.3
	<u>40,093</u>	<u>44.6</u>	<u>48,231</u>	<u>51.2</u>	<u>94,233</u>	<u>66.3</u>
Antibody Products:						
-Specialty antibodies	26,945	30.0	22,936	24.4	23,270	16.4
-Non-specific antibodies	22,830	25.4	22,982	24.4	24,680	17.3
	<u>49,775</u>	<u>55.4</u>	<u>45,918</u>	<u>48.8</u>	<u>47,950</u>	<u>33.7</u>
Total	<u>\$89,868</u>	<u>100.0%</u>	<u>\$94,149</u>	<u>100.0%</u>	<u>\$142,183</u>	<u>100.0%</u>

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Information regarding sales by geographic area for the years ended December 30, 2006, December 31, 2005 and December 25, 2004 and information regarding long-lived assets at December 30, 2006, December 31, 2005 and December 25, 2004 is as follows:

<u>(In thousands)</u>	<u>December 30,</u> <u>2006</u>	<u>December 31,</u> <u>2005</u>	<u>December 25,</u> <u>2004</u>
Sales:			
U.S.	\$ 74,636	\$ 78,476	\$ 129,783
Ex-U.S.	15,232	15,673	12,400
Total	<u>\$ 89,868</u>	<u>\$ 94,149</u>	<u>\$ 142,183</u>
Operating loss:			
U.S.	\$ (53,918)	\$ (90,470)	\$ (41,961)
Ex-U.S.	(342)	(18,795)	(10,084)
Total	<u>\$ (54,260)</u>	<u>\$ (109,265)</u>	<u>\$ (52,045)</u>
Long-lived assets:			
U.S.	\$ 90,711	\$ 96,605	\$ 120,854
Ex-U.S.	2	129	24
Total	<u>\$ 90,713</u>	<u>\$ 96,734</u>	<u>\$ 120,878</u>

Ex-U.S. sales are determined based upon customer location. The majority of our revenue is generated from the U.S. Our principal ex-U.S. markets were South Korea, Israel and Canada in 2006. In the years ended December 30, 2006, December 31, 2005 and December 25, 2004, sales to ex-U.S. markets were derived wholly from antibody products.

Revenue to significant customers for the year ended December 30, 2006 included sales to three customers of our biopharmaceutical products segment, McKesson Drug Co., AmerisourceBergen Corporation, Cardinal Health, Inc., and one customer of our antibody products segment, Talecris Biotherapeutics, representing 20%, 19%, 15% and 20% of total consolidated 2006 revenue including discontinued operations, respectively. Revenue to significant customers for the year ended December 31, 2005, included three customers of our biopharmaceutical product segment, AmerisourceBergen Corporation, Cardinal Health, Inc. and McKesson Drug Co. and one customer of our antibody products segment, Talecris Biotherapeutics, representing 25%, 21%, 15% and 17% of consolidated 2005 revenue including discontinued operations, respectively. Revenue to significant customers for the year ended December 25, 2004, included three customers of our biopharmaceutical product segment, Cardinal Health, Inc., McKesson Drug Co. and AmerisourceBergen and one customer of our antibody products segment, Bayer Corporation, representing 26%, 25%, 23% and 15% of consolidated 2004 revenue including discontinued operations, respectively.

NOTE 24 SUPPLEMENTAL CASH FLOW INFORMATION

(In thousands)	For the Years Ended		
	December 30, 2006	December 31, 2005	December 25, 2004
Interest paid	\$ 1,632	\$ 1,588	\$ 615
Income taxes paid	\$ 659	\$ 182	\$ 703
Discount paid on non-interest bearing notes	\$ 710	\$ 657	\$ 654
Supplemental non-cash financing and investing activities			
Stock options exercised in exchange for common stock	\$ —	\$ 93	\$ 101
Warrants exercised in exchange for common stock	\$ —	\$ —	\$ 1,000
Capital lease obligations	\$ 308	\$ 461	\$ 555

NOTE 25 SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

<u>(In thousands, except per share data)</u>	<u>Revenue</u>	<u>Gross margin</u>	<u>Loss from continuing operations</u>	<u>(Loss) income from discontinued operations</u>	<u>Net loss</u>	<u>Basic and Diluted Loss from Continuing Operations Per Share</u>	<u>Basic and Diluted Loss Per Share</u>
2006							
1st Quarter ended April 1, 2006	\$19,517	\$ 5,069	\$ (15,458)	\$ (2,619)	\$ (18,077)	\$ (0.26)	\$ (0.30)
2nd Quarter ended July 1, 2006	20,374	6,076	(13,661)	(1,163)	(14,824)	(0.23)	(0.24)
3rd Quarter ended September 30, 2006	19,634	4,274	(16,331)	(5,482)	(21,813)	(0.27)	(0.36)
4th Quarter ended December 30, 2006	30,343	11,737	(8,262)	4,273	(3,989)	(0.13)	(0.06)
Year ended December 30, 2006	<u>\$89,868</u>	<u>\$ 27,156</u>	<u>\$ (53,712)</u>	<u>\$ (4,991)</u>	<u>\$ (58,703)</u>	<u>\$ (0.88)</u>	<u>\$ (0.96)</u>
2005							
1st Quarter ended March 26, 2005	\$22,321	\$ 6,321	\$ (13,695)	\$ (2,127)	\$ (15,822)	\$ (0.23)	\$ (0.27)
2nd Quarter ended June 25, 2005	22,683	7,512	(16,789)	(4,141)	(20,930)	(0.28)	(0.35)
3rd Quarter ended September 24, 2005	22,375	8,864	(15,689)	(429)	(16,118)	(0.26)	(0.27)
4th Quarter ended December 31, 2005	26,770	4,187	(59,394)	(16,185)	(75,579)	(0.99)	(1.25)
Year ended December 31, 2005	<u>\$94,149</u>	<u>\$ 26,884</u>	<u>\$ (105,567)</u>	<u>\$ (22,882)</u>	<u>\$ (128,449)</u>	<u>\$ (1.76)</u>	<u>\$ (2.15)</u>

Due to rounding the quarterly per share amounts may not clerically compute to the annual amount.

The fourth quarter of 2005 results include a \$4.4 million adjustment or \$0.07 per share, reflecting the cumulative effect of an adjustment for an error in calculating certain Federal rebate obligations we identified in that period. This amount was not material to any effected prior quarter or annual reporting period and as such, was recorded in the fourth quarter of 2005.

In addition, during the fourth quarter of 2005, we recorded a \$19.8 million impairment to our vaccine manufacturing facility and a \$2.6 million impairment to our manufacturing right intangible asset. Refer to Notes 6 and 7, respectively.

NOTE 26 SUBSEQUENT EVENTS

On February 15, 2007, Thomas H. McLain resigned as Chairman, Chief Executive Officer and President and as a director of the company, without prejudice to any of his rights under any of his agreement with us. Prior to his resignation, Mr. McLain was notified that the Board of Directors would not renew the term of his Employment Agreement with the Company date April 1, 2004 which expires on March 31, 2007. If Mr. McLain signs a termination agreement with us, which contains a release, commencing April 1, 2007 he will be entitled to receive the severance pay and benefits provided under his Employment Agreement which include severance pay for two years at his current salary and continuation of his benefits for two years.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of December 30, 2006. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of December 30, 2006. There has been no change in our internal control over financial reporting that occurred during our fiscal quarter ended December 30, 2006 that has materially affected, or is reasonably likely to materially affect our internal control over financial reporting.

Refer to Item 7 for Management's Annual Report on Internal Control Over Financial Reporting.

ITEM 9B. OTHER INFORMATION

None.

Nabi Biopharmaceuticals

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information called for by this Item and not already provided in Item 4A will be contained in our Proxy Statement, which we intend to file within 120 days following our fiscal year end, December 30, 2006, and such information is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information called for by this Item will be contained in our Proxy Statement, which we intend to file within 120 days following our fiscal year end, December 30, 2006, and such information is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information called for by this Item will be contained in our Proxy Statement, which we intend to file within 120 days following our fiscal year end, December 30, 2006, and such information is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information called for by this Item will be contained in our Proxy Statement, which we intend to file within 120 days following our fiscal year end, December 30, 2006, and such information is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANTS FEES AND SERVICES

The information called for by this Item will be contained in our Proxy Statement, which we intend to file within 120 days following our fiscal year end, December 30, 2006, and such information is incorporated herein by reference.

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Nabi Biopharmaceuticals

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) FINANCIAL STATEMENTS

The following consolidated financial statements are filed as part of this report:

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Consolidated Balance Sheets at December 30, 2006 and December 31, 2005	68
Consolidated Statements of Operations for the years ended December 30, 2006, December 31, 2005 and December 25, 2004,	69
Consolidated Statements of Stockholders' Equity for the years ended December 30, 2006, December 31, 2005 and December 25, 2004	70
Consolidated Statements of Cash Flows for the years ended December 30, 2006, December 31, 2005 and December 25, 2004	71
Notes to Consolidated Financial Statements	72

(2) FINANCIAL STATEMENT SCHEDULES

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All other schedules omitted are not required, inapplicable or the information required is furnished in the financial statements or notes thereto.

(3) EXHIBITS

- 3.1 Restated Certificate of Incorporation of Nabi Biopharmaceuticals, as amended (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q for the quarter ended June 26, 2004)
- 3.2 By-Laws of Nabi Biopharmaceuticals (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q for the quarter ended June 28, 2003)
- 4.1 Certificate of Designations of Series One Preferred Stock contained in the Restated Certificate of Incorporation of Nabi Biopharmaceuticals (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q for the period ended June 26, 2004)
- 4.2 Form of Common Stock Certificate *
- 4.3 Rights Agreement dated August 1, 1997, as amended, between Nabi Biopharmaceuticals and Registrar and Transfer Company (incorporated by reference to Exhibit 10.28 to our Annual Report on Form 10-K for the year ended December 31, 1997)

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- 4.4 Agreement of Substitution and Amendment of Rights Agreement dated July 1, 2002, between Nabi Biopharmaceuticals, Registrant and Transfer Company, and American Stock Transfer & Trust Company (incorporated by reference to Exhibit 4.4 to our Annual Report on Form 10-K for the year ended December 28, 2002)
- 4.5 Indenture between Nabi Biopharmaceuticals and U.S. Bank National Association, as trustee, dated April 19, 2005 (incorporated by reference to Exhibit 4.5 to our Registration Statement on Form S-3 (File No. 333-12541), filed with the Securities and Exchange Commission on March 25, 2005)
- 4.6 Registration Rights Agreement between Nabi Biopharmaceuticals and Lehman Brothers Inc., Bear, Stearns & Co. Inc., and Wachovia Capital Markets, LLC, dated April 19, 2005 (incorporated by reference to Exhibit 4.6 to our Registration Statement on Form S-3 (File No. 333-12541), filed with the Securities and Exchange Commission on March 25, 2005)
- 4.7 Global Note evidencing the unregistered portion of our 2.875% Convertible Senior Notes (incorporated by reference to Exhibit 4.7 to our Registration Statement on Form S-3 (File No. 333-12541), filed with the Securities and Exchange Commission on March 25, 2005)
- 4.8 Global Note evidencing the registered portion of our 2.875% Convertible Senior Notes (incorporated by reference to Exhibit 4.8 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2005)
- 10.1 2004 Stock Plan for Non-Employee Directors (incorporated by reference to Appendix C to our Definitive Proxy Statement dated April 9, 2004)+
- 10.2 1998 Non-Qualified Employee Stock Option Plan (incorporated by reference to Exhibit 10.22 to our Annual Report on Form 10-K for the year ended December 31, 1998)+
- 10.3 2000 Equity Incentive Plan, as amended (incorporated by reference to Appendix B to our Definitive Proxy Statement dated April 9, 2004)+
- 10.4 1998 Non-Qualified Employee Stock Option Plan Award Letter (incorporated by reference to Exhibit 10.6 to our Annual Report on Form 10-K for the year ended December 25, 2004)+
- 10.5 1998 Non-Qualified Employee Stock Option Plan Anniversary Award Letter (incorporated by reference to Exhibit 10.7 to our Annual Report on Form 10-K for the year ended December 25, 2004)+
- 10.6 2000 Equity Incentive Plan Award Letter (incorporated by reference to Exhibit 10.8 to our Annual Report on Form 10-K for the year ended December 25, 2004)+
- 10.7 2000 Equity Incentive Plan Special Award Letter (incorporated by reference to Exhibit 10.9 to our Annual Report on Form 10-K for the year ended December 25, 2004)+
- 10.8 Change of Control Severance Agreement dated April 1, 2004 between Thomas H. McLain and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+

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- 10.9 Employment Agreement dated April 1, 2004 between Thomas H. McLain and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+
- 10.10 Change of Control Severance Agreement dated April 1, 2004 between Henrik Rasmussen, Ph.D., MD and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.5 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+
- 10.11 Employment Agreement dated April 1, 2004 between Henrik Rasmussen, Ph.D., MD and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.6 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+
- 10.12 Change of Control Severance Agreement dated April 1, 2004 between Raafat E.F. Fahim, Ph.D. and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.9 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+
- 10.13 Employment Agreement dated April 1, 2004 between Raafat E.F. Fahim, Ph.D. and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.10 to our Quarterly Report on Form 10-Q for the quarter ended September 25, 2004)+
- 10.14 Change of Control Severance Agreement between Jordan Siegel and Nabi Biopharmaceuticals, dated April 29, 2006 (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)+
- 10.15 Employment Agreement between Jordan Siegel and Nabi Biopharmaceuticals, dated April 29, 2006 (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)+
- 10.16 Relocation, Sign-On Bonus Repayment Agreement between Jordan Siegel and Nabi Biopharmaceuticals, dated April 29, 2006 (incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)+
- 10.17 Severance Agreement dated January 13, 2006 between H. LeRoux Jooste and Nabi Biopharmaceuticals (incorporated by reference to Exhibit 10.20 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2006)+
- 10.18 Nabi Biopharmaceuticals had entered into an Indemnification Agreement in the form filed as Exhibit 10.24 to our Annual Report on Form 10-K for the year ended December 25, 2004, with the following named executive officers: Leslie Hudson, Ph.D., Jordan I. Siegel, Thomas H. McLain, Raafat E.F. Fahim, Ph.D., Henrik S. Rasmussen, M.D., Ph.D. and Adam E. Logal
- 10.19 Form of Retention Plan Restricted Stock Agreements entered into by Nabi Biopharmaceuticals and the following individuals: Thomas H. McLain, Raafat E.F. Fahim, Ph.D., Henrik S. Rasmussen, M.D., Ph.D., and Joseph Johnson (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q for the quarter ended April 1, 2006)+
- 10.20 Form of Letter Agreement for Stock Option Grant and Acceptance between Nabi Biopharmaceuticals and the following individuals: Thomas H. McLain, Raafat E.F. Fahim, Ph.D., Henrik S. Rasmussen, M.D., Ph.D., and Joseph Johnson (incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q for the quarter ended April 1, 2006)+

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- 10.21 Form of Letter Agreement for Retention Program Cash Bonus and Other Awards between Nabi Biopharmaceuticals and the following individuals: Thomas H. McLain, Raafat E.F. Fahim, Ph.D., Henrik S. Rasmussen, M.D., Ph.D., and Joseph Johnson (incorporated by reference to Exhibit 10.5 to our Quarterly Report on Form 10-Q for the quarter ended April 1, 2006)+
- 10.22 Restricted Stock Agreement between Nabi Biopharmaceuticals and Thomas H. McLain, dated May 12, 2006*+
- 10.23 Restricted Stock Agreement between Nabi Biopharmaceuticals and Raafat E.F. Fahim, Ph.D., dated May 12, 2006*+
- 10.24 Restricted Stock Agreement between Nabi Biopharmaceuticals and Henrik S. Rasmussen, M.D., Ph.D., dated May 12, 2006*+
- 10.25 Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Thomas H. McLain, dated May 12, 2006*+
- 10.26 Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Joseph Johnson, dated May 12, 2006*+
- 10.27 Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Adam Logal, dated May 12, 2006*+
- 10.28 Separation Agreement between Joseph Johnson and Nabi Biopharmaceuticals, dated June 13, 2006 (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)+
- 10.29 Summary of Director Compensation*
- 10.30 Base Salary Levels of Executive Officers (incorporated by reference to Exhibit 10.6 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)+
- 10.31 Nabi Biopharmaceuticals has entered into an Indemnification Agreement with each of its directors in the form filed as Exhibit 10.24 to our Annual Report on Form 10-K for the year ended December 25, 2004)+
- 10.32 Termination Agreement between Cambrex Bio Science Baltimore, Inc. and Nabi Biopharmaceuticals, dated February 17, 2006 (incorporated by reference Exhibit 10.27 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2005)
- 10.33 Definitive Co-Development and Commercialization Agreement between Kedrion S.p.A. and Nabi Biopharmaceuticals, dated June 26, 2006 (incorporated by reference to Exhibit 10.7 to our Quarterly Report on Form 10-Q for the quarter ended July 1, 2006)++
- 10.34 Agreement to Develop, Supply and Market ATG-Fresenius North America, between Fresenius Biotech GmbH and Nabi Biopharmaceuticals, dated March 30, 2006 (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarter ended April 1, 2006)++

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- 10.35 Asset Purchase Agreement between Nabi Biopharmaceuticals and Fresenius USA Manufacturing, Inc. dated October 11, 2006*++
- 10.36 Amendment No. 1 to Asset Purchase Agreement between Nabi Biopharmaceuticals and Fresenius USA Manufacturing, Inc. dated October 31, 2006*
- 10.37 Amendment No. 2 to Asset Purchase Agreement between Nabi Biopharmaceuticals and Fresenius USA Manufacturing, Inc. dated November 14, 2006*++
- 10.38 Non-Competition and Nonsolicitation Agreement between Nabi Biopharmaceuticals and Fresenius USA Manufacturing, Inc. dated November 14, 2006*
- 10.39 Asset Purchase Agreement between Nabi Biopharmaceuticals and Braintree Laboratories, Inc. dated June 23, 2003 (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q for the quarter ended June 28, 2003)++
- 10.40 Letter Amendment to Asset Purchase Agreement between Nabi Biopharmaceuticals and Braintree Laboratories, Inc. dated October 19, 2006*++
- 10.41 Plasma Purchase Agreement between Bayer HealthCare LLC and Nabi Biopharmaceuticals dated as of December 3, 2003 (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006)++
- 10.42 Plasma Purchase Agreement between Talecris Biotherapeutics, Inc. (successor in interest to the plasma business of Bayer HealthCare LLC) and Nabi Biopharmaceuticals effective as of September 13, 2006 (incorporated by reference to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2006)++
- 12. Statement Re: Computation of Ratio of Earnings to Fixed Charges*
- 23. Consent of Independent Registered Public Accounting Firm*
- 31.1 Rule 13a-14(a)/15d-14(a) Certification*
- 31.2 Rule 13a-14(a)/15d-14(a) Certification*
- 32. Section 1350 Certification*

* *Filed herewith*

+ *Management contract or compensatory plan or arrangement filed pursuant to Item 15(b) of Form 10-K.*

++ *The Company has requested confidential treatment of the redacted portions of this exhibit pursuant to Rule 24b-2, under the Securities Exchange Act of 1934, as amended, and has separately filed a complete copy of this exhibit with the Securities and Exchange Commission.*

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Nabi Biopharmaceuticals

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on this 15th day of March, 2007.

Nabi Biopharmaceuticals

By: /s/ Leslie Hudson, Ph.D.
Leslie Hudson, Ph.D.
Chief Executive Officer and President

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Leslie Hudson, Ph.D.</u> Leslie Hudson, Ph.D.	Chief Executive Officer and President	March 15, 2007
<u>/s/ Jordan I. Siegel</u> Jordan I. Siegel	Senior Vice President, Finance, Chief Financial Officer and Treasurer	March 15, 2007
<u>/s/ Jason Aryeh</u> Jason Aryeh	Director	March 15, 2007
<u>/s/ David L. Castaldi</u> David L. Castaldi	Director	March 15, 2007
<u>/s/ Geoffrey F. Cox, Ph.D.</u> Geoffrey F. Cox, Ph.D.	Non-executive Chairman of the Board of Directors	March 15, 2007
<u>/s/ Peter B. Davis</u> Peter B. Davis	Director	March 15, 2007
<u>/s/ Richard A. Harvey, Jr.</u> Richard A. Harvey, Jr.	Director	March 15, 2007
<u>/s/ Linda Jenckes</u> Linda Jenckes	Director	March 15, 2007
<u>/s/ Timothy Lynch</u> Timothy Lynch	Director	March 15, 2007
<u>/s/ Stephen G. Sudovar</u> Stephen G. Sudovar	Director	March 15, 2007

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Nabi Biopharmaceuticals

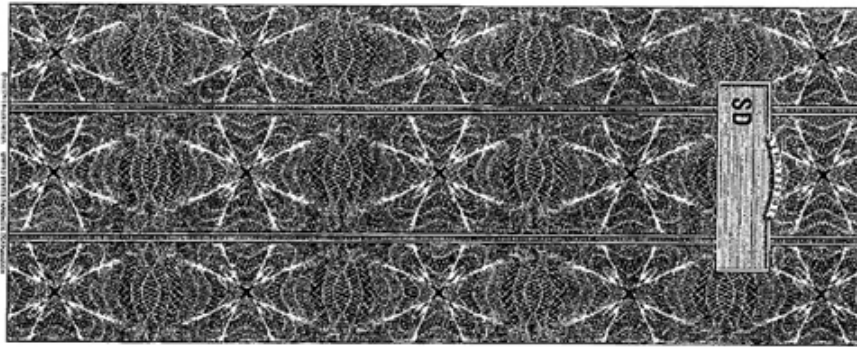
SCHEDULE II – VALUATION AND QUALIFYING ACCOUNTS AND RESERVES FROM TOTAL OPERATIONS

Classification	Balance at Beginning of Period	Additions		Deductions Write-Offs Charged Against Reserve	Balance at End of Period
		Charged to Costs and Expenses	Charged to Other Accounts		
Year ended December 30, 2006:					
Allowance for doubtful accounts	\$ 6	\$ 7	\$ —	\$ 7	\$ 20
Inventory valuation allowance	11,750	2,143	—	(271)	13,622
Deferred tax assets valuation allowance	78,556	24,738	—	—	103,294
Year ended December 31, 2005:					
Allowance for doubtful accounts	\$ 433	\$ 9	\$ —	\$ (436)	\$ 6
Inventory valuation allowance	6,421	8,580	(2,604)	(647)	11,750
Deferred tax assets valuation allowance	—	78,556	—	—	78,556
Year ended December 25, 2004:					
Allowance for doubtful accounts	\$ 646	\$ 428	\$ —	\$ (641)	\$ 433
Inventory valuation allowance	5,219	3,950	(577)	(2,171)	6,421

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Nabi Biopharmaceuticals
EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.2	Form of Common Stock Certificate
10.22	Restricted Stock Agreement between Nabi Biopharmaceuticals and Thomas H. McLain, dated May 12, 2006+
10.23	Restricted Stock Agreement between Nabi Biopharmaceuticals and Raafat E.F. Fahim, Ph.D., dated May 12, 2006+
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23.	Consent of Independent Registered Public Accounting Firm
31.1	Rule 13a-14(a)/15d-14(a) Certification
31.2	Rule 13a-14(a)/15d-14(a) Certification
32.	Section 1350 Certification



NABI
BIOPHARMACEUTICALS

INCORPORATED UNDER THE LAWS
OF THE STATE OF CALIFORNIA

COMMON STOCK
CUSTIP 629519 10 9

This Certifies that

SPECIMEN

is the owner of



FULLY PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF THE PAR VALUE OF TEN CENTS (0.10) PER SHARE OF

Nabi Biopharmaceuticals

Transfer of Title: The undersigned hereby certifies that the above described shares of the common stock of the corporation are the property of the person named as the owner of the shares and that the shares are being transferred to the person named as the transferee in accordance with the provisions of the certificate of incorporation and the bylaws of the corporation and in accordance with the provisions of the certificate of transfer. The undersigned hereby certifies that the shares are being transferred to the person named as the transferee in accordance with the provisions of the certificate of incorporation and the bylaws of the corporation and in accordance with the provisions of the certificate of transfer. The undersigned hereby certifies that the shares are being transferred to the person named as the transferee in accordance with the provisions of the certificate of incorporation and the bylaws of the corporation and in accordance with the provisions of the certificate of transfer.

COUNTERSIGN AND REGISTER:
AMERICAN STOCK TRANSFER & TRUST COMPANY
NEW YORK, NEW YORK AND REGISTERED
BY

AUTHORIZED SIGNATURE



Thomas A. McFarlin
CHAIRMAN OF THE BOARD
Charles Doyle
SECRETARY

AMERICAN BANK NOTE COMPANY
711 ARMSTRONG LANE
COLUMBIA, TENNESSEE 38401
(931) 388-3003
/ EITHER 7 / LIVE JOBS / N / NABI BIOPHARM 23919 FC

PRODUCTION COORDINATOR: HOLLY GRONER 931-490-1722
PROOF OF JUNE 23, 2005
NABI BIOPHARMACEUTICALS
TSB 23919 FC
Operator: Ron / Teresa
REV. 1

PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF: ___ OK AS IS ___ OK WITH CHANGES ___ MAKE CHANGES AND SEND ANOTHER PROOF
Colors Selected for Printing: Logo prints in PMS 7458. Intaglio prints in SC-7 Dark Blue.
COLOR: This proof was printed from a digital file or artwork on a graphics quality, color laser printer. It is a good representation of the color as it will appear on the final product. However, it is not an exact color rendition, and the final printed product may appear slightly different from the proof due to the difference between the dyes and printing ink.

NABI BIOPHARMACEUTICALS

THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS THE DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OR SERIES THEREOF OF THE CORPORATION, AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS THEREOF.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT-	_____ Custodian _____
TEN ENT	- as tenants by the entireties		(Cust) (Minor)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

This certificate and assignment are subject to the terms and conditions of the Uniform Gifts to Minors Act (UGMA) and the Uniform Transfers to Minors Act (UTMA) as amended from time to time. The assignee of this certificate shall be deemed to have accepted the terms and conditions of the UGMA and the UTMA as amended from time to time. The assignee of this certificate shall be deemed to have accepted the terms and conditions of the UGMA and the UTMA as amended from time to time. The assignee of this certificate shall be deemed to have accepted the terms and conditions of the UGMA and the UTMA as amended from time to time.

For value received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____ shares
of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

SIGNATURE(S) GUARANTEED: _____

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 173d-15.

<p>AMERICAN BANK NOTE COMPANY 711 ARMSTRONG LANE COLUMBIA, TENNESSEE 38401 (931) 388-3003</p>	<p>PRODUCTION COORDINATOR: HOLLY GRONER 931-490-1722 PROOF OF JUNE 15, 2006 NABI BIOPHARMACEUTICALS TSB 23919 BK</p>
<p>/ ETHER 7 / LIVE JOBS / N / NABI BIOPHARM 23919 BK</p>	<p>Operator: Ron New</p>

PLEASE INITIAL THE APPROPRIATE SELECTION FOR THIS PROOF: ___ OK AS IS ___ OK WITH CHANGES ___ MAKE CHANGES AND SEND ANOTHER PROOF

May 12, 2006

Mr. Thomas H. McLain
15975 Laurel Creek Drive
Delray Beach, FL 33446

Re: Restricted Stock Agreement Between Nabi Biopharmaceuticals and Thomas H. McLain

Dear Mr. McLain:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby award to you (the "Awardee") Twenty Thousand (20,000) shares of Common Stock of the Company (the "Shares"), effective May 12, 2006 (the "Date of Award") pursuant to the terms of the Company's 2000 Equity Incentive Plan, as amended (the "Plan"), and the terms and conditions set forth below in this Restricted Stock Agreement. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Awardee hereby accepts the Shares subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The Shares shall become vested (i.e. nonforfeitable) as follows: (i) if the Awardee is employed by the Company on the first anniversary of the date hereof, to the extent of 25% of the Shares; (ii) if the Awardee is employed by the Company on the second anniversary of the date hereof, to the extent of an additional 25% of the Shares; (iii) if the Awardee is employed by the Company on the third anniversary of the date hereof, to the extent of an additional 25% of the Shares; and (iv) if the Awardee is employed by the Company on the fourth anniversary of the date hereof, to the extent of the remaining Shares. In the event that Awardee's employment by the Company terminates before any or all of the Shares have become vested (except to the extent provided in the Plan), all unvested Shares will be forfeited to the Company automatically and without notice to the Awardee on the date the Awardee's employment is so terminated.

2. Until they vest, the Shares are referred to herein as "Restricted Stock." Except as otherwise set forth herein, Restricted Stock shall not be transferred, assigned, pledged or otherwise encumbered during the period beginning on the Award Date and ending on date that the Shares fully vest pursuant to Section 1 (the "Restricted Period"). Any attempt at any transfer, assignment, pledge, or other disposition during the Restricted Period shall be null and void and without effect and shall cause the immediate forfeiture of all shares of Restricted Stock. Restricted Stock that is forfeited shall be immediately transferred to the Company without any payment by the Company. The Company shall have the full right to cancel certificates evidencing such forfeited shares automatically upon such forfeiture, whether or not such certificates shall have been surrendered to the Company. Following such forfeiture, the Awardee shall have no further rights with respect to such forfeited shares of Restricted Stock.

3. Promptly following the date the Shares vest, the Company shall deliver to the Awardee or the person or persons to whom rights under this Agreement shall have passed by bequest or inheritance, as the case may be, a stock certificate for the vested Shares free of the restrictions and legend set forth in this Agreement.

4. Any stock certificate representing the Restricted Stock awarded hereunder shall be: (i) affixed with the following legend: "The shares represented by this certificate are subject to forfeiture and restrictions on transfer pursuant to the terms of a Restricted Stock Agreement between the Company and the record holder of this certificate, a copy of which is available for inspection at the offices of the Company or may be made available upon request;" and (ii) deposited with the Company, together with a stock power endorsed by the Awardee in blank (in the form attached as Exhibit A hereto). At the expiration of the Restricted Period, as set forth herein, the Company shall deliver any such certificates to the Awardee. Absent willful misconduct by the Company, it shall be exempted from any responsibility or liability for any delivery or delay in delivery pursuant to this Agreement and for any other act or omission.

5. Subject to the restrictions contained in this Agreement, Awardee shall have the rights of a stockholder with respect to the Shares, including the right to vote the Shares, including Restricted Stock, and to receive all dividends, cash or stock, paid or delivered thereon, from and after the date hereof. Forfeiture of Restricted Stock pursuant to this Agreement shall not create any obligation to repay dividends received as to such Restricted Stock during the Restricted Period, nor shall such forfeiture invalidate any votes given by Awardee with respect to such Shares prior to forfeiture.

6. The parties hereto recognize that the Company may be obligated to withhold federal, state and local income taxes and social security taxes to the extent that the Awardee realizes ordinary income in connection with the vesting of the Restricted Stock or the payment of dividends on the Restricted Stock. The Awardee agrees that the Company or a subsidiary or an affiliate of the Company may withhold amounts needed to cover such taxes from payments otherwise due and owing to the Awardee, and also agrees that upon demand by the Company the Awardee will immediately pay to the Company any additional amounts as may be necessary to satisfy such withholding tax obligation. Such payment shall be made in cash or cash equivalent.

7. Awardee acknowledges and agrees that nothing herein or in the Plan, nor any of the rights granted hereunder or thereunder to Awardee, shall be construed to (a) give Awardee the right to remain employed by the Company or to continue to receive any employee benefits, or (b) in any manner restrict the right of the Company to modify, amend or terminate any of its employee benefit plans.

8. Any and all grants or deliveries of Shares hereunder shall constitute special incentive payments to the Awardee and shall not be taken into account in computing the amount of salary or compensation of the Awardee for the purpose of determining any pension, retirement, death or other benefits under (a) any pension, retirement, profit-sharing, bonus, life insurance, 401(k) or other employee benefit plan of the Company, or any of their affiliates, or (b) any agreement between the Company or any of their affiliates on the one hand, and the Awardee on the other hand, except as such plan or agreement shall otherwise expressly provide or may otherwise provide following a change of control.

9. The law of the State of Delaware, except its law with respect to choice of law, shall be controlling in all matters relating to this Agreement.

10. This Agreement embodies the entire agreement of the parties hereto with respect to the Shares awarded hereunder, and all other matters contained herein. This Agreement supersedes and replaces any and all prior oral or written agreements with respect to the subject matter hereof. This Agreement may be amended, and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. If there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern.

WITNESS the execution hereof as of 12th day of May, 2006.

Nabi Biopharmaceuticals

By /s/ Joseph Johnson

Joseph Johnson, Senior Vice President,
People, Process and Technology

By signing this Restricted Stock Agreement below, the Awardee hereby acknowledges and agrees that he/she has read, understands and accepts and agrees to all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan

/s/ Thomas H. McLain
Awardee Signature

Thomas H. McLain
Print Name

Exhibit A

STOCK TRANSFER POWER

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto Nabi Biopharmaceuticals _____ (_____) shares of Common Stock of Nabi Biopharmaceuticals standing in my name on the books of said corporation and represented by stock certificate no. _____ representing all of such shares and hereby irrevocably constitute and appoint _____, attorney for such transfer of said stock on the books of said corporation with full power of substitution in the premises.

Dated _____

Print name: _____

May 12, 2006

Raafat E.F. Fahim, Ph.D.
1180 S. Ocean Blvd. #8F
Boca Raton, FL 33432

Re: Restricted Stock Agreement Between Nabi Biopharmaceuticals and Raafat E.F. Fahim, Ph.D.

Dear Dr. Fahim:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby award to you (the "Awardee") Forty Thousand (40,000) shares of Common Stock of the Company (the "Shares"), effective May 12, 2006 (the "Date of Award") pursuant to the terms of the Company's 2000 Equity Incentive Plan, as amended (the "Plan"), and the terms and conditions set forth below in this Restricted Stock Agreement. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Awardee hereby accepts the Shares subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The Shares shall become vested (i.e. nonforfeitable) as follows: (i) if the Awardee is employed by the Company on the first anniversary of the date hereof, to the extent of one-third of the Shares; (ii) if the Awardee is employed by the Company on the second anniversary of the date hereof, to the extent of an additional one-third of the Shares; and (iii) if the Awardee is employed by the Company on the third anniversary of the date hereof, to the extent of the remaining Shares. In the event that Awardee's employment by the Company terminates before any or all of the Shares have become vested (except to the extent provided in the Plan), all unvested Shares will be forfeited to the Company automatically and without notice to the Awardee on the date the Awardee's employment is so terminated.

2. Until they vest, the Shares are referred to herein as "Restricted Stock." Except as otherwise set forth herein, Restricted Stock shall not be transferred, assigned, pledged or otherwise encumbered during the period beginning on the Award Date and ending on date that the Shares fully vest pursuant to Section 1 (the "Restricted Period"). Any attempt at any transfer, assignment, pledge, or other disposition during the Restricted Period shall be null and void and without effect and shall cause the immediate forfeiture of all shares of Restricted Stock. Restricted Stock that is forfeited shall be immediately transferred to the Company without any payment by the Company. The Company shall have the full right to cancel certificates evidencing such forfeited shares automatically upon such forfeiture, whether or not such certificates shall have been surrendered to the Company. Following such forfeiture, the Awardee shall have no further rights with respect to such forfeited shares of Restricted Stock.

3. Promptly following the date the Shares vest, the Company shall deliver to the Awardee or the person or persons to whom rights under this Agreement shall have passed by bequest or inheritance, as the case may be, a stock certificate for the vested Shares free of the restrictions and legend set forth in this Agreement.

4. Any stock certificate representing the Restricted Stock awarded hereunder shall be: (i) affixed with the following legend: "The shares represented by this certificate are subject to forfeiture and restrictions on transfer pursuant to the terms of a Restricted Stock Agreement between the Company and the record holder of this certificate, a copy of which is available for inspection at the offices of the Company or may be made available upon request;" and (ii) deposited with the Company, together with a stock power endorsed by the Awardee in blank (in the form attached as Exhibit A hereto). At the expiration of the Restricted Period, as set forth herein, the Company shall deliver any such certificates to the Awardee. Absent willful misconduct by the Company, it shall be exempted from any responsibility or liability for any delivery or delay in delivery pursuant to this Agreement and for any other act or omission.

5. Subject to the restrictions contained in this Agreement, Awardee shall have the rights of a stockholder with respect to the Shares, including the right to vote the Shares, including Restricted Stock, and to receive all dividends, cash or stock, paid or delivered thereon, from and after the date hereof. Forfeiture of Restricted Stock pursuant to this Agreement shall not create any obligation to repay dividends received as to such Restricted Stock during the Restricted Period, nor shall such forfeiture invalidate any votes given by Awardee with respect to such Shares prior to forfeiture.

6. The parties hereto recognize that the Company may be obligated to withhold federal, state and local income taxes and social security taxes to the extent that the Awardee realizes ordinary income in connection with the vesting of the Restricted Stock or the payment of dividends on the Restricted Stock. The Awardee agrees that the Company or a subsidiary or an affiliate of the Company may withhold amounts needed to cover such taxes from payments otherwise due and owing to the Awardee, and also agrees that upon demand by the Company the Awardee will immediately pay to the Company any additional amounts as may be necessary to satisfy such withholding tax obligation. Such payment shall be made in cash or cash equivalent.

7. Awardee acknowledges and agrees that nothing herein or in the Plan, nor any of the rights granted hereunder or thereunder to Awardee, shall be construed to (a) give Awardee the right to remain employed by the Company or to continue to receive any employee benefits, or (b) in any manner restrict the right of the Company to modify, amend or terminate any of its employee benefit plans.

8. Any and all grants or deliveries of Shares hereunder shall constitute special incentive payments to the Awardee and shall not be taken into account in computing the amount of salary or compensation of the Awardee for the purpose of determining any pension, retirement, death or other benefits under (a) any pension, retirement, profit-sharing, bonus, life insurance, 401(k) or other employee benefit plan of the Company, or any of their affiliates, or (b) any agreement between the Company or any of their affiliates on the one hand, and the Awardee on the other hand, except as such plan or agreement shall otherwise expressly provide or may otherwise provide following a change of control.

9. The law of the State of Delaware, except its law with respect to choice of law, shall be controlling in all matters relating to this Agreement.

10. This Agreement embodies the entire agreement of the parties hereto with respect to the Shares awarded hereunder, and all other matters contained herein. This Agreement supersedes and replaces any and all prior oral or written agreements with respect to the subject matter hereof. This Agreement may be amended, and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. If there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern.

WITNESS the execution hereof as of 12th day of May, 2006.

Nabi Biopharmaceuticals

By /s/ Thomas H. McLain

Thomas H. McLain, Chairman, Chief
Executive Officer & President

By signing this Restricted Stock Agreement below, the Awardee hereby acknowledges and agrees that he/she has read, understands and accepts and agrees to all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan

/s/ Raafat Fahim
Awardee Signature

Raafat Fahim
Print Name

Exhibit A

STOCK TRANSFER POWER

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto Nabi Biopharmaceuticals _____ (_____) shares of Common Stock of Nabi Biopharmaceuticals standing in my name on the books of said corporation and represented by stock certificate no. _____ representing all of such shares and hereby irrevocably constitute and appoint _____, attorney for such transfer of said stock on the books of said corporation with full power of substitution in the premises.

Dated _____

Print name: _____

May 12, 2006

Henrik S. Rasmussen, M.D., Ph.D.
628 Magothy View Drive
Arnold, MD 21012

Re: Restricted Stock Agreement Between Nabi Biopharmaceuticals and Henrik S. Rasmussen, M.D., Ph.D.

Dear Dr. Rasmussen:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby award to you (the "Awardee") Forty Thousand (40,000) shares of Common Stock of the Company (the "Shares"), effective May 12, 2006 (the "Date of Award") pursuant to the terms of the Company's 2000 Equity Incentive Plan, as amended (the "Plan"), and the terms and conditions set forth below in this Restricted Stock Agreement. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Awardee hereby accepts the Shares subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The Shares shall become vested (i.e. nonforfeitable) as follows: (i) if the Awardee is employed by the Company on the first anniversary of the date hereof, to the extent of one-third of the Shares; (ii) if the Awardee is employed by the Company on the second anniversary of the date hereof, to the extent of an additional one-third of the Shares; and (iii) if the Awardee is employed by the Company on the third anniversary of the date hereof, to the extent of the remaining Shares. In the event that Awardee's employment by the Company terminates before any or all of the Shares have become vested (except to the extent provided in the Plan), all unvested Shares will be forfeited to the Company automatically and without notice to the Awardee on the date the Awardee's employment is so terminated.

2. Until they vest, the Shares are referred to herein as "Restricted Stock." Except as otherwise set forth herein, Restricted Stock shall not be transferred, assigned, pledged or otherwise encumbered during the period beginning on the Award Date and ending on date that the Shares fully vest pursuant to Section 1 (the "Restricted Period"). Any attempt at any transfer, assignment, pledge, or other disposition during the Restricted Period shall be null and void and without effect and shall cause the immediate forfeiture of all shares of Restricted Stock. Restricted Stock that is forfeited shall be immediately transferred to the Company without any payment by the Company. The Company shall have the full right to cancel certificates evidencing such forfeited shares automatically upon such forfeiture, whether or not such certificates shall have been surrendered to the Company. Following such forfeiture, the Awardee shall have no further rights with respect to such forfeited shares of Restricted Stock.

3. Promptly following the date the Shares vest, the Company shall deliver to the Awardee or the person or persons to whom rights under this Agreement shall have passed by bequest or inheritance, as the case may be, a stock certificate for the vested Shares free of the restrictions and legend set forth in this Agreement.

4. Any stock certificate representing the Restricted Stock awarded hereunder shall be: (i) affixed with the following legend: "The shares represented by this certificate are subject to forfeiture and restrictions on transfer pursuant to the terms of a Restricted Stock Agreement between the Company and the record holder of this certificate, a copy of which is available for inspection at the offices of the Company or may be made available upon request;" and (ii) deposited with the Company, together with a stock power endorsed by the Awardee in blank (in the form attached as Exhibit A hereto). At the expiration of the Restricted Period, as set forth herein, the Company shall deliver any such certificates to the Awardee. Absent willful misconduct by the Company, it shall be exempted from any responsibility or liability for any delivery or delay in delivery pursuant to this Agreement and for any other act or omission.

5. Subject to the restrictions contained in this Agreement, Awardee shall have the rights of a stockholder with respect to the Shares, including the right to vote the Shares, including Restricted Stock, and to receive all dividends, cash or stock, paid or delivered thereon, from and after the date hereof. Forfeiture of Restricted Stock pursuant to this Agreement shall not create any obligation to repay dividends received as to such Restricted Stock during the Restricted Period, nor shall such forfeiture invalidate any votes given by Awardee with respect to such Shares prior to forfeiture.

6. The parties hereto recognize that the Company may be obligated to withhold federal, state and local income taxes and social security taxes to the extent that the Awardee realizes ordinary income in connection with the vesting of the Restricted Stock or the payment of dividends on the Restricted Stock. The Awardee agrees that the Company or a subsidiary or an affiliate of the Company may withhold amounts needed to cover such taxes from payments otherwise due and owing to the Awardee, and also agrees that upon demand by the Company the Awardee will immediately pay to the Company any additional amounts as may be necessary to satisfy such withholding tax obligation. Such payment shall be made in cash or cash equivalent.

7. Awardee acknowledges and agrees that nothing herein or in the Plan, nor any of the rights granted hereunder or thereunder to Awardee, shall be construed to (a) give Awardee the right to remain employed by the Company or to continue to receive any employee benefits, or (b) in any manner restrict the right of the Company to modify, amend or terminate any of its employee benefit plans.

8. Any and all grants or deliveries of Shares hereunder shall constitute special incentive payments to the Awardee and shall not be taken into account in computing the amount of salary or compensation of the Awardee for the purpose of determining any pension, retirement, death or other benefits under (a) any pension, retirement, profit-sharing, bonus, life insurance, 401(k) or other employee benefit plan of the Company, or any of their affiliates, or (b) any agreement between the Company or any of their affiliates on the one hand, and the Awardee on the other hand, except as such plan or agreement shall otherwise expressly provide or may otherwise provide following a change of control.

9. The law of the State of Delaware, except its law with respect to choice of law, shall be controlling in all matters relating to this Agreement.

10. This Agreement embodies the entire agreement of the parties hereto with respect to the Shares awarded hereunder, and all other matters contained herein. This Agreement supersedes and replaces any and all prior oral or written agreements with respect to the subject matter hereof. This Agreement may be amended, and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. If there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern.

WITNESS the execution hereof as of 12th day of May, 2006.

Nabi Biopharmaceuticals

By /s/ Thomas H. McLain

Thomas H. McLain, Chairman, Chief
Executive Officer & President

By signing this Restricted Stock Agreement below, the Awardee hereby acknowledges and agrees that he/she has read, understands and accepts and agrees to all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan

/s/ Henrik S. Rasmussen

Awardee Signature

H. S. Rasmussen

Print Name

Exhibit A

STOCK TRANSFER POWER

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto Nabi Biopharmaceuticals _____ (_____) shares of Common Stock of Nabi Biopharmaceuticals standing in my name on the books of said corporation and represented by stock certificate no. _____ representing all of such shares and hereby irrevocably constitute and appoint _____, attorney for such transfer of said stock on the books of said corporation with full power of substitution in the premises.

Dated _____

Print name: _____

May 12, 2006

Thomas McLain
15975 Laurel Creek Drive
Delray Beach, FL 33446

Re: Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Thomas McLain

Dear Mr. McLain:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby grant to you (the "Optionee") an option to purchase **Seventy-Five Thousand (75,000)** shares of Common Stock of the Company (the "Option"), pursuant to the terms of the Company's 2000 Equity Incentive Plan (the "Plan") and the terms and conditions set forth below. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Optionee hereby accepts the Option subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The price at which the shares of Common Stock may be purchased pursuant to the Option is **\$6.30** per share, subject to adjustment as provided in the Plan.

2. (a) The Option shall expire at the close of business on the seventh anniversary of the date hereof (the "Expiration Date"). Subject to the following provisions of this Section 2 and to the provisions of the Plan, the Option shall be exercisable before said Expiration Date as follows: (i) if the Optionee is employed by the Company on the first anniversary of the date hereof, to the extent of 25% of the number of shares covered hereby; (ii) if the Optionee is employed by the Company on the second anniversary of the date hereof, to the extent of 50% of the number of shares covered hereby, less the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; (iii) if the Optionee is employed by the Company on the third anniversary of the date hereof, to the extent of 75% of the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; and (iv) if the Optionee is employed by the Company on the fourth anniversary of the date hereof, to the extent of the full number of shares covered hereby, less the number of shares as to which the Option has been exercised previously. The Option may not be exercised at all during the first year after the date hereof (except to the extent provided in the Plan) or after the Expiration Date.

(b) If the Optionee's employment is terminated by the Company for "cause", the Option shall terminate automatically and without notice to the Optionee on the date the Optionee's employment is terminated. For purposes hereof, "cause" shall mean (i) illegal or disreputable conduct which impairs the reputation, good will or business of the Company or involves the misappropriation of funds or other property of the Company, (ii) willful misconduct by the Optionee or willful failure to perform his or her responsibilities in the best interests of the Company (including, without limitation, breach by the Optionee of any provision of any employment, advisory, consulting, nondisclosure, non-competition or other agreement between the Optionee and the Company or any subsidiary of the Company, (iii) refusal or failure to carry out any employment duties reasonably assigned to the Optionee other than by reason of death or employment duties for the Company, or (iv) demonstrated negligence or gross inefficiency in the execution of the Optionee's employment duties for the Company. Any resignation in anticipation of discharge for cause that is accepted by the Company in lieu of a formal discharge for cause shall be deemed a termination of employment for cause for purposes hereof.

(c) If the Optionee dies while employed by the Company or within ninety (90) days after the Optionee ceases active employment due to disability, each option held by the Optionee immediately prior to death may be exercised, to the extent it was exercisable immediately prior to death, by the Optionee's executor or administrator or by the person or persons to whom the option is transferred by will or the applicable laws of descent and distribution, at any time within a one-year period beginning with the date of the Optionee's death, but in no event beyond the Expiration Date.

(d) If the Optionee's employment with the Company terminates for any reason other than cause or death, all options held by the Optionee that are not then exercisable, shall terminate. Options that are exercisable as of the date employment terminates shall be exercisable by the Optionee during the ninety (90) days following such termination, but only as to the number of shares, if any, as to which the Option was exercisable immediately prior to such termination and in no event after the Expiration Date.

(e) In the event exercise of the Option shall require the Company to issue a fractional share of Common Stock of the Company, such fraction shall be disregarded and the purchase price payable in connection with such exercise shall be appropriately reduced. Any such fractional share shall be carried forward and added to any shares covered by future exercise(s) of the Option.

3. The Option shall not be transferable other than by will or by the laws of descent and distribution and shall be exercisable during the Optionee's lifetime only by the Optionee.

4. This Option shall not be treated as an incentive stock option.

5. Any brokerage fees or commissions, and all taxes are the responsibility of the Optionee.

WITNESS the execution hereof as of May 12th of 2006.

Nabi Biopharmaceuticals

By /s/ Joseph Johnson
Joseph Johnson, Senior Vice President,
People, Process and Technology

By signing this Letter Agreement below, the Optionee hereby acknowledges and agrees that he/she has read, understands and accepts all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan.

/s/ Thomas H. McLain
Optionee Signature

Thomas H. McLain
Print Name

2000 Equity Incentive Plan

May 12, 2006

Mr. Joseph Johnson
160 South Street
Hingham, MA 02043

Re: Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Joseph Johnson

Dear Mr. Johnson:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby grant to you (the "Optionee") an option to purchase **One Hundred Thousand (100,000)** shares of Common Stock of the Company (the "Option"), pursuant to the terms of the Company's 2000 Equity Incentive Plan (the "Plan") and the terms and conditions set forth below. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Optionee hereby accepts the Option subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The price at which the shares of Common Stock may be purchased pursuant to the Option is **\$6.30** per share, subject to adjustment as provided in the Plan.

2. (a) The Option shall expire at the close of business on the seventh anniversary of the date hereof (the "Expiration Date"). Subject to the following provisions of this Section 2 and to the provisions of the Plan, the Option shall be exercisable before said Expiration Date as follows: (i) if the Optionee is employed by the Company on the first anniversary of the date hereof, to the extent of 25% of the number of shares covered hereby; (ii) if the Optionee is employed by the Company on the second anniversary of the date hereof, to the extent of 50% of the number of shares covered hereby, less the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; (iii) if the Optionee is employed by the Company on the third anniversary of the date hereof, to the extent of 75% of the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; and (iv) if the Optionee is employed by the Company on the fourth anniversary of the date hereof, to the extent of the full number of shares covered hereby, less the number of shares as to which the Option has been exercised previously. The Option may not be exercised at all during the first year after the date hereof (except to the extent provided in the Plan) or after the Expiration Date. Further, Notwithstanding any provision to the contrary in your Employment Agreement with the Company dated effective September 1, 2005, Section 8(D) thereof shall not become applicable to the Option unless and until you are employed by the Company on May 12, 2007.

(b) If the Optionee's employment is terminated by the Company for "cause", the Option shall terminate automatically and without notice to the Optionee on the date the Optionee's employment is terminated. For purposes hereof, "cause" shall mean (i) illegal or disreputable conduct which impairs the reputation, good will or business of the Company or involves the misappropriation of funds or other property of the Company, (ii) willful misconduct by the Optionee or willful failure to perform his or her responsibilities in the best interests of the Company (including, without limitation, breach by the Optionee of any provision of any employment, advisory, consulting, nondisclosure, non-competition or other agreement between the Optionee and the Company or any subsidiary of the Company, (iii) refusal or failure to carry out any employment duties reasonably assigned to the Optionee other than by reason of death or employment duties for the Company, or (iv) demonstrated negligence or gross inefficiency in the execution of the Optionee's employment duties for the Company. Any resignation in anticipation of discharge for cause that is accepted by the Company in lieu of a formal discharge for cause shall be deemed a termination of employment for cause for purposes hereof.

(c) If the Optionee dies while employed by the Company or within ninety (90) days after the Optionee ceases active employment due to disability, each option held by the Optionee immediately prior to death may be exercised, to the extent it was exercisable immediately prior to death, by the Optionee's executor or administrator or by the person or persons to whom the option is transferred by will or the applicable laws of descent and distribution, at any time within a one-year period beginning with the date of the Optionee's death, but in no event beyond the Expiration Date.

(d) If the Optionee's employment with the Company terminates for any reason other than cause or death, all options held by the Optionee that are not then exercisable, shall terminate. Options that are exercisable as of the date employment terminates shall be exercisable by the Optionee during the ninety (90) days following such termination, but only as to the number of shares, if any, as to which the Option was exercisable immediately prior to such termination and in no event after the Expiration Date.

(e) In the event exercise of the Option shall require the Company to issue a fractional share of Common Stock of the Company, such fraction shall be disregarded and the purchase price payable in connection with such exercise shall be appropriately reduced. Any such fractional share shall be carried forward and added to any shares covered by future exercise(s) of the Option.

3. The Option shall not be transferable other than by will or by the laws of descent and distribution and shall be exercisable during the Optionee's lifetime only by the Optionee.

4. This Option shall not be treated as an incentive stock option.

5. Any brokerage fees or commissions, and all taxes are the responsibility of the Optionee.

WITNESS the execution hereof as of May 12th of 2006.

Nabi Biopharmaceuticals

By /s/ Thomas H. McLain
Thomas H. McLain, Chairman
Chief Executive Officer & President

By signing this Letter Agreement below, the Optionee hereby acknowledges and agrees that he/she has read, understands and accepts all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan.

/s/ Joseph Johnson
Optionee Signature

Joseph Johnson
Print Name

2000 Equity Incentive Plan

May 12, 2006

Adam Logal
3194 Quantum Lakes Drive
Boynton Beach, FL 33426

Re: Letter Agreement for Stock Option Grant and Acceptance Between Nabi Biopharmaceuticals and Adam Logal

Dear Mr. Logal:

I am pleased to report that for good and valuable consideration, receipt of which is hereby acknowledged, Nabi Biopharmaceuticals, a Delaware corporation (the "Company"), does hereby grant to you (the "Optionee") an option to purchase **Twenty Thousand (20,000)** shares of Common Stock of the Company (the "Option"), pursuant to the terms of the Company's 2000 Equity Incentive Plan (the "Plan") and the terms and conditions set forth below. A copy of the Plan is attached hereto and is incorporated herein in its entirety by reference.

The Optionee hereby accepts the Option subject to all of the provisions of the Plan, and upon the following additional terms and conditions:

1. The price at which the shares of Common Stock may be purchased pursuant to the Option is **\$ 6.30** per share, subject to adjustment as provided in the Plan.

2. (a) The Option shall expire at the close of business on the seventh anniversary of the date hereof (the "Expiration Date"). Subject to the following provisions of this Section 2 and to the provisions of the Plan, the Option shall be exercisable before said Expiration Date as follows: (i) if the Optionee is employed by the Company on the first anniversary of the date hereof, to the extent of 25% of the number of shares covered hereby; (ii) if the Optionee is employed by the Company on the second anniversary of the date hereof, to the extent of 50% of the number of shares covered hereby, less the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; (iii) if the Optionee is employed by the Company on the third anniversary of the date hereof, to the extent of 75% of the number of shares covered hereby, less the number of shares as to which the Option has been exercised previously; and (iv) if the Optionee is employed by the Company on the fourth anniversary of the date hereof, to the extent of the full number of shares covered hereby, less the number of shares as to which the Option has been exercised previously. The Option may not be exercised at all during the first year after the date hereof (except to the extent provided in the Plan) or after the Expiration Date.

(b) If the Optionee's employment is terminated by the Company for "cause", the Option shall terminate automatically and without notice to the Optionee on the date the Optionee's employment is terminated. For purposes hereof, "cause" shall mean (i) illegal or disreputable conduct which impairs the reputation, good will or business of the Company or involves the misappropriation of funds or other property of the Company, (ii) willful misconduct by the Optionee or willful failure to perform his or her responsibilities in the best interests of the Company (including, without limitation, breach by the Optionee of any provision of any employment, advisory, consulting, nondisclosure, non-competition or other agreement between the Optionee and the Company or any subsidiary of the Company, (iii) refusal or failure to carry out any employment duties reasonably assigned to the Optionee other than by reason of death or employment duties for the Company, or (iv) demonstrated negligence or gross inefficiency in the execution of the Optionee's employment duties for the Company. Any resignation in anticipation of discharge for cause that is accepted by the Company in lieu of a formal discharge for cause shall be deemed a termination of employment for cause for purposes hereof.

(c) If the Optionee dies while employed by the Company or within ninety (90) days after the Optionee ceases active employment due to disability, each option held by the Optionee immediately prior to death may be exercised, to the extent it was exercisable immediately prior to death, by the Optionee's executor or administrator or by the person or persons to whom the option is transferred by will or the applicable laws of descent and distribution, at any time within a one-year period beginning with the date of the Optionee's death, but in no event beyond the Expiration Date.

(d) If the Optionee's employment with the Company terminates for any reason other than cause or death, all options held by the Optionee that are not then exercisable, shall terminate. Options that are exercisable as of the date employment terminates shall be exercisable by the Optionee during the ninety (90) days following such termination, but only as to the number of shares, if any, as to which the Option was exercisable immediately prior to such termination and in no event after the Expiration Date.

(e) In the event exercise of the Option shall require the Company to issue a fractional share of Common Stock of the Company, such fraction shall be disregarded and the purchase price payable in connection with such exercise shall be appropriately reduced. Any such fractional share shall be carried forward and added to any shares covered by future exercise(s) of the Option.

3. The Option shall not be transferable other than by will or by the laws of descent and distribution and shall be exercisable during the Optionee's lifetime only by the Optionee.

4. This Option shall not be treated as an incentive stock option.

5. Any brokerage fees or commissions, and all taxes are the responsibility of the Optionee.

WITNESS the execution hereof as of May 12th of 2006.

Nabi Biopharmaceuticals

By /s/ Thomas H. McLain

Thomas H. McLain, Chairman
Chief Executive Officer & President

By signing this Letter Agreement below, the Optionee hereby acknowledges and agrees that he/she has read, understands and accepts all of the terms and conditions set forth herein and set forth in the Nabi 2000 Equity Incentive Plan.

/s/ Adam Logal

Optionee Signature

Adam Logal

Print Name

2000 Equity Incentive Plan

NABI BIOPHARMACEUTICALS
SUMMARY OF NON-EMPLOYEE DIRECTOR FEES

Under Nabi Biopharmaceuticals' compensation policy for non-employee directors, each non-employee director receives an annual retainer of \$20,000 plus a fee of \$1,000 for each Board and committee meeting attended by the director (whether the meeting is in person or by conference telephone). The Chairman of the Board of Directors receives an annual retainer of \$60,000 in addition to the annual retainer he receives as a non-employee director and, subject to the Board's discretion, he will receive an annual equity grant that is twice the amount of the annual equity grant made to each of the other non-employee directors. Currently, each member of a standing Board committee receives an annual retainer of \$2,500, and each chairperson of a standing Board committee receives an annual retainer of \$5,000, except that the chairmen of the Audit Committee and the Strategic Action Committee each receive an annual retainer of \$7,500. Fees are paid for attendance at committee meetings even if they are held on the same day as Board meetings. Directors are reimbursed for out-of-pocket expenses incurred in connection with attendance at Board and committee meetings. Under Nabi Biopharmaceuticals' 2004 Stock Plan for Non-Employee Directors, each non-employee director may elect to be paid his or her annual retainer, in whole or in part, in shares of Common Stock in lieu of cash

[*****] A CONFIDENTIAL PORTION OF THE MATERIAL HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

ASSET PURCHASE AGREEMENT

between

NABI BIOPHARMACEUTICALS

(the Seller)

and

FRESENIUS USA MANUFACTURING, INC.

(the Buyer)

Dated October 11, 2006

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated October 11, 2006, is between **Nabi Biopharmaceuticals**, a Delaware corporation (the “**Seller**”); and **Fresenius USA Manufacturing, Inc.**, a Delaware corporation (the “**Buyer**”).

Background Statement

The Seller is engaged in, among other activities, the business of distributing, marketing and selling a line of phosphate binder calcium acetate products known as PhosLo® products, which includes causing such products to be manufactured, inspected, packaged, inventoried and delivered to distributors and other purchasers (such business together with the Seller’s activities related to New Formulation Products is referred to herein as the “**PhosLo Business**”).

The Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, certain of the assets of the Seller used in the PhosLo Business, all on the terms and conditions set forth in this Agreement.

Statement of Agreement

In consideration of the premises and the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

1.1 Defined Terms. Except as otherwise specifically provided herein, the following terms shall have the meanings indicated below:

“**Affiliate**” means, with respect to any Person, each of the Persons that directly or indirectly, through one or more intermediaries, owns or controls, or is controlled by or under common control with, such Person. For the purpose of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this agreement, as amended or supplemented in accordance with the terms hereof, together with all Exhibits and Schedules attached hereto or incorporated herein by reference.

“**Arbitration Dispute**” has the meaning set forth in **Section 10.5(a)**.

“**Arbitrators**” has the meaning set forth in **Section 10.5(c)**.

“Assigned Contracts” has the meaning set forth in **Section 2.2(e)**.

“Assigned Permits” shall mean the Permits which are listed on **Schedule 2.2(k)**.

“Assumed Liabilities” has the meaning set forth in **Section 2.4(a)**.

“Assumption Agreement” has the meaning set forth in **Section 4.2(a)(vii)**.

“Bill of Sale” has the meaning set forth in **Section 4.2(a)(iv)**.

“Braintree” means Braintree Laboratories, Inc., a Massachusetts corporation.

“Braintree Purchase Agreement” has the meaning set forth in **Section 5.9(f)**.

“Business Day” means any day excluding Saturday, Sunday and any day that shall be a legal holiday in Massachusetts.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Certificate” has the meaning set forth in **Section 9.2(c)**.

“Buyer Damages” has the meaning set forth in **Section 10.2(a)**.

“Buyer Indemnified Parties” has the meaning set forth in **Section 10.2(a)**.

“CARE 2 Study” means the clinical study initiated by the Seller and designed to compare the relative rate of PhosLo and Renegal, with the addition of Lipitor, in slowing progression of cardiovascular calcification.

“Closing” has the meaning set forth in **Section 4.1**.

“Closing Date” has the meaning set forth in **Section 4.1**.

“Closing Payment” has the meaning set forth in **Section 3.1(a)**.

“CMS” means the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services.

“COBRA” has the meaning set forth in **Section 5.22(h)**.

“Code” means the Internal Revenue Code of 1986, together with the regulations thereunder, in each case as in effect from time to time.

“Commercial Rebate Contract” means each Contract designated as such on **Schedule 2.2(e)**.

“Commercially Reasonable Discontinuance” has the meaning set forth in **Section 8.10(d)**.

“**Competitive Product**” means [*****].

“**Compliance Program**” means a provider compliance program of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

“**Confidentiality Agreement**” has the meaning set forth in **Section 7.3(a)**.

“**Contract**” means any legally binding obligation or agreement, whether oral or written, and specifically including any note, bond, mortgage, lease of real or personal property, license and other instrument.

“**Copyright**” means the legal right provided by the Copyright Act of 1976, as amended, to the expression contained in any work of authorship fixed in any tangible medium of expression together with any similar rights arising in any other country as a result of statute or treaty.

“**CPR**” has the meaning set forth in **Section 10.5(b)**.

“**Damages**” has the meaning set forth in **Section 10.2(a)**.

“**Data Lock**” means, in respect of a clinical trial in support of a new drug application, the time at which, in accordance with the trial protocol, no modifications will be made to the clinical trial data base.

“**Deferred Payment Period**” has the meaning set forth in **Section 3.1(c)**.

“**Deferred Payments**” has the meaning set forth in **Section 3.1(c)**.

“**Demand**” has the meaning set forth in **Section 10.5(b)**.

“**Diligence Breach**” has the meaning set forth in **Section 8.10(a)**.

“**Discounts**” means amounts claimed as discounts with respect to PhosLo Products sold (a) on or before the Closing Date or (b) under any Excluded Contract.

“**Effective Time**” means 12:01 a.m. on the Closing Date.

“**Employees**” means the individuals employed by the Seller principally in the operation of the PhosLo Business.

“**Employee Consent**” means a consent by an Employee to the release of such Employee’s personnel files to the Buyer, substantially in the form of the Consent of Employee Regarding Transfer of Personnel Records attached hereto as **Exhibit 9.3(g)**.

“**Environmental Laws**” means any Legal Requirement relating to the protection of safety, human health or the environment, including any requirement pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of materials that are or may constitute a threat to human health

or the environment. Without limiting the foregoing, each of the following is an Environmental Law: the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Material Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control 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 Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), and the Atomic Energy Act (42 U.S.C. § 2011 *et seq.*), and each similar Legal Requirement promulgated under such federal, state and local laws.

“**EPICK Study**” means the clinical study initiated by the Seller and designed to evaluate PhosLo’s ability to safely and effectively control serum phosphorus levels, parathyroid levels, serum calcium levels and calcium phosphorus product in chronic kidney disease, stage 4, patients.

“**ERISA**” means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001, *et seq.*).

“**Excluded Assets**” has the meaning set forth in **Section 2.3**.

“**Excluded Contracts**” has the meaning set forth in **Section 2.3(d)**.

“**Excluded Liabilities**” has the meaning set forth in **Section 2.4(b)**.

“**Family Member**” means any of (i) a Person’s spouse, (ii) the natural or adoptive grandparents, parents, siblings, children or grandchildren of a Person or such Person’s spouse, (iii) the stepparents, stepchildren, stepbrothers or stepsisters of a Person or such Person’s spouse, (iv) the nieces, nephews, first cousins, aunts or uncles of a Person or such Person’s spouse, or (v) the spouse of any Person described in the foregoing clauses (i) through (iv).

“**FDA**” means the United States Food and Drug Administration.

“**FDA Approval**” means the approval, clearance or authorization of the FDA that allows the Buyer to make, sell, promote, market and distribute a pharmaceutical product for therapeutic use in humans on a lawful and commercial basis in the United States.

“**FD&C Act**” means the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.*, as amended, and the rules and regulations promulgated thereunder.

“**Finished Goods Inventory**” has the meaning set forth in **Section 2.2(l)**.

“**Fixed Assets**” means all equipment (including computer hardware and data processing and telecommunications equipment), machinery, furniture and furnishings, fixtures, tools, vehicles and other tangible personal property of every type, in each case that are used principally in the PhosLo Business, whether owned or leased, all contract rights with respect thereto, and all maintenance records and other documents relating thereto.

“Foreign Marketing Authorization” means the equivalent of an FDA Approval in each country of the Territory other than the United States.

“GAAP” means generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants, as in effect from time to time, consistently applied and maintained on a consistent basis for the applicable Person (or Persons on a consolidated basis, as the case may be) throughout the period indicated and consistent with such Person’s prior financial practices.

“Good Practices” means compliance with the applicable requirements contained in “Good Laboratory Practices,” “Investigational New Drug” and/or “current Good Manufacturing Practices” regulations as promulgated by the FDA.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any municipal, local, city or county government, or any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Governmental Filings” has the meaning set forth in **Section 7.1(a)**.

“GPOs” has the meaning set forth in the definition of “Wholesaler Charges.”

“Hazardous Material” means any substance or material meeting any one or more of the following criteria: (i) it is or contains a substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance under any Environmental Law; (ii) it is toxic, explosive, corrosive, reactive, ignitable, infectious, radioactive, mutagenic, dangerous or otherwise hazardous; (iii) its presence at some quantity requires investigation, notification or remediation under any Environmental Law or common law; (iv) it constitutes a danger, a nuisance, a trespass or a health or safety hazard to persons or property; or (v) it is or contains, without limiting the foregoing clauses (i)-(iv), asbestos, polychlorinated biphenyls, petroleum hydrocarbons, petroleum derived substances or waste, crude oil or any fraction thereof, nuclear fuel or waste, natural gas or synthetic gas.

“Healthcare Governmental Authority” means any Governmental Authority, whether created under any federal, state or local statute or regulation, which governs or has oversight over the delivery or reimbursement of healthcare services, including CMS and fiscal intermediaries and other agents acting on behalf of CMS, and the health department or health licensing department of any federal, state or local Governmental Authority.

“HSR Act” has the meaning set forth in **Section 5.3(a)**.

“Indemnified Party” has the meaning set forth in **Section 10.4(a)**.

“Indemnifying Party” has the meaning set forth in **Section 10.4(a)**.

“Information” has the meaning set forth in **Section 8.5(a)**.

“**Inventories**” means all inventories of pharmaceuticals, goods, materials and supplies used principally in the PhosLo Business.

“**Know-How**” means ideas, designs, concepts, compilations of information, methods, techniques, procedures and processes, inventions and discoveries, whether or not patentable.

“**Knowledge of the Seller,**” “**Seller’s Knowledge**” and similar phrases means the actual knowledge of any of the following Persons and the information available in the books, records and files of the Seller: [*****].

“**Legal Requirement**” means any statute, law, treaty, rule, regulation of any Governmental Authority or any Order applicable or binding upon the subject Person (including its business or the ownership or use of any of its assets), property or other asset.

“**Liabilities**” means all liabilities or obligations of any nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, known or unknown, direct or consequential or otherwise.

“**Lien**” means any lien, charge, claim, pledge, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, security agreement, right of first refusal, option, restriction, license, covenant or other encumbrance (including the filing of, or agreement to file any financing statement under the Uniform Commercial Code or statute or law of any jurisdiction).

“[*****] **Agreement**” has the meaning set forth in **Section 2.2(p)**.

“**Mark**” means any word, name, symbol or device used by a Person to identify its goods or services, whether or not registered, and any right that may exist to obtain a registration with respect thereto from any Governmental Authority and any rights arising under any such application. As used in this Agreement, the term “Mark” includes trademarks and service marks.

“**Master Formulations**” has the meaning set forth in **Section 2.2(d)**.

“**Material Adverse Effect**” means any change, including any damage, destruction or other casualty loss, that is or would reasonably be expected to be materially adverse to the Purchased Assets or the PhosLo Business including its financial condition or results of operations; provided however, (i) a “Material Adverse Effect” does not include any change caused by a change in any circumstance, political, economic or business conditions affecting the United States economy as a whole or the pharmaceutical sector of the United States economy specifically and (ii) in determining whether there has been a Material Adverse Effect, any change shall be considered both individually and together with all other changes.

“**Medicaid**” means that means tested entitlement program under Title XIX of the Social Security Act that provides federal grants to states for medical assistance based on specific eligibility criteria. (Social Security Act of 1965, Title XIX, P.L. 89 87; 42 U.S.C. 1396 *et seq.*).

“Medical Product Regulatory Authority” means any Governmental Authority that is concerned with the safety, efficacy, reliability, manufacture, investigation, sale or marketing of pharmaceuticals, medical products, biologics or biopharmaceuticals, including the FDA.

“Medicare” means that government sponsored entitlement program under Title XVIII of the Social Security Act that provides for a health insurance system for eligible elderly and disabled individuals. (Social Security Act of 1965, Title XVIII, P.L. 89-87 as amended, 42 U.S.C. 1395 *et seq.*).

“Milestone Payments” means the payments payable from the Buyer to the Seller pursuant to **Sections 3.1(a)(i)-(vi)** upon the achievement of certain milestones.

“NDA Filing Date” has the meaning set forth in **Section 5.16(a)**.

“NDAs” has the meaning set forth in **Section 2.2(a)**.

“Net Sales Deductions” means all: [*****].

“New Formulation Net Sales” means the excess of (a) the gross amount invoiced by the Buyer or its subsidiaries or Affiliates or its or their licensees, successors and assignees from or on account of sales or other dispositions of any New Formulation Products to unaffiliated third parties who are not licensees or sublicensees over (b) any Net Sales Deductions. The Buyer and any such sublicensees, Affiliates, licensees, successors and assignees shall allocate Net Sales Deductions to the New Formulation Products in a manner consistent with the manner in which it allocates similar deductions to products in the balance of its business. For the avoidance of doubt, New Formulation Net Sales shall not result from any transfer between or among the Buyer and any of its subsidiaries or Affiliates or its or their licensees, successors and assignees for resale, but shall result from the sale or resale by any such subsidiary, Affiliate, licensee, successor or assignee.

“New Formulation Net Sales Statement” has the meaning set forth in **Section 3.2(b)**.

“New Formulation Products” means each and every [*****].

“New Formulation Rights” has the meaning set forth in **Section 2.2(p)**.

“Noncompetition and Nonsolicitation Agreement” has the meaning set forth in **Section 4.2(a)(ii)**.

“Order” means any award, decision, injunction, judgment, order, writ, decree, ruling, subpoena or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

“Part D Rebate Contract” means each Contract designated as such on **Schedule 2.2(e)**.

“Patent” means any patent granted by the United States Patent and Trademark Office or by the comparable agency of any other country, and any renewal thereof, and any rights arising under any patent application filed with the United States Patent and Trademark Office or the comparable agency of any other country and any rights that may exist to file any such application, together with any divisionals, continuations or continuations in part with respect to any such patent applications, any re-examinations of any such patent, any reissues of any such patent and any amendments thereto as a result of reexamination.

“Patent Agreement” has the meaning set forth in **Section 4.2(a)(v)**.

“Permits” means all licenses, permits, authorizations, registrations, certifications, certificates of occupancy, franchises and approvals of any nature issued by any Governmental Authority and used in the operation of the PhosLo Business, including regulatory approvals and worldwide registrations.

“Person” means an individual, partnership, corporation, limited liability company, trust, decedent’s estate, joint venture, joint stock company, association, unincorporated organization, Governmental Authority or other entity.

“PhosLo Business” has the meaning set forth in the Background Statement to this Agreement.

“PhosLo GelCap” means the size 0 capsule dose of PhosLo (667 mg) or the size 2 (333.5 mg) capsule dose of PhosLo as approved in NDA 21-160.

“PhosLo Products” means the following products: PhosLo GelCap and PhosLo Tablets.

“PhosLo Tablets” means the round tablet dose of PhosLo (667 mg) as approved by NDA 19-976.

“Plan” means any employee pension, retirement, profit-sharing, stock bonus, incentive, deferred compensation, stock option, employee stock ownership, hospitalization, medical, dental, vacation, insurance, sick pay, disability, severance or other plan, fund, program, policy, contract or arrangement, whether arrived at through collective bargaining or otherwise, providing employee benefits, including any “employee benefit plan” as that term is defined in **Section 3(3)** of ERISA, currently maintained by, sponsored in whole or in part by, or contributed to by the Seller, for the benefit of employees, retirees, dependents, spouses, directors, independent contractors or other beneficiaries, whether created in writing, through an employee manual or similar document, or orally.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Proprietary Rights” means, cumulatively, Copyrights, Know-how, Marks, domain names, Patents, Trade Secrets and other intellectual property rights.

“Proprietary Software” has the meaning set forth in the definition of “Software.”

“Purchased Assets” has the meaning set forth in **Section 2.2** of this Agreement.

“**Purchased Proprietary Rights**” has the meaning set forth in **Section 5.6(a)**.

“**Purchase Price**” has the meaning set forth in **Section 3.1**.

“**Qualified Beneficiaries**” has the meaning set forth in **Section 5.22(h)**.

“**Rebate Charges**” means amounts claimed by or under, and actually paid to or in respect of, Medicaid, state rebate programs, pharmaceutical benefit management organizations, managed care organizations, and other Persons as rebates under Contracts between such parties and the Seller or the Buyer, as the context requires.

“**Registrations**” has the meaning set forth in **Section 2.2(a)**.

“**Restricted Period**” has the meaning set forth in **Section 8.11(a)**.

“**Retained Marks**” has the meaning set forth in **Section 8.7(a)**.

“**Roxane Proceeding**” has the meaning set forth in **Section 2.4(a)(iii)**.

“**Scientific Data**” has the meaning set forth in **Section 5.18(a)**.

“**Seller**” has the meaning set forth in the introductory sentence of this Agreement.

“**Seller Certificate**” has the meaning set forth in **Section 9.3(c)**.

“**Seller Damages**” has the meaning set forth in **Section 10.3(a)**.

“**Seller Disclosure Schedule**” has the meaning set forth in **Section 5**.

“**Seller Indemnified Parties**” has the meaning set forth in **Section 10.3(a)**.

“**Software**” means:

(a) every computer software program or portion thereof (including operating systems, application programs, software tools, firmware and software imbedded within any telecommunications, dialysis or other equipment, including both object code and source code versions thereof), including computer software programs purchased or licensed from third parties;

(b) every computer software program that the Seller (including its employees and independent contractors) has designed or created and all electronic or written materials that explain any such computer software program or that were used in the development of any such computer software program or represent an interim step in the development of any such computer software program, including logic diagrams, flowcharts, procedural diagrams and algorithms, and all electronic or written materials used by the Seller or provided to any patient or physician in connection with the installation, customization or use of any of the computer software programs described above.

That portion of the Software that is owned by the Seller is referred to herein as the “**Proprietary Software**,” and that portion of the Software that is owned by any Person other than the Seller is referred to herein as the “**Third-Party Software**.”

“**Specifications**” has the meaning set forth in **Section 5.21**.

“**Taxes**” means all taxes, and all charges, fees, levies or other assessments imposed in respect thereof, imposed by a Governmental Authority (whether federal, state, local or foreign), including income, gross receipts, excise, property, estate, sales, use, stamp, value added, transfer, license, payroll, franchise, ad valorem, withholding, social security and unemployment taxes; and such term shall include any interest, penalties and additions to such taxes, charges, fees, levies or other assessments.

“**Tax Return**” means, with respect to any Person, any report, return or schedule attached to a return (or any combination thereof) required to be supplied by such Person to any Governmental Authority in connection with Taxes.

“**Territory**” shall mean each country in the world.

“**Third-Party Consents**” has the meaning set forth in **Section 7.1(a)**.

“**Third-Party Software**” has the meaning set forth in the definition of the term “Software.”

“**Trade Secrets**” means business or technical information of any Person including, but not limited to, customer lists and Know-How, that is not generally known to other Persons who are not subject to an obligation of nondisclosure and that derives actual or potential commercial value from not being generally known to other Persons.

“**Trademark Agreement**” has the meaning set forth in **Section 4.2(a)(vi)**.

“**Transaction Agreements**” has the meaning set forth in **Section 4.2(c)**.

“**Transition Services Agreement**” has the meaning set forth in **Section 4.2(a)(viii)**.

“**Wholesaler Charges**” means amounts claimed by wholesalers of the PhosLo Products as chargebacks or returns to the wholesaler under contracts between group purchasing organizations, FSS and PHS (collectively, “**GPOs**”) and the Seller and amounts claimed by GPOs as administrative or marketing fees under contracts between GPOs and the Seller.

1.2 Construction.

(a) The article and section headings contained in this Agreement are solely for the purpose of reference and convenience, are not part of the agreement of the parties, and shall not in any way limit, modify or otherwise affect the meaning or interpretation of this Agreement.

(b) References to “Sections” or “Articles” refer to corresponding Sections or Articles of this Agreement unless otherwise specified.

(c) Unless the context requires otherwise, (i) the words “include,” “including” and variations thereof mean without limitation; (ii) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms refer to this Agreement as a whole and not any particular section or article in which such words appear; (iii) words in the singular include the plural, words in the plural include the singular, and words importing any gender shall be applicable to all genders; (iv) a term defined as one part of speech (such as a noun) shall have a corresponding meaning when used as another part of speech (such as a verb); and (v) currency amounts referenced herein are in U.S. Dollars.

(d) Any reference herein to a Legal Requirement shall include any amendment thereof, any successor thereto and any rules, regulations and published interpretations promulgated thereunder by Governmental Authorities.

(e) References to a number of days refer to calendar days unless Business Days are specified. Except as otherwise specified, whenever any action must be taken on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(f) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

ARTICLE II

CONTEMPLATED TRANSACTIONS

2.1 Purchase of Assets. On the terms and subject to the conditions of this Agreement, on the Closing Date, effective as of the Effective Time, the Seller shall sell, convey, assign, and transfer to the Buyer (or one or more of its assignees), all of the Seller’s right, title and interest in and to the Purchased Assets, and the Buyer (or one or more of its assignees) shall purchase, acquire and accept the Seller’s right, title and interest in and to the Purchased Assets, free and clear of any Lien of any nature except for Liens for Taxes not yet due and payable.

2.2 Purchased Assets. For purposes of this Agreement, the term “**Purchased Assets**” shall mean all of the tangible and intangible assets, rights and properties used or held for use by the Seller principally in connection with the PhosLo Business, including the following assets, rights and properties, but excluding the Excluded Assets:

(a) all regulatory approvals, worldwide product registrations and associated materials (including the product dossier) relating to the PhosLo Business or the PhosLo Products (the “**Registrations**”), including the New Drug Applications (No. 19-976 and No. 21-160) issued by the FDA (together with all amendments, supplements and updates thereto (the “**NDAs**”)), and the other approvals, registrations, pending registrations and associated materials set forth on **Schedule 2.2(a)** hereto;

(b) the name “PhosLo” and any variant thereof, and the other Marks, trade names and domain names set forth on **Schedule 2.2(b)** hereto;

(c) the Patents set forth on **Schedule 2.2(c)** hereto;

(d) the intangible property rights that relate primarily to or are embodied in the PhosLo Products or the PhosLo Business (including phosphate binders generally or any product, device or service for the treatment of hyperphosphatemia, if any), whether or not patentable, including but not limited to Copyrights, Know-how, Trade Secrets, the goodwill associated with the PhosLo Business, master formulations for the PhosLo Products (“**Master Formulations**”), master processes used for manufacturing the PhosLo Products from the Master Formulations and other confidential business information;

(e) the Contracts related to the PhosLo Business that are listed on **Schedule 2.2(e)** hereto exclusive of the rights thereunder that relate to PhosLo Products sold prior to the Closing Date or the operation of the PhosLo Business prior to the Closing Date (the “**Assigned Contracts**”);

(f) the exclusive right to satisfy all unfilled purchase orders relating to the PhosLo Products from and after the Closing Date;

(g) all brochures and other promotional and printed materials, trade show materials (including displays), videos, advertising and/or marketing materials, including materials containing post-marketing clinical data, in the Seller’s possession or under its control used solely in connection with the sale of the PhosLo Products and/or the conduct of the PhosLo Business, including the materials listed on **Schedule 2.2(g)**;

(h) all warranties and guarantees and other similar contractual rights made by third parties in favor of the Seller with respect to the PhosLo Products or the PhosLo Business included in the Assigned Contracts exclusive of those to the extent relating to PhosLo Products sold prior to the Closing Date or the operation of the PhosLo Business prior to the Closing Date;

(i) copies of all customer and supplier lists, account lists, call data, sales history, call notes, marketing studies, consultant reports, physician databases, and correspondence (excluding invoices and credit memos) principally relating to the PhosLo Products or the PhosLo Business to the extent maintained by the Seller, and all complaint files and adverse event files principally relating to the PhosLo Products or the PhosLo Business to the extent maintained by the Seller, including the materials listed on **Schedule 2.2(i)**;

(j) all PhosLo specific training materials including an outline of training, quizzes and answers that accompany the written training materials to the extent maintained by the Seller, including the materials listed on **Schedule 2.2(j)**;

(k) the Permits listed in **Schedule 2.2(k)** (the “**Assigned Permits**”);

(l) all PhosLo Products held by or on behalf of the Seller in inventory as finished goods (the “**Finished Goods Inventory**”), as well as all other Inventory;

(m) the Scientific Data, including any rights of access that the Seller has to the Scientific Data;

(n) copies of all financial records maintained by the Seller principally in connection with the sale of PhosLo Products relating to sales, accounts receivable, returns, chargebacks, rebates and discounts, redacted as necessary to delete all records and data respecting or including other products of the Seller and/or other aspects of its business;

(o) all rights of the Seller and its Affiliates to develop, make, have made, sell, distribute, promote, and use the PhosLo Products worldwide subject, in the case of Canada, to the rights of Genpharm Inc. pursuant to that certain Distribution Agreement between Genpharm Inc. and the Seller dated July 12, 2005;

(p) all rights of the Seller, and its Affiliates to [*****] (the “**New Formulation Rights**”) and all rights of the Seller and its Affiliates, if any, to develop and manufacture such products;

(q) the Fixed Assets listed on **Schedule 2.2(q)**;

(r) all telephone numbers and listings in telephone directories maintained by third parties as listed on **Schedule 2.2(r)**;

(s) copies of all other files, records, books, documents, data, plans and proposals of the Seller relating principally to the PhosLo Business or PhosLo Products, whether in written, electronic, visual or other form, redacted as necessary to delete all files, records, books, documents, data, plans and proposals respecting or including other products of the Seller and/or aspects of its business;

(t) [intentionally blank];

(u) all claims and rights relating principally to the Purchased Assets or the Assumed Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent, including all claims and rights of the Seller against third parties relating principally to the Purchased Assets or the Assumed Liabilities and including claims and rights under express or implied warranties but exclusive of those relating principally to PhosLo Products sold prior to the Closing Date or the operation of the PhosLo Business prior to the Closing Date; and

(v) the PhosLo Business as a going concern.

2.3 Excluded Assets. Notwithstanding anything in **Section 2.2** to the contrary, the Purchased Assets shall not include any of Seller’s right, title or interest in or to the following assets, rights and properties (the “**Excluded Assets**”), all of which shall be retained by the Seller:

(a) [intentionally blank];

(b) all cash, cash equivalents and short-term investments of cash;

(c) all accounts receivable (billed and unbilled) in respect of sales of PhosLo Products made prior to the Closing Date;

(d) all Contracts and rights arising under any Contracts not specifically included in the Purchased Assets (the “**Excluded Contracts**”);

(e) the assets, rights and properties, if any, set forth on **Schedule 2.3(e)**;

- (f) any inter-company balances due to or from the Seller and any Affiliate;
- (g) all interests in any real property, whether leased or owned;
- (h) all Tax refunds and Tax deposits;
- (i) any insurance policies;
- (j) all Software;
- (k) the Fixed Assets listed or described on **Schedule 2.3(k)**;
- (l) all telephone numbers and listings in telephone directories maintained by third parties other than those listed on **Schedule 2.2(r)**; and
- (m) all rights to receive payment of a license fee pursuant to Section 6.1(b) of the Distribution Agreement, dated as of July 12, 2005, between the Seller, Genpharm, Inc. and Prepharm, Inc.

2.4 Assumption of Liabilities.

(a) Assumed Liabilities. On the Closing Date, the Buyer shall assume, and shall thereafter timely pay and perform, the following Liabilities of the Seller (the “**Assumed Liabilities**”):

(i) the Liabilities of the Seller arising after the Effective Time under the Assigned Contracts (including in respect of all open purchase orders for PhosLo Products placed by customers with the Seller as of the Effective Time and all purchase orders and committed forecasts placed by the Seller with Braintree and Verdugt for the production or delivery of Inventory as of the Effective Time), excluding, however, any such Liabilities that arise from defaults or breaches under such Assigned Contracts based upon actions, omissions, circumstances or occurrences existing or occurring before the Closing Date (including for this purpose any event which, with notice or time, would constitute such a breach or default and any breach or default that occurs as a result of the Closing);

(ii) all Liabilities under the Registrations and the Assigned Permits, if any, to the extent to be satisfied or performed, or arising out of acts or omissions of the Buyer, after the Closing Date; and

(iii) any Liabilities arising from the Proceeding known as Nabi Biopharmaceuticals v. Roxane Laboratories, Inc., filed in the United States District Court for the Southern District of Ohio (the “**Roxane Proceeding**”), based on acts, circumstances or omissions occurring after the Effective Time including the fees and expenses of counsel and experts and other third parties incurred in connection with the prosecution of the Roxane Proceeding after the Effective Time. Any such Liabilities based on acts, circumstances or omissions occurring prior to the Effective Time shall remain Liabilities of the Seller.

(b) **Liabilities Not Assumed.** Except for the Liabilities specifically assumed pursuant to **Section 2.4(a)**, the Buyer shall not assume, shall not take subject to and shall not be liable for, any Liabilities of the PhosLo Business, the Seller or any Affiliate of the Seller (the “**Excluded Liabilities**”). Without limiting the generality of the foregoing and notwithstanding anything in **Section 2.4(a)** to the contrary, the Excluded Liabilities shall include the following:

(i) any Liabilities incurred or arising in connection with the operation of the PhosLo Business, the condition of the Seller’s assets or the ownership of the Purchased Assets prior to the Effective Time, including any claims made by or against the Seller or any Affiliate of the Seller, whether before or after the Closing Date, that arise out of actions, omissions, circumstances or occurrences existing or occurring before the Closing Date;

(ii) any claim, lawsuit or Liability of any kind or nature whatsoever (including any Liabilities relating to malpractice, tort or breach of contract claims asserted by any customer, patient, former patient, employee or any other party) that is based on PhosLo Products sold prior to the Effective Time, the sale after the Effective Time of Finished Goods Inventory existing as of the Effective Time, or marketing practices or marketing materials for PhosLo Products used prior to the Effective Time;

(iii) any Liabilities to refund or repay, and all Liability associated with, any unreconciled payments, overpayments, duplicate payments, refunds, discounts, rebates or adjustments due to Medicare, Medicaid, Blue Cross Blue Shield, or any other healthcare reimbursement or payment program or intermediary third-party payor, any states, the Veterans Administration, other governmental programs or any other Person in respect of PhosLo Products sold prior to the Effective Time, including any Liabilities to repay any amounts for failure to report correctly average manufacturing price or best price in violation of any Contract or Permit, including the Seller’s Medicaid Rebate Agreement, Pharmaceutical Provider Agreement with the Veterans Administration, or 340B Agreement, in violation of any Legal Requirement with respect to the calculation of reported prices, or any Liabilities for rebates or discounts for PhosLo Products bearing the Seller’s NDC number arising under Part D Rebate Contracts and Commercial Rebate Contracts assigned to the Buyer pursuant to **Section 8.17**;

(iv) any Liabilities relating to investigations of the Seller or any Affiliate of the Seller by any Governmental Authority or relating to any noncompliance by the Seller or any Affiliate of the Seller with Legal Requirements, including applicable healthcare laws and regulations;

(v) any Liabilities arising out of or relating to the conduct of the CARE 2 Study or the EPICK Study prior to the Effective Time;

(vi) any Liabilities (whether assessed or unassessed) of the Seller or any Affiliate of the Seller for any Taxes, including any Taxes arising by reason of the transactions contemplated herein;

- (vii) all Liabilities with respect to the Wholesaler Charges and Discounts in respect of PhosLo Products sold prior to the Effective Time;
- (viii) any product liability relating to or arising out of the sale of PhosLo Products prior to the Effective Time or the sale after the Effective Time of the Finished Goods Inventory existing as of the Effective Time;
- (ix) all Liabilities arising out of or relating to the recall, replacement or return of, or any claim for breach of warranty in respect of or for refund of the purchase price of, the PhosLo Products sold prior to the Closing Date;
- (x) all Liabilities of the Seller or its predecessors arising under any Environmental Laws;
- (xi) any Liabilities attributable to any period prior to the Closing Date that arises out of any Contract, including Assigned Contracts, so long as such Liabilities do not arise as a result of the performance or non-performance of such Assumed Contract by the Buyer after the Closing Date;
- (xii) except as specifically set forth in this Agreement, any Liabilities to former or current officers, directors, employees, shareholders or Affiliates of the Seller or any Affiliate of the Seller, including any Liabilities of the Seller or any Affiliate of the Seller in connection with any Plans or collective bargaining, labor or employment agreement or other similar arrangement, any obligations in respect of retiree health benefits, and any accrued employee paid time off, including for vacation and sick leave;
- (xiii) any Liabilities of the Seller or any Affiliate of the Seller incurred or arising in connection with this Agreement, including any fees or expenses of the Seller or any Affiliate of the Seller incurred in connection with the transactions contemplated herein; and
- (xiv) any Liabilities relating to Excluded Assets.

2.5 Consent of Third Parties. On the Closing Date, the Seller shall assign to the Buyer, and the Buyer shall assume, the Assigned Contracts to the extent provided in this Agreement. To the extent that the assignment of all or any portion of any Assigned Contract shall require the consent of the other party thereto or any other third party, this Agreement shall not constitute an agreement to assign any such Assigned Contract if an attempted assignment without any such consent would constitute a breach or violation thereof. In order, however, to seek to provide the Buyer the full realization and value of every Assigned Contract of the character described in the immediately preceding sentence (i) as soon as practicable after the Closing, the Seller and the Buyer shall cooperate, in all reasonable respects, to obtain any necessary consents to the assignment of the Assigned Contracts, provided that neither party shall be required to make any payments or agree to any material undertakings in connection therewith, and (ii) until all such consents are obtained or all such Assigned Contracts expire or are terminated, the Seller and the Buyer shall cooperate, in all reasonable respects, to provide to the Buyer the benefits under the Assigned Contracts (with the Buyer entitled to all the gains and responsible for all the losses, Taxes and Liabilities thereunder). In connection with clause (ii) of this **Section 2.5**, the Seller shall seek to enforce at

the cost of and for the benefit and risk of the Buyer all claims or rights of the Seller arising under the Assigned Contracts to the extent such claims or rights are included in the Purchased Assets, and the Buyer shall perform and comply with, at the Buyer's cost, all of the Seller's obligations under the Assigned Contracts, to the extent such obligations are Assumed Liabilities as if the Buyer was the Seller thereunder. Nothing in this **Section 2.5** shall in any way diminish the conditions in **Article IX** of this Agreement.

2.6 Registrations and Applicable Permits. On the Closing Date, the Seller shall assign or transfer to the Buyer, and the Buyer shall assume, the Registrations and Assigned Permits to the extent provided in this Agreement to the extent that they are assignable, provided, however, that the Buyer will reimburse the Seller on the Closing Date for the portion of the fees paid by the Seller in respect of periods after the Effective Time under the Prescription Drug User Fee Act. To the extent that the assignment or transfer of all or any portion of any Registration or Permit shall require the consent of the other party thereto or any other third party, this Agreement shall not constitute any agreement to assign or transfer any such Registration or Permit if an attempted assignment or transfer without any such consent would constitute a breach or violation thereof. In order, however, to seek to provide the Buyer the full realization and value of every Registration and Permit of the character described in the immediately preceding sentence (i) as soon as practicable after the Closing, the Seller and the Buyer shall cooperate, in all reasonable respects, and use best efforts to obtain, at the earliest possible date, any necessary consents to the assignment or transfer of the Registrations and Permits, provided that neither party shall be required to make any payments or agree to any material undertakings in connection therewith, and (ii) until all such consents are obtained or all such Registrations and Permits expire or are terminated, the Seller and the Buyer shall cooperate, in all reasonable respects, to provide to the Buyer the benefits under the Registration and Permits (with the Buyer entitled to all the gains and responsible for all the losses, Taxes and Liabilities thereunder). In such event, the Buyer shall perform and comply with, at the Buyer's cost, all of the Seller's obligations under the Registrations and Permits to the extent such obligations are Assumed Liabilities, as if the Buyer was the Seller thereunder. Nothing in this **Section 2.6** shall in any way diminish the conditions in **Article IX** of this Agreement.

ARTICLE III

PURCHASE PRICE AND CLOSING

3.1 Purchase Price. In consideration of the transfer to the Buyer of the Purchased Assets and the covenants of the Seller set forth herein, and subject to the terms and conditions of this Agreement, the Buyer shall pay or cause to be paid to the Seller the following amounts (together, the "**Purchase Price**");

(a) \$65,000,000 in cash on the Closing Date (the "**Closing Payment**");

(b) the following amounts payable within ten (10) Business Days of notification of the achievement of each of the following Milestones; provided, however, that the payment due in connection with the achievement prior to the Closing Date of the Milestone in **Section 3.1(b)(i)** shall be payable on the Closing Date or within five (5) Business Days after the Closing Date:

(i) \$5,000,000 upon completion of Data Lock related to the EPICK Study;

(ii) \$2,500,000 upon submission to the FDA of an application seeking FDA Approval to market PhosLo GelCaps for use by chronic kidney disease, stage 4 patients, which application meets the requirements of 21 CFR Part 3.14 and other relevant FDA guidance and has been prepared in accordance with normally accepted industry standards for such applications, but only if such application is submitted by December 31, 2009;

(iii) \$2,500,000 upon FDA Approval to market a PhosLo Product for use by chronic kidney disease, stage 4 patients, but only if such FDA Approval is obtained by the tenth anniversary of the date hereof;

(iv) \$2,500,000 upon presentation of the CARE 2 Study abstract at the American Society of Nephrology 2006 meeting or cancellation of the meeting by ASN;

(v) \$2,500,000 upon acceptance and publication of the CARE 2 Study by a mutually agreed upon third party peer reviewed medical journal, but only if published by December 31, 2010;

(vi) \$5,000,000 within ten Business Days after the first commercial sale of a New Formulation Product by the Buyer or its Affiliates or their licensees or assignees, but only if such first commercial sale is made by the tenth anniversary of the date hereof; and

(c) deferred payments (the “**Deferred Payments**”) equal to [*****] of the annual New Formulation Net Sales in excess of \$32,000,000 in each such calendar year during the period (the “**Deferred Payment Period**”) from the Closing Date through the earlier to occur of (a) receipt by the Seller of Closing Payments, Milestone Payments and Deferred Payments totaling \$150,000,000, and (b) the tenth anniversary of the Closing Date. Notwithstanding the foregoing, the \$32,000,000 threshold for the calendar year that includes the tenth anniversary of the Closing Date shall be prorated and reduced by multiplying \$32,000,000 by a fraction equal to the total number of days between January 1, 2016 and the tenth anniversary of the Closing Date (inclusive) divided by 366. In no event shall the Buyer be obligated to pay the Seller Closing Payments, Milestone Payments and Deferred Payments of more than \$150,000,000.

(d) The Buyer agrees that it shall have no right to set-off or apply against any Milestone Payment or Deferred Payment that the Buyer is obligated to make to the Seller under this Agreement after the Closing any amounts owed to the Buyer or its Affiliates by the Seller (including, without limitation, any indemnification obligation of the Seller under **Section 10.2**) unless and until such amount(s) shall have been reduced to an arbitration award or judgment.

3.2 Reports; Payments.

(a) Each party shall notify the other in writing whenever it believes that the Buyer has earned a Milestone Payment (including the Milestone in **Section 3.1(b)(i)**), together with reasonably detailed information supporting the achievement of the corresponding Milestone. Except with respect to the Milestone in **Section 3.1(b)(i)**, the Seller shall not notify the Buyer of the achievement of any Milestone before the Closing Date. Except as otherwise provided in **Section 3.1(b)(i)**, within ten (10) Business Days of the notice of

achievement of a Milestone, the Buyer shall either pay the Seller the Milestone Payment or, if the Buyer disputes whether the Seller has earned the Milestone Payment, provide the Seller with written notice of its objections to payment of the Milestone Payment, with reasonably detailed supporting information.

(b) The Buyer shall deliver to the Seller, within forty-five (45) days after the last day of each calendar quarter (or partial quarter) that ends during the Deferred Payment Period, a statement in the form attached hereto as **Schedule 3.2** (each, a “**New Formulation Net Sales Statement**”), setting forth (i) the gross amount of invoiced sales for each New Formulation Product (including unit quantities) for the year to date and the quarter then ended, (ii) the Net Sales Deductions for each such period (which deductions shall be aggregated by category), and (iii) the calculation of the related Deferred Payment then due, if any. For the avoidance of doubt the Seller agrees that no Deferred Payments shall be due in respect of any quarter unless the New Formulation Net Sales Statement delivered for such quarter establishes that the New Formulation Net Sales for the period from January 1 of such year through the end of such quarter exceed \$32,000,000. If a New Formulation Net Sales Statement shall establish that Deferred Payments are due, then the Buyer shall pay such Deferred Payments to the Seller within ten days of its receipt of such New Formulation Net Sales Statement. The parties agree that the first Deferred Payment hereunder and the associated statement shall be made by the Buyer with respect to the quarter ending after the first commercial sale of a New Formulation Product.

(c) Any disputes regarding the right to receive any of the foregoing payments that cannot be settled amicably between the parties shall be resolved by arbitration in accordance with the arbitration procedures set forth in **Sections 10.5(b)** through **10.5(i)**.

3.3 Books and Records; Audits. For a period of not less than three years after the relevant calendar year, the Buyer and its subsidiaries and Affiliates and its and their licensees that sell PhosLo Products and New Formulation Products shall keep full, true and accurate books of account sufficient to determine the amounts payable pursuant to **Section 3.1**. The Seller shall have the right, not more than once during any calendar year, to have the books and records of the Buyer, its subsidiaries and Affiliates and its and their licensees audited by a qualified independent accounting firm of the Seller’s choosing, subject to the Buyer’s approval, which approval shall not be unreasonably withheld or delayed, under appropriate confidentiality provisions, to ascertain the accuracy of the reports and payments under **Section 3.2** and compliance by the Buyer with its obligations under **Section 3.1**. Such audit shall be conducted upon at least ten days’ advance notice during normal business hours and in a manner that does not interfere unreasonably with the business of the audited entity. Subject to the Buyer’s right to dispute such amounts, any underpayment determined by such audit shall promptly be paid by the Buyer. The Seller shall pay for the costs of such audit unless such audit shall establish an underpayment to the Seller in any calendar year of more than the greater of (i) 10% of the correct Deferred Payment and (ii) \$50,000, in which event the Buyer shall reimburse the Seller for not more than \$20,000 of the Seller’s out-of-pocket costs incurred in connection with conducting such audit.

3.4 Payments. Payments of Purchase Price shall be made by wire transfer to an account or accounts designated by the Seller at least two Business Days prior to the payment due date.

3.5 Allocation of Closing Payment. The parties shall allocate the Closing Payment among the Purchased Assets and the Seller's covenants as indicated on **Schedule 3.5**. The parties agree to report the transactions contemplated by this Agreement for income Tax purposes in accordance with such allocation pursuant to Section 1060 of the Code and the regulations thereunder, and agree not to take, in any filing with or accompanying any Tax Return reporting any part of the transactions contemplated herein, a position inconsistent with such allocations.

3.6 Freedom to Conduct Business Unimpaired. Subject to the terms of this Agreement, including **Sections 8.10** and **8.11**, the Seller acknowledges and agrees that the Buyer and its Affiliates shall be free to pursue their respective business goals and that New Formulation Net Sales may be affected thereby. Accordingly, this Agreement shall not be deemed to impose any express or implied obligation on the Buyer or any of its Affiliates to maximize New Formulation Net Sales for all or any portion of the Deferred Payment Period or to impair the freedom of the Buyer and its Affiliates to conduct their respective businesses as they deem appropriate.

ARTICLE IV

CLOSING

4.1 Closing. The closing of the purchase and sale of the Purchased Assets and the consummation of the other transactions contemplated herein (the "Closing") shall take place on October 18, 2006, or, if all of the conditions to the obligations of the parties to consummate the transactions contemplated hereby (excluding the delivery of any documents to be delivered at the Closing by any of the parties, it being understood that the occurrence of the Closing shall remain subject to the delivery of such documents) have not been satisfied in full or waived by such date, on such mutually agreeable later date as soon as practicable (but in no event more than three Business Days) after the first date on which the conditions to the obligations of the parties to consummate the transactions contemplated hereby (excluding the delivery of any documents to be delivered at the Closing by any of the parties, it being understood that the occurrence of the Closing shall remain subject to the delivery of such documents) have been satisfied or waived (the "Closing Date"), at the offices of Nutter McClennen & Fish LLP, in Boston, Massachusetts, beginning at 10:00 a.m., local time. The Closing shall be effective as of the Effective Time.

4.2 Closing Obligations. At the Closing:

(a) The Seller shall deliver (or cause to be delivered) to the Buyer:

(i) the various certificates, instruments and documents required to be delivered under **Section 9.3**;

(ii) a Non-solicitation and Non-competition Agreement in the form attached hereto as **Exhibit 4.2(a)(ii)** (the "**Noncompetition and Nonsolicitation Agreement**")

(iii) a letter from the Seller in the form attached hereto as **Exhibit 4.2(a)(iii)**, notifying the FDA of the transfer of the rights to the Registrations to the Buyer;

- (iv) a Bill of Sale in the form attached hereto as **Exhibit 4.2(a)(iv)** (the “**Bill of Sale**”);
 - (v) a Patent Assignment Agreement in the form attached hereto as **Exhibit 4.2(a)(v)** (the “**Patent Agreement**”);
 - (vi) a Trademark Assignment Agreement in the form attached hereto as **Exhibit 4.2(a)(vi)** (the “**Trademark Agreement**”);
 - (vii) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit 4.2(a)(vii)** (the “**Assumption Agreement**”);
 - (viii) a Transition Services Agreement in the form attached hereto as **Exhibit 4.2(a)(viii)** (the “**Transition Services Agreement**”);
 - (ix) such other instruments of conveyance, consent, and acknowledgement as may be required to convey all of the Purchased Assets to the Buyer, to permit the Buyer to record or register all registrable Purchased Proprietary Rights and to put the Buyer in possession and control of all of the Purchased Assets of a tangible nature, including documents and data in electronic formats, to the extent that such documents and data are in electronic formats;
 - (x) original executed versions of the Assigned Contracts except for those that are not in the Seller’s possession, as indicated on **Schedule 2.2(e)**; and
 - (xi) copies of the Software listed on **Schedule 4.2(a)(xi)** (the Buyer acknowledging that such copies of Software will be provided by the Seller without any representation or warranty of any kind including as to any title or right of the Seller or the Buyer to use such Software).
- (b) The Buyer shall deliver (or cause to be delivered) to the Seller:
- (i) The various certificates, instruments and documents required to be delivered under **Section 9.2**;
 - (ii) The Assumption Agreement;
 - (iii) The Noncompetition and Nonsolicitation Agreement;
 - (iv) The Transition Services Agreement;
 - (v) A letter from the Buyer to the FDA in the form attached hereto as **Exhibit 4.2(b)(v)**, notifying the FDA of the transfer of the Registrations to the Buyer; and
 - (vi) The Closing Payment.

(c) The agreements and instruments referred to in **Sections 4.2(a)(ii)** through **(viii)** and **Section 4.2(b)(v)**, together with this Agreement, are referred to herein as the **“Transaction Agreements.”**

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as disclosed on **Schedule 5** hereto (the **“Seller Disclosure Schedule”**) the Seller represents and warrants to the Buyer the following:

5.1 Organization and Good Standing. The Seller is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, as indicated in the introductory paragraph of this Agreement. The Seller has full corporate power and authority necessary to enable it to own, lease or otherwise hold its properties and assets (including the Purchased Assets) and to carry on the PhosLo Business as presently conducted. The Seller is duly qualified to do business as a foreign corporation in all the states, provinces and jurisdictions in which such qualification is necessary because of the operation of the PhosLo Business, the ownership or use of the Purchased Assets or otherwise.

5.2 Authority Relative to this Agreement. The Seller has full corporate or other power and authority to execute, deliver and perform this Agreement and the other Transaction Agreements and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Seller of the Transaction Agreements and the consummation of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate or other action on its part and no other further authorization or consent of the Seller or its board of directors, lenders or stockholders will be necessary. This Agreement has been, and each other Transaction Agreement will be, duly executed and delivered by the Seller and constitutes, and such other Transaction Agreement will constitute, the legally valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or other laws of general applicability affecting creditors' rights and by general principles of equity.

5.3 Consents and Approvals; No Violations.

(a) Subject to compliance with the applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the **“HSR Act”**), there is no requirement applicable to the Seller to make any filing with, or to obtain any permit, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated hereby.

(b) The execution, delivery and performance of each Transaction Agreement by the Seller and the Seller's compliance with the terms thereof will not: (i) conflict with any provision of the articles of incorporation, bylaws or other governing documents of the Seller; (ii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to terminate or modify, result in the loss of any rights under, or require any notice, consent or waiver under, any Assigned Contract or any Assigned Permit; (iii) contravene, conflict with, violate, or

give any Governmental Authority or other Person the right to challenge any of the transactions contemplated hereby or exercise any remedy (including revocation, withdrawal, suspension or modification of any Permit) or obtain any relief under, any Legal Requirement applicable to the Seller; (iv) violate any Order specifically naming the Seller or any of its properties or assets; or (v) result in the creation or imposition of any Lien of any nature upon any of the Purchased Assets.

5.4 Purchased Assets.

(a) Tangible Assets. **Schedule 5.4(a)** lists or describes, as of the Closing Date, each item of the Purchased Assets that is tangible personal property (other than Inventory). The Fixed Assets listed on **Schedule 2.2(q)** are all of the Fixed Assets owned or leased by the Seller that are used primarily in connection with the PhosLo Business. All such Purchased Assets are in good working order and condition, reasonable wear and tear excepted.

(b) Title. The Seller has the right to sell and transfer to the Buyer good title to the Purchased Assets, free and clear of all Liens except for Liens for Taxes not yet due and payable. The delivery to the Buyer of the instruments of transfer of ownership contemplated by this Agreement will vest good title to the Purchased Assets in the Buyer, free and clear of all Liens except for Liens for Taxes not yet due and payable and Liens arising solely by actions or failures to act of the Buyer.

(c) Sufficiency. Except for the Excluded Assets and for the Seller's assets that are used in connection with the provision of the corporate overhead and administrative services and the assets listed or described in **Schedule 5.4(c)**, the Purchased Assets constitute all of the assets necessary for the continued conduct of the PhosLo Business by the Buyer after the Closing in substantially the same manner as conducted by the Seller prior to the Closing. The telephone numbers and telephone directory listings listed on **Schedule 2.2(r)** are all of the telephone numbers and telephone directory listings that are used by the Seller primarily in connection with the PhosLo Business.

5.5 Real Property. [Intentionally Blank].

5.6 Intellectual Property.

(a) Ownership and Right to Use. The Seller owns or has the right to use on a worldwide basis all of the Proprietary Rights included within the Purchased Assets (the "**Purchased Proprietary Rights**"). The Purchased Proprietary Rights include all of the Proprietary Rights necessary for the continued conduct of the PhosLo Business by the Buyer after the Closing in substantially the same manner as conducted by the Seller prior to the Closing. None of the Purchased Proprietary Rights will lapse, be terminable, be diminished or limited or be subject to any additional restrictions as a result of the Closing and the assignment of the Purchased Proprietary Rights to the Buyer. Each Person under Seller's control, if any, who has participated in the creation, development, testing, modification or documentation of any PhosLo Product or New Formulation Product has entered into an enforceable agreement with the Seller assigning to the Seller, or is required by Legal Requirement to assign to the Seller, any of such Person's rights in the Purchased Proprietary Rights.

(b) Marks and Trade Names. **Schedule 5.6(b)** lists each Mark, trade name and domain name that has been used by the Seller since August 4, 2003 to identify the PhosLo Business or the PhosLo Products and lists each registration that has been filed or obtained by the Seller with respect to any such Marks. All such pending and registered Marks are valid. To the Knowledge of the Seller, no other Person is using a confusingly similar Mark to describe products that are similar to the PhosLo Products.

(c) Patents. **Schedule 5.6(c)** lists each Patent owned or licensed by the Seller and used in or in connection with the PhosLo Business, specifies whether each such Patent is owned or licensed by the Seller and lists each country in which each such issued Patent has been issued. Each such issued Patent is valid and enforceable with regard to its coverage of the applicable PhosLo Product. Each Contract pursuant to which the Seller licenses any Patent included within the Purchased Proprietary Rights grants the Seller the unrestricted right to carry on any business within the scope of the inventions covered by such Patent in the countries in which the Patent is valid. Neither the Seller nor, to the Knowledge of the Seller, anyone acting on its behalf in a representative capacity, has knowledge of any material misrepresentation made to any Governmental Authority in connection with the procurement of any Patent included in the Purchased Proprietary Rights.

(d) Copyrights. **Schedule 5.6(d)** lists each Copyright registration included within the Purchased Proprietary Rights.

(e) Trade Secrets. The Seller has taken efforts that are reasonable under the circumstances to prevent the unauthorized disclosure to any other Person of such portions of the Seller's Trade Secrets included in the Purchased Assets as would enable any other Person to compete with the Seller within the scope of the PhosLo Business as now conducted and as presently proposed to be conducted. Each current or former Employee and independent contractor of the Seller engaged principally in the operation of the PhosLo Business has executed a confidentiality agreement with the Seller or is subject to an obligation of confidentiality.

(f) Agreements with Other Persons. **Schedules 5.6(c)** and **5.6(f)** list each Contract pursuant to which the Seller has licensed or otherwise acquired the right to use any Purchased Proprietary Rights that are not owned by the Seller. The Seller has performed the obligations required to be performed by it under the terms of each such Contract, and neither the Seller nor, to the Knowledge of the Seller, any other party to any such Contract is in default under any such Contract. Except as disclosed in **Schedule 5.6(f)** or as set forth in the Contracts listed in **Schedule 5.6(f)**, the Seller has no obligation to pay any royalty or other fee to any Person relating to any of the Purchased Proprietary Rights and is not under any obligation to any other Person to register, protect or otherwise take any action with respect to any of the Purchased Proprietary Rights. There is no Contract, other than those Contracts listed in **Schedules 5.6(c)** and **5.6(f)**, that grants any Person a license in any of the Purchased Proprietary Rights or that imposes any restriction or limitation upon the Seller relating to its use of the Purchased Proprietary Rights. The Seller is not required to pay any royalty or other similar recurring payment to any other Person in connection with developing, making, having made, using, importing, distributing,

offering for sale or selling the PhosLo Products or a New Formulation Product, except for (i) payments to Governmental Authorities pursuant to requirements of general application to Persons engaged in developing, making, having made, using, importing, distributing, offering for sale or selling pharmaceutical products, and (ii) administrative payments made to Governmental Authorities in the ordinary course, such as patent maintenance fees.

(g) **No Infringement.** The Seller's operation of the PhosLo Business in the United States and Canada does not conflict with, infringe upon, contribute to or induce the infringement of, or misappropriate or violate any Patent, Mark, trade name, Copyright, Trade Secret or other proprietary right of any other Person; provided that any representation and warranty made in this sentence with respect to New Formulation Products is made solely to the Knowledge of the Seller. Since August 4, 2003, the Seller has not received notice of a pleading or threatened claim, interference action or other judicial or adversarial proceeding claiming that (i) the development, manufacture, marketing, sale, distribution, promotion and/or use of the PhosLo Products or the development of the New Formulation Products infringes any Patent, Mark, trade name, Copyright, Trade Secret or other proprietary right of any other Person, or (ii) the Seller has misappropriated or is misappropriating or otherwise improperly using the Trade Secrets, formulae or proprietary rights of any other Person with respect to the development, manufacture, marketing, sale, distribution, promotion and/or use of the PhosLo Products or the development of New Formulation Products. There is no pending or threatened claim by the Seller against any other Person for infringement, misuse, violation or misappropriation of the Purchased Proprietary Rights and, to the Knowledge of the Seller, no facts or circumstances exist or are threatened that, with or without the passing of time or the giving of notice or both, might reasonably serve as the basis for any such claim.

5.7 Software. Schedule 5.7 lists all Proprietary Software and all Third-Party Software used by the Seller in connection with the PhosLo Business, other than unmodified versions of publicly available word processing, accounting, communications and similar software.

5.8 Permits.

(a) **Schedule 5.8(a)** lists all of the Permits. The Permits constitute all of the licenses, permits, authorizations, registrations, certifications, certificates of occupancy, franchises and approvals of any nature from Governmental Authorities that are necessary to enable the Seller to own, lease or otherwise hold its assets, to carry on the PhosLo Business as presently conducted including all rights to receive payment from private and Healthcare Governmental Authorities for PhosLo Products.

(b) Each Permit is in full force and effect. Since August 4, 2003, no violations of any Permit have occurred or, to the Knowledge of the Seller, have been alleged to have occurred. No Proceedings are pending or, to the Knowledge of the Seller, threatened that would have the effect of revoking or limiting or affecting the transfer or renewal of any Permit. No Permit is subject to any restrictions or conditions that would limit the PhosLo Business as presently conducted. Each Permit may be assigned to the Buyer without the consent of any Person other than the Seller. Each Permit shall be in full force and effect immediately subsequent to the Closing and shall not be subject to any additional restriction or condition as a result of their assignment to the Buyer.

5.9 Contracts.

(a) Each of the Seller's Contracts relating principally to the PhosLo Business is disclosed in **Schedule 5.9(a)**. True and correct copies of the written Contracts have been made available to the Buyer by the Seller.

(b) Each Assigned Contract is a legal, valid and binding obligation of the Seller and is enforceable by the Seller against the other party or parties to such Assigned Contract in accordance with its terms (except as its enforceability may be limited by applicable bankruptcy, insolvency or other laws of general applicability affecting creditors' rights and by general principles of equity).

(c) There is no event of default or breach by the Seller or, to the Knowledge of the Seller, any other Person under any Assigned Contract and no facts or circumstances exist that, with the passage of time or the giving of notice or both, would constitute an event of default or breach. The Seller has not received notice that the Seller is in default under or in breach of any Assigned Contract or received notice of the termination of any such Assigned Contract. The Seller has not given notice to any other party to any of the Assigned Contracts that such other party is in default thereunder or in breach thereof or given notice of the termination thereof. The Seller has not received from any other party to any of the Assigned Contracts notice of any actual or potential claim relating to (i) any breach by the Seller of any warranty or any applicable standard of care or (ii) any negligence or similar claim arising in relation to any Assigned Contract. The Seller has no Knowledge of any facts or circumstances that could give rise to any one or more of the claims set forth in this paragraph.

(d) With respect to any and all Contracts (including Excluded Contracts) relating to the PhosLo Business (i) the Seller is not a party to and has not received notice of the commencement of any debarment proceeding or governmental investigation or action (including any civil investigative demand or subpoena under the False Claims Act (31 U.S.C. §3729, *et seq.*), Anti-Kickback Act (42 U.S.C. §1320a-7(b)), The Stark Law (42 U.S.C. §1395nn), Civil Monetary Penalties Law (42 U.S.C. §1320a-7(a)), the Foreign Corrupt Practices Act (15 U.S.C. §§78m, 78dd-1-3 and 78ff), Truth in Negotiations Act (10 U.S.C. §§2306 and 2306a) or otherwise), and no grounds for any such Proceeding, investigation, or action exist and (ii) the Seller is in compliance in all material respects with all of the terms, conditions and other requirements of such Contracts and all Legal Requirements relating thereto.

(e) The Seller has the right to assign to the Buyer each of the Assigned Contracts without the consent of any Person and, upon such assignment at Closing in the manner contemplated by this Agreement, the Buyer shall have all of the rights of the Seller thereunder. No Assigned Contract may be terminated by any other party thereto as a result of the transactions contemplated by this Agreement.

(f) There have been no indemnification claims made by the Seller against Braintree or its Affiliates under or in connection with the Asset Purchase Agreement, dated June 23, 2003, between the Seller and Braintree (the “**Braintree Purchase Agreement**”).

5.10 Financial Statements. Schedule 5.10 sets forth the Seller’s gross revenue, net revenue, cost of sales and gross margin of the PhosLo Product for the periods therein specified, determined in accordance with GAAP applied on a consistent basis.

5.11 Books and Records. All the books and records of the Seller respecting the PhosLo Business have been maintained in the ordinary course of business consistent with the past practices and do not contain any material inaccuracies, discrepancies or omissions. The Seller has records that accurately and validly reflect its transactions, and accounting controls sufficient to insure that such transactions are (i) executed in accordance with management’s general or specific authorization, and (ii) recorded in conformity with GAAP so as to maintain accountability for assets.

5.12 Taxes. There are no Liens with respect to Taxes (except for Liens for Taxes that are not yet delinquent) upon any of the Purchased Assets. Schedule 5.12 lists each jurisdiction in which the Seller collects, or is registered to collect, sales Taxes in respect of sales of the PhosLo Products.

5.13 Liabilities. [Intentionally Blank].

5.14 Product Liability; Litigation. Schedule 5.14 lists each (a) product liability claim (including any claim based on strict products liability, negligence, other tort theories, breach of express or implied warranty) that has been asserted in writing against the Seller or, to the Knowledge of the Seller, against any other Person, relating to the PhosLo Products since August 4, 2003; (b) Order of any Governmental Authority, or any formal investigation conducted by any Governmental Authority and any subpoena in connection therewith, since August 4, 2003 that specifically names the Seller or, to the Knowledge of the Seller, any other Person and relates to the PhosLo Business; and (c) Proceeding by or before any Governmental Authority to which the Seller or, to the Knowledge of the Seller, any other Person is or has been a party since August 4, 2003 that relates to the PhosLo Business. Since August 4, 2003, neither the Seller nor, to the Knowledge of the Seller, any other Person has received written notice alleging the need for any recall arising out of, and neither the Seller nor, to the Knowledge of the Seller, any other Person has been held liable for, any injury to individuals or property as a result of the ownership, possession or use of any PhosLo Product developed, manufactured, sold, leased or delivered in connection with the PhosLo Business.

5.15 Litigation. Since August 4, 2003, there have been no Proceedings pending, or to the Knowledge of the Seller, threatened, by or against or affecting the Seller that relate to any of the Purchased Assets or the PhosLo Business or seeking to enjoin the consummation of the transactions contemplated hereunder. To the Knowledge of the Seller, no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

5.16 Regulatory Compliance.

(a) The Seller has made available to the Buyer true and correct copies of the NDAs and drug master files and has made available to the Buyer copies of material written communications between the Seller, Braintree or any third party manufacturer of the PhosLo Products, on the one hand, and the FDA or any other applicable Medical Product Regulatory Authority, on the other hand, since May 8, 1989 (the “**NDA Filing Date**”), and any existing written summaries of material discussions between such parties since the NDA Filing Date, that describe matters that are material to assessing compliance of the Seller’s or Braintree’s operation of the PhosLo Business or any third party manufacturer’s production of the PhosLo Products with the FD&C Act and its implementing regulations, including copies of (i) all warning letters, notices of adverse findings and similar correspondence received by the Seller, Braintree or such third party manufacturer from the FDA since the NDA Filing Date, (ii) all audit reports relating to audits for compliance with the FD&C Act performed since the NDA Filing Date and submitted to the FDA and (iii) any document concerning any significant oral or written communication received from the FDA by the Seller, Braintree or a third party manufacturer since the NDA Filing Date; provided, however, that the Seller’s representations hereby with respect to Braintree and each other third party manufacturer are limited to matters as to which the Seller has Knowledge.

(b) The Seller’s operation of the PhosLo Business is in material compliance with all FDA and other comparable state and local Legal Requirements applicable to the PhosLo Business, including, but not limited to, FDA and comparable state and local rules and regulations relating to clinical investigations, Good Practices, advertising and promotion, pre- and post-marketing adverse drug experience and adverse drug reaction reporting, and all other pre- and post-marketing reporting requirements, as applicable. The Seller knows of no material adverse side effects from the use of the PhosLo Products which are not disclosed in the package insert for the PhosLo Products which are required to be disclosed in the package insert for the PhosLo Products under the FD&C Act.

(c) Neither the Seller nor, to its Knowledge, Braintree or any third party manufacturer of the PhosLo Products, is in receipt of written unresolved notice of, or is Known by the Seller to be subject to any written, adverse inspection, finding of deficiency, finding of non-compliance, compelled or voluntary recall, investigation, penalty for corrective or remedial action or other compliance or enforcement action, in each case relating to the PhosLo Products or to the facilities in which such products are developed, manufactured, collected or handled, by any applicable Medical Product Regulatory Authority. There are no pending or, to the Seller’s Knowledge, threatened Proceedings or complaints by any applicable Medical Product Regulatory Authority related to the Seller, Braintree or any third party manufacturer which would prohibit or impede the conduct of the PhosLo Business as it is currently conducted or would reasonably be expected to result in a Material Adverse Effect.

(d) The Seller has not made any false statements on, or material omissions from, any applications, approvals, reports and other submissions to any applicable Medical Product Regulatory Authority or in or from any other records and documentation prepared or maintained to comply with the requirements of any applicable Medical Product Regulatory Authority relating to its PhosLo Products.

(e) Since August 4, 2003, the Seller has not received any written notification from the FDA or any other applicable Medical Product Regulatory Authority indicating that any of its PhosLo Products is misbranded or adulterated as defined in the FD&C Act.

(f) **Schedule 5.16(f)** lists all approvals for the manufacture, distribution, advertising, importation and sale of PhosLo Products by any Medical Product Regulatory Authority; provided that any representation and warranty made in this sentence with respect to the manufacture of of PhosLo Products is made solely to the Knowledge of the Seller. The PhosLo Products have been approved by the FDA for sale in the United States and the PhosLo Tablets have been approved by the applicable Medical Product Regulatory Authority for sale in Canada. The PhosLo Products marketed and sold by the Seller in the United States during the twelve month period immediately preceding the Closing Date have been manufactured and sold in compliance, in all material respects, with the FDA Approval criteria for PhosLo Products. The PhosLo Products marketed and sold by the Seller in Canada during the twelve month period immediately preceding the Closing Date have been manufactured and sold in compliance, in all material respects, with the Clinical Trials and Special Access Program, Therapeutic Products Directorate.

(g) Neither the Seller nor, to the Seller's Knowledge, any other Person has received any material adverse events reports pertaining to the PhosLo Products since August 4, 2003.

(h) The Seller has completed and timely filed all annual or other reports required by the FDA or other Medical Product Regulatory Authority in order to maintain the Registrations.

5.17 Compliance.

(a) The Seller is in compliance in all material respects with all applicable Legal Requirements relating to the PhosLo Products or the PhosLo Business, including all applicable safety, and equal opportunity laws (including affirmative action compliance), ERISA, the Stark Law (42 U.S.C. § 1395nn), the federal Anti-Kickback Law (42 U.S.C. § 1320a-7b), the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d through d-8), the regulations contained in 45 C.F.R. Parts 160 and 164, the regulations contained in 45 C.F.R. Parts 160 and 162, applicable state privacy laws, and the False Claims Act (31 U.S.C. § 3729, *et seq.*), and to the Knowledge of the Seller no facts or circumstances exist that, with or without the passing of time or the giving of notice or both, might reasonably serve as the basis for any claim that the Seller is not in compliance in all material respects with any such Legal Requirement. The Seller has not received any written communication from a Governmental Authority that alleges that it is not in compliance with any Legal Requirement relating to the PhosLo Products or the PhosLo Business or informs the Seller is under investigation by a Governmental Authority with respect thereto. The Seller has delivered to the Buyer complete and accurate copies of all surveys, reports or deficiency notices concerning the PhosLo Business for the past three years by the Medicare program, the Medicaid program, any state survey agency, or any accrediting body.

(b) The Seller has not been investigated, charged or implicated in any material violation of any Legal Requirement relating to the PhosLo Products or the PhosLo Business involving false, fraudulent or abusive practices, including false or fraudulent billing practices, relating to its participation in state or federally sponsored reimbursement programs. The Seller has properly and legally

billed all Governmental Authorities, intermediaries and third-party payors for services rendered relating to the PhosLo Products or the PhosLo Business and has maintained its records to reflect such billing practices. Neither the Seller nor any officer, director or Employee has engaged on behalf of the Seller in any of the following relating to the PhosLo Products or the PhosLo Business: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under the Medicare or Medicaid program; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under the Medicare or Medicaid program; (iii) failing to disclose knowledge of any event affecting the initial or continued right to any benefit or payment under the Medicare or Medicaid program on its own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting, paying, or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (x) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid, or (y) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by Medicare or Medicaid; (v) presenting or causing to be presented a claim for reimbursement for services that is for an item or service that was known or should have been known to be (x) not provided as claimed, or (y) false or fraudulent; or (vi) knowingly and willfully making or causing to be made or inducing or seeking to induce the making of any false statement or representation (or omitting to state a fact required to be stated therein or necessary to make the statements contained therein not misleading) of a material fact with respect to (x) a facility in order that the facility may qualify for Healthcare Governmental Authority certification, or (y) information required to be provided under 42 USC §1320a-3.

(c) The Seller has filed all filings of required cost, government or other reports required to be filed under the Medicare and Medicaid programs and state survey programs due prior to the Closing Date with respect to the PhosLo Products or the PhosLo Business. There are no claims, actions, payment reviews, or appeals pending or, to the Knowledge of the Seller, threatened before any commission, board or agency including any fiscal intermediary or carrier, the Administrator of CMS or any other Governmental Authority with respect to any Medicare or Medicaid claims filed by the Seller on or before the Effective Time or program compliance matters, which could materially adversely affect the Purchased Assets, the operation of the PhosLo Business, or the consummation of the transactions contemplated hereby. No validation review or program integrity review related to the Seller with respect to the PhosLo Products or the PhosLo Business has been conducted by any commission, board or agency in connection with the Medicare or Medicaid program, and no such reviews are scheduled, pending or, to the Knowledge of the Seller, threatened against or affecting the Seller with respect to the PhosLo Products or the PhosLo Business, or the consummation of the transactions contemplated hereby.

(d) Neither the Seller or any of its Employees, nor to the Seller's Knowledge any of its agents or contractors, (i) has ever been excluded, suspended, debarred or otherwise ineligible to participate in any federal or state funded healthcare program nor, to the Knowledge of the Seller, is any such exclusion or suspension threatened; or (ii) has ever been convicted of a criminal offense related to the provision of healthcare items or services.

(e) The Seller has made available to the Buyer a copy of its current compliance program materials with respect to the PhosLo Products or the PhosLo Business, including all ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms and disciplinary policies. The Seller has a current Compliance Program with respect to the PhosLo Products or the PhosLo Business, the materials for which include ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms and disciplinary policies with respect to the PhosLo Products or the PhosLo Business. With respect to the PhosLo Products and the PhosLo Business the Seller (i) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services, (ii) has no reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority, (iii) to the Knowledge of the Seller, has not been the subject of any government payor program investigation conducted by any Governmental Authority, (iv) has not been a defendant in any *qui tam* or False Claims Act litigation, (v) has not been served with or received any search warrant, subpoena, civil investigative demand, contact letter or, to the Knowledge of the Seller, telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the PhosLo Business), and (vi) has not received any complaints (written, through the Seller's compliance hotline, or communicated during employee interviews or otherwise) from employees, independent contractors, vendors, physicians or any other person that would indicate that the Seller has violated any Legal Requirement. **Schedule 5.17** contains a description of each audit and investigation conducted by the Seller with respect to the PhosLo Products or the PhosLo Business pursuant to its Compliance Program outside the ordinary course of business.

5.18 Clinical and Scientific Data; Good Practices.

(a) The Seller has made available to the Buyer all available laboratory and all clinical data, including raw data and reports created by the Seller or any third party on behalf of the Seller or in the possession of the Seller, in connection with the PhosLo Products or New Formulation Products ("**Scientific Data**"). **Schedule 5.18(a)** identifies each clinical study of the PhosLo Products or New Formulation Products, whether or not complete, conducted or sponsored by the Seller or, to the Knowledge of the Seller, any other Person, indicating, in each case, the location of the study, the principal investigator, the number of patients included in the study, the period covered by the study and a brief description of the study design.

(b) The Seller either owns or has full rights of access to and possession of all Scientific Data created by the Seller, Braintree or any third party on behalf of the Seller or Braintree in connection with the PhosLo Products.

(c) The clinical studies conducted, and all Scientific Data created from such studies, by the Seller in connection with the PhosLo Products have been conducted, kept and maintained by the Seller in a manner that complies in all material respects with Good Practices and, to the Knowledge of the Seller, all clinical studies conducted, and all Scientific Data created in such studies, in connection with PhosLo Products by Braintree or by any third party on behalf of the Seller or Braintree have been conducted, kept and maintained in a manner that complies in all material respects with Good Practices.

(d) The Scientific Data is (i) not materially and adversely different from the presentation thereof contained in the NDA and (ii) does not identify any adverse event reports that are materially more adverse than those adverse event reports documented as a result of commercialization of the PhosLo Products.

5.19 Exports and Customs. The Seller is in compliance in all material respects with applicable export and customs Legal Requirements of the United States and any applicable Canadian Governmental Authority relating to the PhosLo Products. Except in connection with its sales in Canada, the Seller is not the exporter of record of any products or merchandise of the PhosLo Business presently produced, distributed or sold by the Seller.

5.20 Warranty Claims. Schedule 5.20 sets forth the Seller's current product warranty and the aggregate amounts incurred by the Seller in fulfilling warranty obligations in respect of the PhosLo Products in each full fiscal year since August 4, 2003 and during the eight-month period ended August 31, 2006. There are no outstanding material warranty claims. The Seller has no Knowledge of any reason to believe that amounts expensed in fulfilling warranty obligations in respect of the PhosLo Products will materially increase as a percentage of sales of such products in future years.

5.21 Specifications. The specifications attached hereto as Schedule 5.21 (the "Specifications") are the specifications that are used by the Seller to manufacture the PhosLo Products as of the date hereof, and such specifications comply in all material respects with applicable Legal Requirements relating to specifications to manufacture the PhosLo Products, and no other specifications are needed to manufacture the PhosLo Products. The Specifications comply with the NDAs.

5.22 Labor and Employment Matters.

(a) Schedule 5.22(a) lists as of the date hereof all of the Employees. Schedule 5.22(a) also lists, with respect to each such Employee other than the Employees listed on Schedule 7.7(a), such Employee's name, position, current rate of compensation, and any entitlement to bonus, commission, severance or other additional compensation, and indicates whether any such Employee is on leave of absence, short-term disability or other similar status. The Seller is not delinquent in payments to any Employee for any wages, salaries, commissions, bonuses or other compensation for any services performed by such Employee or amounts required to be reimbursed to such Employee.

(b) The Seller has delivered to the Buyer complete and accurate copies of each written employment, consulting, compensation or similar agreement to which the Seller is a party relating to the PhosLo Business, other than agreements with the Employees listed on Schedule 7.7(a), all of which are listed on Schedule 5.22(b).

(c) The Seller is not a party to any collective bargaining agreement that covers any Employee, and the Seller has not received since August 4, 2003 a demand for recognition of any collective bargaining representative with respect thereto. During the past three years, there have been no material labor strikes, disputes or work stoppages by the Employees and, to the Knowledge of the Seller, no such actions by the Employees are threatened.

(d) [Intentionally Blank].

(e) [Intentionally Blank].

(f) [Intentionally Blank].

(g) No Employee has informed the Seller of his or her intention to terminate his or her employment or to refuse employment by the Buyer.

(h) With respect to each Employee (including any eligible spouse and dependent thereof) who is currently covered under any group health plan (as defined in ERISA Section 607) of the Seller or one of its ERISA affiliates and incurs a qualifying event, as defined by Code Section 4980B or Part 6 of Subtitle B of Title I of ERISA (“**COBRA**”), as a result of the transactions contemplated by this Agreement, whether or not hired by the Buyer, or who, regardless of whether currently covered under any group health plan of the Seller or one of its ERISA affiliates, incurred or incurs a qualifying event prior to the Closing Date (all such Employees together with their spouses and eligible dependents being referred to herein as “**Qualified Beneficiaries**”), the Seller shall retain the obligation for providing notices and continuation coverage under COBRA and shall offer such Qualified Beneficiaries continuation coverage under the Seller’s group health, dental or other medical plans to the fullest extent required by COBRA. Further, with respect to the Qualified Beneficiaries, the Seller agrees to indemnify and hold the Buyer and its group health plan(s) harmless in the event (i) the Buyer and its group health plans shall be liable for any COBRA continuation coverage for any of the Seller’s Employees (and their eligible dependents) or (ii) the Buyer and its group health plans shall be liable for any claim or liability with respect to COBRA continuation coverage relating to the Qualified Beneficiaries.

5.23 Employee Benefit Plans; ERISA. Schedule 5.23 lists all material Plans applicable to the Employees. The Seller has no formal plan or commitment, nor has the Seller made any announcement of its intentions, whether or not legally binding, to create any additional material Plan applicable to the Employees or to modify or change any existing Plan applicable to the Employees in any material respect. The Seller has made available to the Buyer a copy of the most recent summary plan description with respect to each material Plan.

5.24 Environmental Matters. The Seller, in connection with the PhosLo Business (i) has never sent or disposed of, otherwise had taken or transported, arranged for the taking or disposal of (on behalf of itself, a patient, supplier, or any other Person) or in any other manner participated or been involved in the taking of or disposal or release of a Hazardous Material to or at a site that is contaminated by any Hazardous Material or that, pursuant to any Environmental Law, (x) has been placed on the “National Priorities List”, the “CERCLIS” list, or any similar state or federal list, or (y) is subject to or the source of a claim, an administrative order or other request to take “removal”, “remedial”, “corrective” or any other “response” action, as defined in any Environmental Law, or to pay for the costs of any such action at the site; (ii) is and at all times has been in material compliance with all Environmental Laws in

all of its activities and operations, and is not liable under any Environmental Law; (iii) is not involved in (and has no basis to expect to be involved in) any Proceeding and has not received (and has no basis to expect to receive) any notice, request for information or other communication from any Governmental Authority or other third party with respect to a release or threatened release of any Hazardous Material or a violation or alleged violation of any Environmental Law, and has not received (and has no basis to expect to receive) notice of any claims from any person or entity relating to property damage or to personal injuries from exposure to any Hazardous Material; and (iv) has timely filed every report required to be filed, acquired all material necessary Permits (all of which are listed on **Schedule 5.24**), and generated and maintained all material required data, documentation and records under all Environmental Laws.

5.25 Insurance.

(a) **Schedule 5.25(a)** lists all of the insurance policies maintained by the Seller that provide product liability insurance coverage in connection with the PhosLo Business, and for each indicates the insurer's name, policy number, expiration date, amount and type of coverage, and whether such coverage is provided on an occurrence or claims-made basis. All such policies are in full force and effect. The Seller is not in default under any provision contained in any such insurance policy relating to the PhosLo Business which would reasonably be expected to have a material adverse effect upon the ability of the insured to collect insurance proceeds under such policy. No written notice of cancellation or non-renewal with respect to such policy has been received by the Seller.

(b) The Seller is, and has been since August 4, 2003, insured against product liability in aggregate annual amounts of not less than those shown on **Schedule 5.25(a)**. The Seller has timely filed claims with insurers with respect to all product liability claims relating to the PhosLo Business for which the Seller believes it has coverage, and no insurance provider with respect thereto has claimed any reservation of rights or denied coverage. The Seller has not received any notification from any insurer regarding a product liability policy with respect to the PhosLo Business, requiring any action of the Seller that has not been taken by the Seller.

(c) **Schedule 5.25(c)** lists all of the Seller's accident reports and incident reports relating to the PhosLo Products as well as a description of all claims against its insurance policies with respect thereto since August 4, 2003.

5.26 Absence of Changes or Events. Since December 31, 2005 the Seller has not (a) conducted the PhosLo Business other than in the ordinary course consistent with past practices in substantially the same manner as presently conducted, with all reasonable efforts made consistent with past practices to preserve the goodwill of the PhosLo Business and its relationships with the customers, suppliers and others with whom they deal in connection with the PhosLo Business and to keep available the services of its officers and Employees; (b) suffered any Material Adverse Effect; or (c) done any of the following with respect to the PhosLo Business:

(i) granted any material increase in compensation to any Employees, or paid or agreed to pay to any such Employee any bonus, severance or termination payment;

- (ii) incurred any material change in its overhead costs, Accounts Receivable or accounts payable;
- (iii) waived any material claims or rights of substantial value;
- (iv) made any change in any method of accounting for sales;
- (v) acquired any assets that are material to the PhosLo Business, except Inventory acquired in the ordinary course of business consistent with past practices;
- (vi) sold, leased, licensed or otherwise disposed of any of its material assets or Permits, except Inventory used or sold in the ordinary course of business consistent with past practices;
- (vii) entered into, canceled or modified any material Contract or assumed any material Liability, other than in the ordinary course of business consistent with past practices;
- (viii) adopted or amended any Plan relating to any Employees; or
- (ix) agreed, whether in writing or otherwise, to do any of the foregoing.

5.27 Customers and Suppliers. Schedule 5.27 sets forth a list of (i) the top ten customers, by revenue, of the PhosLo Business during the fiscal year ended December 31, 2005 and the eight-month period ended August 31, 2006 and the amount and percentage of gross sales accounted for by each such customer during each such period; (ii) the top four suppliers, by volume of purchases, of the PhosLo Business during the fiscal year ended December 31, 2005 and the eight-month period ended August 31, 2006; and (iii) each supplier that is the sole supplier of any material product or service to the PhosLo Business.

5.28 Business Relationships. To the Knowledge of the Seller, no material supplier intends to cease supplying goods or services or substantially reduce its supplies in relation to the PhosLo Business.

5.29 Inventory; Pricing; Certain Costs.

- (a) All Inventory included in the Purchased Assets will be usable or saleable in the ordinary course of the PhosLo Business and, in the case of Finished Goods Inventory, will not have an expiration date earlier than June 2009 in the case of PhosLo GelCaps and November 2009 in the case of PhosLo Tablets.
- (b) The Finished Goods Inventory as of the Closing Date will have been manufactured in accordance with the Specifications.
- (c) The Seller's wholesale acquisition cost per bottle (200 ct.) of each PhosLo Product is set forth on **Schedule 5.29**.

(d) The Seller estimates that the remaining costs to prepare final study reports for the Care 2 Study and the EPICK Study will not exceed the amount set forth on **Schedule 5.29**. The Seller completed Data Lock with respect to the EPICK Study on September 29, 2006.

5.30 Adjustments. The Seller has no liability for any overpayment, duplicate payments, refunds, discounts or adjustments due to Medicare, Medicaid, Blue Cross Blue Shield, or any other reimbursement program, third-party payor or other Person.

5.31 Certain Interests. To the Knowledge of the Seller, no officer or director of the Seller or its Affiliates or any Family Member of any such Person (i) has a beneficial interest in any Assigned Contract, or (ii) otherwise has any material interest in any of the Purchased Assets, the Assumed Liabilities, or any property used in or pertaining to the PhosLo Business.

5.32 Commissions. No broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Seller or any Affiliate thereof for which Seller or any of its Affiliates could be held liable.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby represents and warrants to the Seller the following:

6.1 Organization and Qualification. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Buyer has full corporate power and authority necessary to enable it to own, lease or otherwise hold its properties and to carry on its business as presently conducted.

6.2 Authority Relative to this Agreement. The Buyer has full corporate power and authority to execute and deliver the Transaction Agreements to which it is a party and to perform its obligations under such Transaction Agreements and to consummate the transactions contemplated thereby. The execution, delivery and performance by the Buyer of the Transaction Agreements to which it is a party and the consummation by the Buyer of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate or other action on the part of the Buyer. The Transaction Agreements to which the Buyer is a party have been duly executed and delivered by the Buyer and each such agreement constitutes the legally valid and binding obligation of the Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or other laws of general applicability affecting creditors' rights and by general principles of equity.

6.3 Consents and Approvals; No Violations.

(a) The execution, delivery and performance by the Buyer of the Transaction Agreements to which it is a party and the Buyer's compliance with the terms thereof will not (i) conflict with any provision of the articles of incorporation or bylaws of the Buyer, or (ii) violate any Legal Requirement.

(b) Subject to compliance with the applicable requirements of the HSR Act there is no requirement applicable to the Buyer to make any filing with, or to obtain any permit, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated hereby.

(c) The execution, delivery and performance of each Transaction Agreement by the Buyer and the Buyer's compliance with the terms thereof will not: (i) conflict with any provision of the articles of incorporation, bylaws or other governing documents of the Buyer; (ii) contravene, conflict with, violate, or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated hereby or exercise any remedy (including revocation, withdrawal, suspension or modification of any Permit) or obtain any relief under, any Legal Requirement applicable to the Buyer; or (iii) violate any Order specifically naming the Buyer or any of its properties or assets.

6.4 Litigation. There are no Proceedings or investigations pending or, to the knowledge of the Buyer, threatened by or against or affecting the Buyer seeking to enjoin the consummation of the transactions contemplated hereby.

6.5 Commission. No broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Buyer or any Affiliate thereof.

ARTICLE VII

PRE-CLOSING COVENANTS

7.1 Closing Efforts; HSR Act.

(a) Subject to the terms hereof, including **Section 7.1(b)**, each of the parties shall use commercially reasonable efforts to take all actions and to do all things reasonably necessary or advisable to consummate the transactions contemplated by this Agreement, including using commercially reasonable efforts to: (i) obtain all waivers, permits, consents, approvals or other authorizations from Governmental Authorities and from other third Persons (the "**Third Party Consents**"), (ii) effect all registrations, filings and notices with or to Governmental Authorities (the "**Governmental Filings**") and (iii) otherwise comply in all material respects with all applicable Legal Requirements in connection with the consummation of the transactions contemplated by this Agreement; provided that neither party shall be required to make any payments in excess of nominal amounts or agree to any material undertakings in connection therewith. The Seller shall not, without the prior consent of the Buyer, agree to any condition for obtaining any of the Third Party Consents that would reasonably be expected to have a material adverse effect on the Purchased Assets or the PhosLo Business. Each of the parties shall promptly notify the other party in writing of any fact, condition or event known to it that would reasonably be expected to prohibit, make unlawful or delay the consummation of the transactions contemplated by this Agreement, including (i) any written notice or other written communication from any third Person alleging that a Third Party Consent is or may be required in connection with the transactions described in this Agreement, and (ii) any default under any Assigned Contract to which the Seller is party and which relates to the PhosLo Business that with notice or lapse of time or both, would become a material default.

(b) Without limiting the generality of the foregoing, each of the parties shall (i) promptly file any notification and report forms and related material that it may be required to file with the Federal Trade Commission and/or the Antitrust Division of the United States Department of Justice under the HSR Act, (ii) use commercially reasonable efforts to obtain an early termination of the applicable waiting period under the HSR Act, (iii) make any further filings or information submissions pursuant thereto that may be reasonably necessary or advisable and (iv) promptly make any filings or submissions required under any applicable foreign antitrust or trade regulation law. The Seller and the Buyer will act diligently and reasonably, and will cooperate with each other, to transfer all licenses from any Governmental Authority relating to the Purchased Assets and secure any approvals of any Governmental Authority required to be obtained by them that relate to the transactions contemplated by this Agreement. Each of the parties shall use commercially reasonable efforts to resolve any objections that may be asserted by any Governmental Authority with respect to the transactions contemplated hereby, and shall cooperate with each other to contest any challenges to the transactions contemplated hereby by any Governmental Authority. Each of the parties shall promptly inform the other party of any material communication received by such party from the Federal Trade Commission, the Antitrust Division of the Department of Justice or any other Governmental Authority regarding any of the transactions contemplated hereby (unless the provision of such information would (A) violate the provisions of any applicable Legal Requirements (including those relating to security clearance or export controls) or any confidentiality agreement or (B) cause the loss of the attorney-client privilege with respect thereto).

(c) The Seller will request that Braintree execute the Assignment Agreement in the form attached hereto as **Schedule 7.1(c)** and thereafter use commercially reasonable efforts to obtain Braintree's signature thereto.

(d) Notwithstanding the foregoing, nothing contained in this Agreement will require or obligate the Buyer or its Affiliates (i) to initiate, pursue or defend any litigation brought by the Antitrust Division of the Department of Justice and the Federal Trade Commission, provided that if the Buyer determines not to initiate, pursue or defend such litigation, it shall notify the Seller in writing immediately and the Seller shall have the right to terminate this Agreement immediately upon written notice to the Buyer; (ii) to agree with any Governmental Authority or otherwise become subject to any material limitations imposed by a Governmental Authority on (A) the right of the Buyer effectively to control or operate the PhosLo Business or the Purchased Assets, (B) the right of the Buyer or its Affiliates to acquire or hold the PhosLo Business, or (C) the right of the Buyer to exercise full rights of ownership of the PhosLo Business or all or any material portion of the Purchased Assets; or (iii) to agree with any Governmental Authority or otherwise be required by any Governmental Authority to sell or otherwise dispose of, hold separate (through the establishment of a trust or otherwise), or divest itself of all or any portion of the business, assets or operations of Buyer, any Affiliate of Buyer or the PhosLo Business.

7.2 Operation of Business. Except as contemplated by this Agreement or as set forth on **Schedule 7.2**, during the period from the date of this Agreement until the Closing Date, unless the Buyer shall otherwise consent in writing, the Seller shall operate the PhosLo Business in the ordinary course and substantially consistent with past practice. Without limiting the generality of the foregoing:

(a) the Seller shall comply in all material respects with all laws applicable to the PhosLo Business, and use commercially reasonable efforts to preserve the goodwill of suppliers, customers and others having business relations with the PhosLo Business and to maintain the PhosLo Business;

(b) the Seller shall inform the Buyer in writing of any event or circumstance that has or would reasonably be expected to have a Material Adverse Effect promptly after the Seller learns of such an event or circumstance;

(c) the Seller shall use commercially reasonable efforts to maintain, in full force and effect, any material contractor or sub-contractor agreements and regulatory approvals, including but not limited to ANDA and NDA approvals, necessary to provide uninterrupted continuation of the PhosLo Business;

(d) except as expressly described in this Agreement, or except with the Buyer's express written approval, the Seller shall not:

(i) enter into any contract, agreement or arrangement (oral or written) that requires the consent or approval of any third party to consummate the transactions described in this Agreement or any other Transaction Agreement;

(ii) amend, terminate, renew or (except as required by its terms) renegotiate any Assigned Contract or default (or take or omit to take any action that with or without the giving of notice or passage of time or both, would constitute a default) in any of its obligations under any Assigned Contract (including any lease) or enter into any new Assigned Contract (including any lease);

(iii) terminate, amend or fail to renew or preserve any material Permits;

(iv) sell, lease (as lessor), transfer, license, or otherwise dispose of any Purchased Assets, other than Inventory sold or used in the ordinary course of business and in amounts consistent with prior practices;

(v) mortgage or pledge any Purchased Assets or allow any Lien to be placed on any Purchased Assets, except for Liens for Taxes not yet due and payable;

(vi) to the extent it relates to the PhosLo Business, materially adversely alter its customary practices with respect to collection of accounts receivable of the PhosLo Business, billing practices or the provision of discounts, rebates or allowances;

(vii) grant any general or uniform increase in the rates of pay or benefits to Employees (or a class thereof) or any material increase in salary or benefits of any Employee not required by a written employment agreement with such Employee, pay any bonus to any person (other than consistent with past practices), or enter into any new employment, collective bargaining or severance agreement; or

(viii) enter into any Contract or commitment to take any action prohibited by this **Section 7.2**.

7.3 Access.

(a) Prior to the Closing, the Seller shall permit representatives of the Buyer to have access (at reasonable times, on reasonable prior written notice and in a manner so as not to interfere with the normal business operations of the PhosLo Business) to the premises, properties, financial and accounting records, contracts, personnel (including senior management of the Seller and persons who provided diligence information to the Buyer) and other records and documents of the Seller pertaining to the PhosLo Business. Any such information and documents made available to the Seller or its representatives shall be provided by the Seller subject to the terms of the confidentiality letter agreement dated as of November 10, 2005, as amended between the Buyer and the Seller (the "**Confidentiality Agreement**").

(b) The Buyer and the Seller acknowledge and agree that the Confidentiality Agreement remains in full force and effect and that information provided by the Seller to the Buyer pursuant to this Agreement prior to the Closing shall be treated in accordance with the Confidentiality Agreement. If this Agreement is terminated prior to the Closing, the Confidentiality Agreement shall remain in full force and effect in accordance with its terms. If the Closing occurs, the Confidentiality Agreement, insofar as it covers information relating to the PhosLo Business or the Purchased Assets, shall terminate effective as of the Closing, but shall remain in effect insofar as it covers other information disclosed thereunder.

7.4 Reports. Until the Closing, if the Closing does not occur within fifteen days of the date of this Agreement, the Seller will furnish to the Buyer such reports and financial information as the Buyer may reasonably request relating to the Purchased Assets or the PhosLo Business.

7.5 Exclusivity. Prior to the Closing, the Seller shall neither authorize nor permit its officers, directors, employees, representatives and agents to (i) initiate, solicit or encourage any proposal by or offer from any party (other than the Buyer) concerning any acquisition of the PhosLo Business or the assets thereof, in any manner, directly or indirectly; (ii) engage in negotiations with any party (other than the Buyer) concerning any such transaction; (iii) enter into any agreement relating to or approve any such transaction; provided, that the foregoing shall not apply to any transaction involving the sale or merger of the Seller, including the indirect sale of the PhosLo Business or the sale of substantially all the assets of the Seller. Without limiting the preceding sentence, the parties agree that any violation of the restrictions described in the preceding sentence by the Seller and any officer, employee, financial advisor, attorney, or other advisor or representative of the Seller, whether or not such Person is purporting to act on behalf of the Seller, will be deemed to be a breach of this **Section 7.5** by the Seller.

7.6 Notice of Suits. Prior to the Closing, each party shall promptly notify the other of any Proceeding that is instituted or, to its knowledge, threatened against such party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement. Prior to the Closing, the Seller will promptly notify the Buyer of any Proceeding or investigation that is, to the Seller's Knowledge, threatened, brought or asserted against the Seller that would have been listed in **Schedule 5.14** or **5.15** if the Proceeding or investigation had arisen prior to the date of this Agreement.

7.7 Employees.

(a) The Seller shall use commercially reasonable efforts to assist the Buyer in obtaining the employment of the Employees whom the Buyer in its sole discretion desires to employ, other than the Employees listed on **Schedule 7.7(a)**, and the Seller shall cooperate with and shall make available to the Buyer on a prompt basis all information and documents as may be necessary to assist and coordinate the employment by the Buyer of such Employees. The Seller acknowledges that the Buyer intends, but shall not be obligated, to hire on the Closing Date each of the Employees in positions with comparable levels of responsibility and compensation as such Employees have with the Seller (treating service by Employees from their date of hire by the Seller as service with the Buyer for determining length of service for purposes of vesting in benefits offered by the Buyer to its employees), or on other terms mutually acceptable to the Buyer and the applicable Employee, subject in the case of each Employee to (i) such Employee releasing his or her personnel files to Buyer prior to Closing as contemplated in **Section 9.3(h)**, (ii) the receipt of a negative result from a pre-employment drug screen test, and (iii) such Employee never having been excluded, suspended, sanctioned or otherwise restricted from participating in any federal or state health care programs, including Medicare or Medicaid. Nothing herein shall be deemed to create any third-party beneficiaries of this Agreement or to constitute an employment agreement or offer of employment. The Buyer shall disclose to the Seller the compensation packages it will offer to the Employees prior to the Closing Date.

(b) On the Closing Date, the Seller shall terminate the employment of all of the Employees who have determined to accept employment with the Buyer. The Seller shall pay to all such Employees all benefits that have vested under the Seller's Plans, including payment for unused vested time off, and the Buyer shall not be liable to any Employee or any other Person for any severance obligations, benefit obligations, paid time off or any other similar obligations owing by the Seller in connection with the termination of any such Employee's or other Person's employment with the Seller.

(c) Prior to the Closing, the Buyer shall not (i) employ or engage as an employee, an independent contractor or otherwise any individual who was (A) an Employee of the Seller listed on **Schedule 7.7(a)** or (B) an employee of the Seller (other than an Employee of the Seller not listed on **Schedule 7.7(a)**) with whom the Buyer had contact or of whom the Buyer became aware in connection with the Buyer's investigation of the PhosLo Business or negotiation of the Purchase Agreement or (ii) in any manner induce or attempt to induce any such employee to terminate his or her employment with the Seller.

7.8 Updated Schedules. Prior to the Closing the Seller shall give prompt notice to the Buyer of (i) the existence, occurrence or non-occurrence of any fact, condition, matter, circumstance, claim or event the existence, occurrence or non-occurrence of which if not disclosed on the Seller Disclosure Schedule would cause the representations or warranties of the Seller contained in this

Agreement to be untrue or inaccurate in any material respect at or prior to the Effective Time and (ii) any material failure of the Seller to perform, comply with or satisfy any covenant, condition or agreement to be performed, complied with or satisfied by it hereunder or under any Transaction Agreement; provided, however, that the Seller Disclosure Schedules shall be deemed to include only that information contained therein on the date of this Agreement and shall be deemed to exclude any information contained in any such notice for all purposes of this Agreement, including **Articles IX and X**; except that if any such information would cause a condition to the Buyer's obligation to close the transactions contemplated hereby not to be met, in accordance with **Section 9.3**, and the Seller admits in such notice that the information has caused a failure of a condition to be met and the Buyer is not obligated to close, and the Buyer chooses to waive the condition with respect to such information and close, the Seller Disclosure Schedules shall be deemed to be amended to reflect such information for purposes of **Article X**. If the Seller shall deliver to the Buyer updated **Schedules 5.8(a)** and **5.9(a)** covering Contracts and Permits entered or obtained after the date hereof that would have otherwise been included on such Schedules if entered into prior to the date hereof, the Contracts and Permits listed on such updated Schedules shall become Assigned Contracts and Assigned Permits hereunder only to the extent that the Buyer agrees at the Closing that they shall be treated as such.

7.9 Sales Tax. The Seller shall pay all personal property transfer Taxes, if any, and all use and other similar Taxes, if any, imposed on or in connection with the purchase, sale or transfer of the Purchased Assets to, and the assumption of the Assumed Liabilities by, the Buyer pursuant to this Agreement. The Seller shall directly pay, on behalf of the Buyer, any such Taxes which, under applicable Legal Requirements, are imposed upon the Buyer.

7.10 Inventory. Between the date hereof and the Closing Date, the Seller shall not sell any Finished Goods Inventory to any of [*****] (or any of their Affiliates).

ARTICLE VIII

POST-CLOSING COVENANTS

8.1 Post-Closing Payments. The Seller shall promptly and in due course pay and fully discharge all of Excluded Liabilities, including amounts owed by the Seller to Employees.

8.2 Reports. The Seller agrees to cooperate with the Buyer in preparing and filing all required cost, government or other reports required under Medicare, Medicaid and state survey programs due for the period after the Effective Time subject to the provisions of the Transition Services Agreement, and the Buyer shall make all such filings required for the period after the Effective Time. The Seller shall file its closing CMS Form 265, other cost report documents or any other documents for the period prior to the Effective Time within the time required by CMS at the Seller's sole expense. The Seller shall provide to Buyer copies of all such documents when filed.

8.3 Tail Insurance. The Seller, at the Seller's expense, will take steps necessary so that all liability, including products liability, insurance policies maintained by the Seller with respect to the PhosLo Business will remain in full force and effect for at least six years after the Closing in respect of sales of PhosLo Products by the Seller for the period prior to the Closing. The Seller shall deliver to the Buyer at the Closing and on each of the six successive anniversaries of the Closing Date a certificate of insurance evidencing such insurance coverage.

8.4 Intellectual Property.

(a) Non-Disclosure. The Seller acknowledges that in the course of owning and operating the PhosLo Business, the Seller has been privy to various proprietary information of the PhosLo Business that is of value to the Buyer. Until [*****] after the Closing Date, the Seller agrees not to use or to disclose to any Person any confidential information or trade secrets relating to the PhosLo Business or the PhosLo Products, including confidential information and/or trade secrets regarding: the identity and relationships of Employees or of distributors or vendors, financial data, including pricing information and information regarding the compensation of Employees and independent contractors; Scientific Data; Intangible Property Rights; regulatory approval, reimbursement, and market expansion strategies; marketing and sales programs and data; and operations and other manuals. Notwithstanding the foregoing, the Seller may use or disclose such information that is or becomes generally known through no fault of the Seller or to the extent that such use or disclosure is reasonably required in connection with or pursuant to (i) an Order or Legal Requirement, (ii) any investigation or audit by a Governmental Authority, including the Internal Revenue Service or CMS, (iii) the filing of any Tax Returns, (iv) any billing activities related to the PhosLo Business, or (v) the Transition Services Agreement. In all such cases, the Seller shall disclose such confidential information only to the extent reasonably required to fulfill such purpose or Legal Requirement or Order. If the Seller becomes legally compelled to disclose any such confidential information, the Seller shall (to the extent permitted by Legal Requirements) promptly notify the Buyer of such fact so that the Buyer may seek an appropriate remedy to prevent such production, and request the person demanding such production to allow the Buyer a reasonable period of time to seek such remedy.

(b) Trade Names and Marks. Following the Closing Date, the Seller shall not, display, publish or otherwise use the phrase “PhosLo” (alone or in combination with other phrases) or any phrase confusingly similar to PhosLo, as a trade name or Mark in connection with any other business.

8.5 Access to Information; Record Retention; Cooperation; Confidentiality.

(a) Access to Information. Subject to compliance with contractual obligations and applicable laws, during the ten-year period following the Closing, after not less than five days prior written notice, each party shall afford to the other party and to such party’s authorized accountants, counsel, bank auditors and other designated representatives during normal business hours in a manner so as to not unreasonably interfere with the conduct of business (i) reasonable access and duplicating rights to all non-privileged records, books, contracts, instruments, documents, correspondence, computer data and other data and information (collectively, “**Information**”) within the possession or control of such party to the extent such access may reasonably be required by the party seeking access solely in connection with matters relating to or affected by the operations of the PhosLo Business, as to the Seller, for periods prior to the Closing Date, and as to the Buyer, for periods on and after the Closing Date and (ii) reasonable access to the

personnel of such party; provided, however, notwithstanding anything to the contrary contained in this **Section 8.5**, this **Section 8.5** shall not give the Seller the right to have access to the Buyer's Information and personnel for the purpose of reviewing the accuracy of any payments made pursuant to **Section 3.1** beyond what is provided for in **Section 3.3** of this Agreement. Requests may be made under this **Section 8.5** for financial reporting and accounting matters, preparing financial statements, preparing and filing of any Tax Returns, prosecuting any claims for refund, defending any Tax claims or assessment, preparing securities law or securities exchange filings, prosecuting, defending or settling any litigation or insurance claim, performing obligations under this Agreement and the other Transaction Agreements, and all other proper business purposes, but may not be made, and access and duplicating rights need not be afforded, under this **Section 8.5** in connection with disputes between the parties, including disputes as to indemnification hereunder.

(b) **Reimbursement.** A party making Information or personnel available to the other party under **Section 8.5** shall be entitled to receive from the other party, upon the presentation of invoices therefor, payments for such amounts relating to supplies, disbursements and other out-of-pocket expenses, as may reasonably be incurred in making such Information or personnel available; provided, however, that no such reimbursements shall be required for the salary or cost of fringe benefits or similar expenses pertaining to employees of the providing party.

(c) **Retention of Records.** Except as may otherwise be required by law or agreed to in writing by the parties, each party shall use reasonable commercial efforts to preserve, until five years after the Closing Date, all Information in its possession or control pertaining to the PhosLo Business after December 31, 2001. Notwithstanding the foregoing, in lieu of retaining any specific Information, any party may offer in writing to the other party to deliver such Information to the other party, and if such offer is not accepted within sixty days, the offered Information may be disposed of at any time.

(d) **Confidentiality.**

(i) From and after the Closing, each party shall hold, and shall cause its respective Affiliates, auditors, attorneys, financial advisors, bankers and other consultants and advisors, to hold, in strict confidence all Information concerning the other party furnished to it by the other party or such other party's representatives pursuant to this Agreement or the Confidentiality Agreement except to the extent that such Information:

(A) is or becomes generally available to the public other than as a result of any breach of the obligations provided for by this **Section 8.5(d)**;

(B) was within the possession of the receiving party prior to it initially being furnished to the receiving party by or on behalf of the disclosing party; or

(C) is or becomes available on a non-confidential basis to the receiving party from a source other than the disclosing party, provided that the source of such Information did not breach any obligation of confidentiality to the disclosing party.

(ii) Each party shall not release or disclose such Information to any other Person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors, unless compelled to disclose such Information by judicial or administrative process or by other requirements of law or so as not to violate the rules of any stock exchange, Legal Requirement or Order of a Governmental Authority; provided, however, that in the case of disclosure compelled by judicial or administrative process, the receiving party shall (to the extent permitted by Legal Requirements) notify the disclosing party promptly of the request and the documents requested thereby so that the disclosing party may seek an appropriate protective Order or other appropriate remedy; and provide further that the receiving party shall use reasonable efforts to avoid and/or minimize such disclosure.

8.6 Post-Effective Time Receipts and Payments. All cash receipts received by the Seller at any time in connection with the sale of PhosLo Products prior to the Effective Time shall be retained by the Seller. All cash receipts received by the Seller at any time in connection with the sale of PhosLo Products at or after the Effective Time shall be remitted promptly by the Seller to the Buyer, and the Seller shall be the Buyer's agent with respect to the receipt of all such amounts and shall hold such amounts in trust for the Buyer until paid to the Buyer. All cash receipts received by the Buyer at any time in connection with the sale of PhosLo Products prior to the Effective Time shall be remitted promptly by the Buyer to the Seller, and the Buyer shall be the Seller's agent with respect to the receipt of all such amounts and shall hold such amounts in trust for the Seller until paid to the Seller.

8.7 Use of Name for Transition Period.

(a) Following the Closing, except as otherwise provided herein, the Buyer shall have no rights to use any trademarks, trade names or logos of the Seller (the "**Retained Marks**") and will not hold itself out as having any affiliations with the Seller.

(b) Notwithstanding the provisions of this **Section 8.7**,

(i) for a period of ninety days after the Closing Date, the Buyer may utilize sale promotional aids, literature and other printed material of the PhosLo Business, provided such material clearly and prominently displays the following statement or a statement of similar import: "**[the Buyer product name]**, formerly a product of Nabi Biopharmaceuticals." Promptly following the Closing Date, the Buyer will implement a plan to eliminate the use of all such material within such ninety-day period; and

(ii) the Buyer may disclose to its customers and potential customers that it is conducting the PhosLo Business as a successor to the Seller from and after the Closing Date.

(c) Notwithstanding anything in this Agreement to the contrary, the Buyer may not use after the Closing Date the Retained Marks or the Seller's packaging and labeling, and may not reference the Seller's NDC numbers, on any PhosLo Products Inventory, including Finished Goods Inventory, purchased by the Buyer from the Seller or from Braintree.

(d) The royalty-free licenses to use the Retained Marks set forth in this **Section 8.7(d)** shall not prohibit the Seller or any of its Affiliates from using the Retained Marks (or any similar name or logo) during the term of the respective license or thereafter in any manner. The Buyer agrees that its use of the Retained Marks shall be consistent with the past practices of the Seller in connection with the Seller's business and operations and, with respect to such use, the Buyer shall adhere to substantially similar quality standards to which the Seller adhered immediately prior to the Closing.

8.8 Wholesaler Charges and Rebate Charges. Following the Closing, (i) the Seller shall be liable for any Wholesaler Charges or Rebate Charges in respect of PhosLo Products sold with the Seller's NDC Code and (ii) the Buyer shall be liable for any Wholesaler Charges or Rebate Charges in respect of PhosLo Products sold with the Buyer's NDC Code.

8.9 Assistance with Proceedings. From time to time, as may be reasonably requested by the Buyer, in connection with claims or actions brought by or against third parties and arising out of or related to the PhosLo Business before or after the Closing Date, including in connection with the Roxane Proceeding, duly authorized representatives of the Buyer shall, upon reasonable prior notice to the Seller and at the Buyer's cost and expense, have access to the Seller's employees during normal business hours at mutually agreed upon times; provided, however, that the operations and business of the Seller are not materially and adversely affected thereby. In addition to the rights of access provided in this Section, at the request of the Buyer, the Seller shall provide to the Buyer such information and documents (or reasonable assistance in collecting such information or documents) in the Seller's possession as the Buyer shall reasonably request in connection with the prosecution or defense of such claims or actions. The Seller shall provide such information and documents at mutually agreed upon times. In addition, the Seller shall use reasonable efforts to make its officers and employees available as witnesses in connection with such claims or actions when reasonably requested by the Buyer. The Buyer shall reimburse the Seller for all reasonable out-of-pocket costs and expenses incurred by the Seller (excluding salaries and wages and related costs of benefits of its employees) in providing such assistance. The Buyer shall, and shall cause its Affiliates to, provide similar rights of access to the Seller and its Affiliates if and to the extent that the Seller or its Affiliates require similar rights of access in connection with claims or actions brought by or against third parties and arising out of or related to the PhosLo Business prior to the Closing Date.

8.10 Buyer's Diligence Obligations. Subject to the Seller fulfilling its obligations under the Transition Services Agreement, the Buyer shall use commercially reasonable efforts (i) to achieve each of the milestones set forth in **Section 3.1(b)** as soon as reasonably practicable after the Closing Date, and (ii) to obtain an FDA Approval or Foreign Marketing Authorization, as applicable, for the New Formulation Products, and commercialize and market the New Formulation Products through the end of the Deferred Payment Period, in the United States and each country listed on **Schedule 8.10** hereto, subject however to the following provisions:

(a) The Seller may not allege a breach of this **Section 8.10** (a "**Diligence Breach**") for the Buyer's failure to file in the countries listed on **Schedule 8.10** the documents necessary to obtain a Foreign Marketing Authorization in respect of the New Formulation Products until at least the first anniversary of the date of issuance by the FDA of an "Approvable Letter" in respect of a New Formulation Product;

(b) The Seller may not allege a Diligence Breach for the Buyer's failure in any other respect to use commercially reasonable efforts to obtain a Foreign Marketing Authorization and/or to commercialize the New Formulation Products in the countries listed on **Schedule 8.10** until at least the second anniversary of the date of issuance by the FDA of an "Approvable Letter" in respect of a New Formulation Product;

(c) If the Seller wishes to allege a Diligence Breach it must do so in writing whereupon the Buyer shall have ninety days following delivery of such written notice to cure such breach. If the Diligence Breach is not cured within such period then on a country by country basis the Seller shall be entitled to require, as its sole and exclusive remedy in respect of such breach, that the Buyer comply with the provisions of **Section 8.1(e)** below.

(d) In the event the Buyer determines it is not commercially reasonable to seek an FDA Approval or a Foreign Marketing Authorization for, or commercialize or market through the end of the Deferred Payment Period, the New Formulation Products in the United States or any other country listed on **Schedule 8.10** (a "**Commercially Reasonable Discontinuance**"), then the Buyer shall give the Seller written notice of the Buyer's determination whereupon the Seller shall have sixty days to acquiesce in such determination or, if the Seller in good faith determines that it is commercially reasonable to seek such an FDA Approval or Foreign Market Authorization for, or to commercialize or market, the New Formulation Products, and decides in good faith to do so, to notify the Buyer of such determination and to require the Buyer to assign, license or sublicense the Buyer's rights with respect to the New Formulation Products in such country.

(e) In the event that on a country by country basis the Buyer has committed a Diligence Breach or the Seller has elected to obtain an assignment, license or sublicense to commence upon a Commercially Reasonable Discontinuance, then at the sole expense of the Buyer:

(i) The Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns, upon the request of the Seller and without consideration being paid to the Buyer, its subsidiaries or Affiliates or its or their sublicensees, successors or assigns, shall assign, license or sublicense to the Seller, as reasonably requested by the Seller, all their right title, and interest in and to the New Formulation Products in respect of such country and promptly make available to the Seller or its designee all data, studies, analyses, technological, commercial, business-related and other information related to the New Formulation Products in such country, including but not limited to assignable contracts entered into with respect thereto (as well as amounts payable and statement of accounts with respect to such contracts), any and all submissions and responses received from any Governmental Authority, complete documentation and information on completed and ongoing studies, preclinical and safety data, the status application of a CAS number, if applicable, all information on orphan drug designation, status of investigators' brochures, status of the distribution of clinical supplies, as well as all consents and waivers necessary to have access to the source data documentation (the "**Data**"); provided, however, that the sole obligation of the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns under this section shall be to provide such Data in the form in which it is maintained and the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns shall in no circumstances be required to collate, synthesize or re-work any such Data before or after delivery to the Seller.

(ii) At such time as the Seller may reasonably request, the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns will, as soon as reasonably practicable under the circumstances, without consideration being paid by the Seller, execute and/or deliver (or cause to be executed and/or delivered) to the Seller or its designee all certificates, instruments and documents as may be necessary to assign, license or sublicense, to Seller or a party designated by the Seller, as reasonably requested by the Seller, without representation or warranty, all assignable rights which the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns may have with respect to:

(A) the New Formulation Products in such country, including the licensing, marketing, promotion, manufacture and sale thereof;

(B) all submissions to and approvals from the Medical Regulatory Authorities in such country for the New Formulation Products; and

(C) any IND or marketing approval studies, analyses and/or documents necessary for the IND or the FDA Approval or Foreign Marketing Regulatory Approval, as applicable, to be assigned to the Seller.

(iii) The Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns will use commercially reasonable efforts to allow the assumption by the Seller or its designees of all applicable Medical Regulatory Authority applications and licenses and of any agreements between the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns and third parties relating to New Formulation Products in the applicable country, including without limitation agreements with clinical research organizations, trial sites, investigators and monitors relating to the development of the New Formulation Products, all without additional consideration being paid to the Buyer.

(iv) The Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns will be responsible for all amounts due and owing to third parties with respect to the New Formulation Products which have been incurred by the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors or assigns.

(v) The Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns will use commercially reasonable efforts to assist the Seller in obtaining a supply agreement with [*****] for the New Formulation Products for such country reasonably satisfactory to the Seller and, until such agreement is obtained by the Seller, to supply to the Seller, at cost, the New Formulation Products for sale in such country. "Cost" shall include customary costs of supply (including shipping) and the Transfer Fees and Royalty Fees (both as defined in the [*****] Agreement) payable under the [*****] Agreement by the Buyer on the New Formulation Products supplied by the Buyer to the Seller.

(f) If, with respect to any country, the Seller elects to obtain an assignment, license or sublicense from the Buyer after a Commercially Reasonable Discontinuance in accordance with **Section 8.10(d)** and the Seller should thereafter determine not to commercialize or market New Formulation Products in such country, or should abandon or discontinue its efforts to commercialize or market New Formulation Products in such country, the Seller shall assign to the Buyer, upon the Buyer's request, all rights and Data relating to such New Formulation Products in such country in the same manner and to the same extent as contemplated by **Section 8.10(e)(i) to (iv)** with respect to a conveyance by the Buyer to the Seller, including all Data received by the Seller from the Buyer and all Data thereafter created by or on behalf of the Seller, all without consideration being paid to the Seller.

8.11 Non-Competition by the Buyer.

(a) From the Closing Date until [*****] (the "**Restricted Period**"), none of the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns shall, without the prior written consent of the Seller (which may be granted or denied in the sole discretion of the Seller): market, sell, manufacture for commercial sale or distribute in the United States any Competitive Product, provided that, (x) the marketing, sale, manufacture for commercial sale and distribution of Competitive Products by the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns pursuant to and for the limited period provided in **Section 8.11(b)** shall not constitute a default under this **Section 8.11** and (y) if the Buyer, its subsidiaries or Affiliates or its or their sublicensees, successors or assigns has developed a Competitive Product, each such entity may assign its rights (by sale or exclusive license for a term which shall not be less the remaining term of the Restricted Period) in such Competitive Product to a third party (it being understood that none of the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors or assigns shall have any right of ownership or participation in such third party or the income or profit of such third party during the Restricted Period other than through a royalty in connection with the license) and such action shall not constitute a breach of this Agreement for so long as the Buyer, its subsidiaries and Affiliates and its or their sublicensees, successors and assigns do not engage in providing any direct or indirect marketing activity, or provide marketing direction or assistance, information or data in relation to such Competitive Product.

(b) If the Buyer shall be acquired by a third party who possesses a Competitive Product at the time of such acquisition or if the Buyer, its subsidiaries or Affiliates or its or their sublicensees, successors or assigns shall determine to acquire, by purchase, license or otherwise, in the Territory, one or more products (whether directly through an acquisition or license of assets or indirectly through an acquisition of capital stock) and such acquisition includes a Competitive Product that is sold, marketed or distributed in the United States, the Buyer shall give the Seller as much advance written notice thereof as is reasonably feasible under the circumstances, as well as written notice of the consummation of such acquisition. Any such notice must specify whether the party acquiring the Buyer, or Buyer, its subsidiaries or Affiliates or its or their sublicensees, successors or assigns, as applicable, intend within twelve months of the acquisition to divest their interest in such Competitive Product in the United States following the acquisition or to withdraw such Competitive Product from the market in the United States. The failure to divest or withdraw such a Competitive Product from the market in the United States within twelve months of its acquisition shall constitute a breach of this Agreement.

8.12 Seller's Diligence Obligations. The Seller shall use commercially reasonable efforts to assist the Buyer in its efforts to achieve each of the milestones set forth in **Section 3.1(b)** pursuant to and in accordance with the terms of the Transition Services Agreement.

8.13 Certain Excluded Liabilities. The Seller shall pay and perform when due, and shall cause its Affiliates to pay and perform when due, all such Excluded Liabilities as could reasonably be expected to result in a Material Adverse Effect after the Effective Time (specifically including Excluded Liabilities owing by the Seller or its Affiliates to Braintree and Verdugt), except, however, those Excluded Liabilities that are subject to a bona fide dispute.

8.14 Roxane Proceeding.

(a) Within three days from the Closing Date, the Buyer (FMCNA) shall move under Fed. R. Civ. P. 25(c) to be joined with Seller as additional plaintiff and counterclaim defendant in the Roxanne Proceeding and, upon the court's grant of such motion, shall assume the sole and absolute right to control, abandon, negotiate, settle (subject to the provisions of this **Section 8.14**) and otherwise deal with the Roxane Proceeding. The Buyer shall keep the Seller reasonably informed of all developments in the Roxane Proceeding subject to any obligations of confidentiality required by the Roxane Proceeding and to the preservation of the attorney-client privilege. Notwithstanding the foregoing, the Seller shall be entitled to participate in the Roxane Proceeding at its own expense.

(b) The parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of the Roxane Proceeding.

(c) The Buyer will not compromise or settle the Roxane Proceeding, or otherwise terminate the Roxane Proceeding, without the prior written consent of the Seller, which consent will not be unreasonably withheld, provided, however, that the Seller's consent shall not be required for any termination of the litigation under which (i) the Seller is unconditionally released in writing from all Liabilities with respect thereto and the claims litigated therein or (ii) the Buyer assumes an obligation to indemnify the Seller for any Liabilities arising from the Roxane Proceeding.

(d) Notwithstanding any other provision of this Agreement, the Buyer shall have no liability or responsibility for actions or omissions by the Seller in initiating and maintaining the Roxane Proceeding prior to the Buyer's assumption of control under **Section 8.14(a)**. The Seller shall be responsible for defending its own acts or omissions in initiating and maintaining the Roxane Proceeding occurring prior to the Seller's assumption of control.

8.15 [*****] Agreement The Buyer agrees that it shall not elect to discontinue during the Deferred Payment Period [*****]

8.16 Excluded Contracts. After the Effective Time, the Seller shall, upon the Buyer's reasonable request, enforce for the benefit of the Buyer any rights that the Seller may have against third parties under any Excluded Contracts that relate to the PhosLo Business. The Buyer shall reimburse to the Seller, from time to time as requested by the Seller, all out-of-pocket expenses and Damages incurred by the Seller in connection with any such enforcement. Such requests for reimbursement shall include reasonably detailed supporting documentation.

8.17 Part D and Commercial Rebate Contracts. Notwithstanding any provision of this Agreement to the contrary, the assignment to the Buyer of each Part D Rebate Contract and Commercial Rebate Contract shall be subject to the consent of the counter party, if required under the terms of the Contract, and the agreement of the counter party to amend the Contract to provide that the Buyer shall be responsible for all rebate or discount payments to the counter party with respect to PhosLo Products bearing the Buyer's NDC number. For so long as the Seller continues to have Liability under any Part D Contract or Commercial Rebate Contract, the Buyer (i) shall provide to the Seller a copy of each amendment to any such Contract promptly after the effectiveness of any such amendment and (ii) shall not amend any such Contract without the prior written consent of the Seller, such consent not to be unreasonably withheld, if such amendment would increase or extend the Liability of the Seller under such Contract in any way. The Buyer shall reimburse the Seller promptly upon request for any expenses incurred by the Seller in connection with obtaining any consent to assignment of, or any amendment to, any Part D Rebate Contract or Commercial Rebate Contract.

ARTICLE IX

CLOSING CONDITIONS

9.1 Mutual Conditions. The respective obligations of each party to consummate the transactions required to be taken by it at the Closing shall be subject to the fulfillment of the following conditions:

(a) No party to this Agreement shall be subject on the Closing Date to any Order of a Governmental Authority of competent jurisdiction that enjoins or prohibits the consummation of the transactions contemplated by this Agreement, nor shall there be any Proceeding pending or threatened by any Person other than a party to this Agreement that involves any challenge to, or seeks damages or other relief in connection with, any of the transactions contemplated hereby, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the transactions contemplated hereby.

(b) Any applicable waiting period under the HSR Act relating to the transactions contemplated hereby shall have expired or been terminated.

(c) No Legal Requirement shall have been adopted or promulgated as of the Closing Date having the effect of making the transactions contemplated herein illegal or otherwise prohibiting consummation of, or making void or voidable, the transactions contemplated herein.

9.2 Closing Conditions of the Seller. The obligations of the Seller to effect the transactions contemplated hereby shall be subject to the fulfillment of the following conditions, any one or more of which may be waived by the Seller:

(a) Each representation and warranty of the Buyer set forth in Article VI that is qualified as to materiality shall be true and correct in all respects (including such materiality limitation) and each other representation and warranty of the Buyer set forth in Article VI shall be true and correct in all material respects, in each case as of the date hereof and as of the Closing Date as if made as of the Closing Date.

(b) The Buyer shall have performed and complied with all of its covenants and agreements contained in this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) The Buyer shall have delivered to the Seller a certificate (the "**Buyer Certificate**") signed by a duly authorized officer of the Buyer on behalf of the Buyer to the effect that each of the conditions specified in **Sections 9.2(a)** and **(b)** and **Section 9.1(a)** (insofar as **Section 9.1(a)** relates to an Order or Proceeding against the Buyer) have been satisfied.

(d) All documents required to have been delivered by the Buyer to the Seller at or prior to the Closing shall have been delivered, and all actions required to have been taken by the Buyer at or prior to the Closing shall have been taken.

(e) As of the Closing Date, the Seller shall have received from the Buyer the following documents:

(i) certificates of existence of the Buyer from its state of incorporation, each as of a date reasonably close to (and in no event more than twenty days prior to) the Closing Date;

(ii) a copy of the resolutions of the Board of Directors of the Buyer authorizing the execution and delivery by the Buyer of this Agreement and all instruments and documents to be delivered by the Buyer in connection herewith, and the consummation by the Buyer of the transactions contemplated hereby and thereby, certified by the Secretary of the Buyer;

(iii) a certificate from the Secretary of the Buyer as to the incumbency and signatures of its officers who will execute documents at the Closing or who have executed this Agreement and the other Transaction Documents; and

(f) All of the third party consents and Governmental Filings set forth in **Schedule 9.2(f)** shall have been obtained or made, as applicable.

(g) The Seller shall have received an opinion from counsel to the Buyer, dated the Closing Date, in form and substance acceptable to the Buyer, addressing the matters set forth on **Exhibit 9.2(g)**.

9.3 Closing Conditions of the Buyer. The obligations of the Buyer to effect the transactions contemplated hereby shall be subject to the fulfillment of the following conditions, any one or more of which may be waived by the Buyer:

(a) Each representation and warranty of the Seller set forth in **Article V** that is qualified as to materiality shall be true and correct in all respects (including such materiality limitation) and each other representation and warranty of the Seller set forth in **Article V** shall be true and correct in all material respects, in each case as of the date hereof and as of the Closing Date as if made as of the Closing Date.

(b) The Seller shall have performed and complied with all of its covenants and agreements contained in this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) The Seller shall have delivered to the Buyer a certificate (the "**Seller Certificate**") signed by a duly authorized officer of the Seller on behalf of the Seller to the effect that each of the conditions specified in **Sections 9.3(a)** and **(b)** and **Section 9.1(a)** (insofar as **Section 9.1(a)** relates to an Order or Proceeding against the Seller) have been satisfied.

(d) All documents required to have been delivered by the Seller to the Buyer at or prior to the Closing shall have been delivered, and all actions required to have been taken by the Seller at or prior to the Closing shall have been taken.

(e) As of the Closing Date, the Buyer shall have received from the Seller the following documents:

(i) certificates of existence of the Seller from its state of incorporation, each as of a date reasonably close to (and in no event more than twenty days prior to) the Closing Date;

(ii) a copy of the resolutions of the Board of Directors of the Seller authorizing the execution and delivery by the Seller of this Agreement and all instruments and documents to be delivered by the Seller in connection herewith, and the consummation by the Seller of the transactions contemplated hereby and thereby, certified by the Secretary of the Seller; and

(iii) a certificate from the Secretary of the Seller as to the incumbency and signatures of its officers who will execute documents at the Closing or who have executed this Agreement.

(f) The Buyer shall have received an opinion from counsel to the Seller, dated the Closing Date, in form and substance acceptable to the Buyer, addressing the matters set forth on **Exhibit 9.3(f)**.

(g) The Buyer shall have received from at least fifty percent (50%) of the Employees (exclusive of the Employees listed on **Schedule 7.7(a)**) who have accepted employment with the Buyer an Employee Consent substantially in the form attached as **Exhibit 9.3(g)**.

(h) All of the third party consents and Governmental Filings set forth in **Schedule 9.3(h)** shall have been obtained or made, as applicable.

(i) No Material Adverse Effect shall have occurred since the date of execution of this Agreement, other than as contemplated on **Schedule 7.2**.

(j) The Buyer shall have been issued a Resident Manufacturer/Distributor License from the Commonwealth of Massachusetts, Department of Public Health, Division of Food and Drugs.

(k) The Seller shall have assigned the [*****] Agreement to the Buyer.

(l) [Intentionally blank.]

(m) The amount of Finished Goods Inventory held by the Seller's distributors and the amount of Inventory of PhosLo Products held by the Seller shall be consistent with historic inventory levels of the PhosLo Business (but in no event in the case of Finished Goods Inventory held by the Seller's distributors in an aggregate amount equal to more than five months of average in-market sales by such distributors), and the Seller shall have delivered to the Buyer a letter from each such distributor, dated within thirty one (31) days before the Closing Date, confirming the amount of Finished Goods Inventory held by such distributor.

ARTICLE X

INDEMNIFICATION

10.1 Survival of Representations.

(a) All representations and warranties made by either party in this Agreement, any other Transaction Agreement, the Seller Certificate and the Buyer Certificate shall survive the Closing. No such warranty or representation or right to indemnification shall be deemed to be waived or otherwise diminished as a result of (i) any due diligence investigation by the party to whom the warranty or representation was made, or (ii) any actual or constructive knowledge by such party with respect to any facts, circumstances or claims or by the actual or constructive knowledge of such person that any warranty or representation is false at the time of Closing, or (iii) a party's consummation of the transactions contemplated hereby after waiving any of the conditions to its obligation to close (including the condition that the other party's representations and warranties be true and correct). All claims made by virtue of such representations, warranties, covenants and agreements shall be made under, and subject to the limitations set forth in, this **Article X**.

(b) EXCEPT AS SET FORTH IN ARTICLE 5, THE OTHER TRANSACTION AGREEMENTS AND THE SELLER CERTIFICATE, THE SELLER MAKES NO REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SALE OF THE PURCHASED ASSETS OR THE PHOSLO BUSINESS. THE BUYER ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT IT IS NOT RELYING ON ANY REPRESENTATION, WARRANTY OR OTHER STATEMENTS MADE BY OR ON BEHALF OF THE SELLER, OTHER THAN THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 5 OF THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS AND THE SELLER CERTIFICATE.

10.2 Seller's Agreement to Indemnify.

(a) The Seller hereby agrees to indemnify, defend and hold harmless the Buyer and its officers, directors, employees, agents, representations and Affiliates (collectively, the "**Buyer Indemnified Parties**") from and against all demands, claims, actions, losses, assessments, fees, damages, liabilities, obligations, judgments, interest, penalties, fines, Taxes, diminutions in value, costs and expenses (including attorneys' fees, settlement costs, arbitration costs and any reasonable legal and other expenses) ("**Damages**") incurred by any of the Buyer Indemnified Parties arising out of or in connection with or resulting from any of the following (collectively, "**Buyer Damages**"):

(i) any misrepresentation, inaccuracy, or breach of any representation or warranty of the Seller contained as of the Closing Date in this Agreement, any other Transactions Agreement or in the Seller Certificate;

(ii) any breach or nonfulfillment of any covenant or agreement of the Seller contained in this Agreement or in any other Transaction Agreement;

(iii) any Liability or alleged Liability of the Seller arising from the operation of the PhosLo Business prior to the Effective Time that is not an Assumed Liability, whether asserted before or after the Closing, including any Liability or alleged Liability that becomes, or is alleged to have become, a Liability of the Buyer under any bulk transfer law of any jurisdiction, under any common law doctrine of de facto merger or successor liability, or otherwise by operation of law;

(iv) any Liability to any Governmental Authority in respect of the PhosLo Business (or regarding the conduct of the PhosLo Business) prior to the Effective Time, whether asserted before or after the Closing; or

(v) any Liability or alleged Liability incurred or arising in connection with any demands, claims or actions by or on behalf of any shareholders of the Seller (including shareholder derivative actions) arising out of or relating to the transactions contemplated by this Agreement.

(b) Within ten days after the Seller's receipt from any Buyer Indemnified Party of a claim for Buyer Damages, Seller shall pay such Buyer Indemnified Party in cash, subject to the provisions of **Section 10.5** in the event of a disagreement and subject to the other provisions of this **Article X**, the amount set forth in such claim for Buyer Damages.

10.3 Buyer's Agreement to Indemnify.

(a) Buyer hereby agrees to indemnify, defend and hold harmless the Seller and its officers, directors, employees, agents, representatives and Affiliates (the "**Seller Indemnified Parties**") from and against all Damages incurred by any of the Seller Indemnified Parties arising out of or in connection with or resulting from any of the following (collectively, "**Seller Damages**"):

(i) any misrepresentation, inaccuracy, or breach of any representation or warranty of the Buyer contained in this Agreement, any other Transaction Agreement or in the Buyer Certificate;

(ii) any breach or nonfulfillment of any covenant or agreement of the Buyer contained in this Agreement or in any other Transaction Agreement; or

(iii) any failure by the Buyer to pay, perform or discharge any Assumed Liability;

(iv) any Liabilities or alleged Liabilities incurred or arising, or alleged to have occurred or arisen, in connection with the operation of the PhosLo Business, the condition of the Buyer's assets or the ownership of the Purchased Assets after the Effective Time, but excluding those Liabilities excluded from the Assumed Liabilities pursuant to the exclusion contained in **Section 2.4(a)(i)**; or

(v) any Liability or alleged Liability incurred or arising in connection with any demands, claims or actions by or on behalf of any shareholders of the Buyer (including shareholder derivative actions) arising out of or relating to the transactions contemplated by this Agreement.

(b) Within ten days after the Buyer's receipt from any Seller Indemnified Party of a claim for Seller Damages, the Buyer shall pay such Seller Indemnified Party in cash, subject to the provisions of **Section 10.5** in the event of a disagreement and subject to the other provisions of this **Article X**, the amount set forth in such claim for Seller Damages.

10.4 Procedure for Third-Party Claims.

(a) If any Person shall claim indemnification hereunder arising from any claim or demand of a third party, the party seeking indemnification (the "**Indemnified Party**") shall, within thirty days after receiving notice thereof, notify the party or parties from whom indemnification is sought (collectively, the "**Indemnifying Party**") in writing of the basis for such claim or demand setting forth the nature of the claim or demand in reasonable detail. Notwithstanding the foregoing, neither the failure of the Indemnified Party to so notify, nor any delay on the part of the Indemnified Party in so notifying, the Indemnifying Party of any such claim or demand shall relieve the Indemnifying Party of any indemnification obligation hereunder in respect thereof, except to the extent the Indemnifying Party demonstrates that the defense of such claim or demand is materially prejudiced by such failure or delay (and then only to such extent).

(b) Upon receipt of the foregoing notice, the Indemnifying Party may undertake the defense of the claim or demand if (i) the Indemnifying Party provides written notice to the Indemnified Party that the Indemnifying Party intends to undertake such defense and that the Indemnifying Party will indemnify the Indemnified Party against all Buyer Damages or Seller Damages, as applicable, resulting from or relating to such third-party claim for which indemnification shall be owing pursuant to this **Article X**; (ii) the

Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the third-party claim and fulfill its indemnification obligations hereunder; (iii) the third-party claim involves only money damages and does not seek an injunction or other equitable relief or involve Taxes of the Indemnified Party in any material respect; (iv) settlement of, or an adverse judgment with respect to, the third-party claim is not, in the good faith reasonable judgment of the Indemnified Party, likely to establish a precedent adverse to the continuing business interests of the Indemnified Party; (v) if the Indemnifying Party is a party to the Proceeding, the Indemnified Party has not determined in good faith that the Indemnifying Party's undertaking the defense of the claim or demand for itself and the Indemnified Party would be inappropriate; and (vi) the defense of the third-party claim is conducted actively and diligently by legal counsel reasonably acceptable to the Indemnified Party. The Indemnified Party may, by counsel of its choice, participate in such Proceedings, negotiations or defense, at the expense of the Indemnified Party.

(c) If (i) notice is given to the Indemnifying Party of a third-party claim as contemplated above, and the Indemnifying Party does not, within ten days after such notice is given, give notice to the Indemnified Party of its election to assume the defense of such Proceeding, or (ii) any of the conditions set forth in the first sentence of **Section 10.3(b)** above are or become unsatisfied, the Indemnified Party shall (upon notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim, and the Indemnifying Party shall reimburse the Indemnified Party promptly and periodically for the costs of defending the third-party claim (including the reasonable attorneys' fees and expenses of such counsel) and shall remain responsible for any indemnifiable amounts arising from or related to such third-party claim to the fullest extent provided in this **Article X**. The Indemnifying Party may elect to participate in such Proceedings, negotiations or defense at any time at its own expense.

(d) If the Indemnifying Party assumes the defense of a third-party claim hereunder, (i) no compromise or settlement of the claims with respect thereto may be effected by the Indemnifying Party without the Indemnified Party's consent unless (x) there is no finding or admission of any violation of any Legal Requirement, and (y) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party, and (ii) the Indemnified Party shall have no liability with respect to any compromise or settlement of such claims effected without its consent.

(e) If the Indemnified Party assumes the defense of a third-party claim hereunder based on the failure of one or more of the conditions set forth in **Section 10.4(b)(ii)-(v)**, then (i) no compromise or settlement of the claims with respect thereto may be effected by the Indemnified Party without the Indemnifying Party's consent unless and as part of such settlement the Indemnifying Party is released in writing from all liability with respect to such third party claim, other than the underlying claim for indemnification under this **Article X** and (ii) except as provided in clause (i) hereof, the Indemnifying Party shall have no liability with respect to any compromise or settlement of any such claim effected without its consent.

(f) The parties shall cooperate in the defense of all third-party claims that may give rise to indemnification obligations hereunder. In connection with the defense of any such claim, each party shall make available to the party controlling such defense any books, records or other documents within its control that are reasonably requested in the course of such defense. The parties shall also keep one another reasonably apprised of the status of all third-party claims that may be subject to indemnification hereunder.

10.5 Procedure for Direct Claims.

(a) If an Indemnified Party shall claim indemnification hereunder for any claim other than third-party claims, the Indemnified Party shall notify the Indemnifying Party in writing of the basis for such claim, setting forth the nature and amount of the Seller Damages or Buyer Damages, as applicable resulting from such claim. The Indemnifying Party shall give written notice of any disagreement with such claim within 15 days following receipt of the Indemnified Party's notice of the claim, specifying in reasonable detail the nature and extent of such disagreement. If the Indemnifying Party and the Indemnified Party are unable to resolve any disagreement within 30 days following receipt by the Indemnified Party of the notice referred to in the preceding sentence, then the parties hereto agree, subject to **Section 10.6**, to arbitrate any direct claim for Damages less than \$7,500,000 (an "**Arbitration Dispute**") pursuant to this **Section 10.5**. With respect to any direct claim for Damages in excess of \$7,500,000, the parties are free to pursue recourse in state or federal courts.

(b) With respect to any Arbitration Dispute, any party may commence arbitration proceedings with the CPR Institute for Arbitration Dispute Resolution office (the "**CPR**") by filing a demand for arbitration in writing (a "**Demand**") with the CPR and by simultaneously sending a copy of the Demand to the other parties. The arbitration proceedings shall be governed by and decided in accordance with the CPR Rules for Non-Administered Arbitration then in effect, unless the parties to the arbitration shall mutually agree otherwise in writing. Any evidentiary rules not expressly provided by the CPR Rules shall be determined in accordance with the Federal Rules of Evidence. The arbitration shall be governed by the U.S. Arbitration Act, 9 U.S.C. § 1, et seq. and shall be administered under the procedures set forth herein.

(c) The arbitration panel to be selected (the "**Arbitrators**") shall be a balanced panel, consisting of (i) three independent and impartial arbitrators selected pursuant to CPR Rule 6.4 in the event the total amount in the Arbitration Dispute is \$3 million or more; or (ii) one independent and impartial arbitrator selected pursuant to CPR Rule 6.4 in the event the total amount in the Arbitration Dispute is less than \$3 million.

(d) The arbitration shall be conducted in Boston, Massachusetts; provided that the Arbitrator(s) may, for the convenience of the parties and without changing the sites of the arbitration proceeding, permit the taking of evidence outside of Boston.

(e) The Arbitrator(s) shall permit and facilitate discovery pursuant to Rule 11 of the Federal Rules of Civil Procedure, except that for claims involving \$1 million or less, no more than two depositions shall be permitted. Within 30 days after selection of the Arbitrator(s), the party filing the demand for arbitration shall provide copies of all business documents and other evidence in its possession that support its demand. Within 30 days of receipt of such information, the receiving party shall produce all business documents and evidence that support its defense or response. Thereafter, each party shall have the right to such other discovery

procedures as the Arbitrator(s) may determine to be reasonably necessary for a fair understanding of any legitimate issue raised in the arbitration. A party's failure to timely disclose documents, witnesses, expert reports, calculations and other evidence relating to the Arbitration Dispute shall operate as a bar to the nondisclosing party's use of such evidence, and, in the discretion of the Arbitrator(s), be a basis for sanctions, including an award against the nondisclosing party.

(f) It is the intention of the parties hereto that the arbitration proceeding be completed through the rendering of the award within six months of the selection of the Arbitrator(s), and each party hereto shall so instruct the Arbitrator(s) and take such other actions as may be reasonably required to give effect to such intention. The award of the Arbitrator(s) may be monetary damages, an order requiring performance of obligations under this Agreement or any other appropriate award or remedy. The Arbitrator(s) may not make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, the Arbitrator(s) shall not be authorized or empowered to award punitive, exemplary, consequential or special damages, and the parties expressly waive any claim to such damages.

(g) The fees and expenses of the Arbitrator shall be shared equally by the parties and advanced by them from time to time as required; provided that, at the conclusion of the arbitration, the prevailing party shall be entitled to recover all attorneys' fees, filing fees, costs, including the costs of the arbitration previously advanced, expert fees and costs, and related expenses from the non-prevailing party and such recovery shall be made part of any judgment or arbitration award.

(h) The final award rendered by the Arbitrator(s) (after any CPR appeal allowed herein) shall be final and binding upon the parties and judgment may be entered by any competent court having jurisdiction thereof. In the event of an arbitration award of Damages less than \$1 million (inclusive of costs, fees and interest), such award shall not be subject to appeal. In the event the award exceeds \$1 million (inclusive of any award of costs, fees and interest), an appeal may be taken under the CPR Arbitration Appeal Procedure from any final award of an arbitral panel arising out of or related to this Agreement. Such appeal must conform to the requirements of the CPR Arbitration Appeal Procedure. Notwithstanding anything to the contrary provided in this paragraph and without prejudice to the above procedures, any of the parties may apply to any court of competent jurisdiction for temporary injunctive judicial relief if such action is necessary to avoid irreparable damage or to preserve the status quo until such time as the arbitration panel is convened and available to hear such party's request for temporary relief. The award rendered by the Arbitrator(s), after any appeal taken pursuant to the foregoing, shall be final and not subject to judicial review, and judgment thereon may be entered in any court of competent jurisdiction. The award of the Arbitrator(s) shall be accompanied by a written explanation of the basis for the award. Any amount owing by any Person as a result of this **Section 10.5** shall be paid within two Business Days after final determination of such amount.

(i) The parties agree that (i) the provisions of this **Section 10.5** shall not apply to any preliminary or temporary equitable relief sought with respect to breaches of the obligations set forth in **Sections 8.4** (intellectual property), **8.5** (access to information, etc.) and **12.4** (publicity), and (ii) the Arbitrator shall have no power to grant such preliminary or temporary relief with respect to breaches of such obligations.

10.6 Limitations on Indemnification. Notwithstanding anything in this **Article X** to the contrary:

(a) The Seller shall have no liability under **Section 10.2(a)(i)** or with respect to any breach by Seller of its obligations under **Section 7.8** unless and until the aggregate amount of the Buyer Damages under such subsection exceeds \$[*****], and the Seller shall have no obligation to indemnify for \$[*****] of such Buyer Damages after such threshold is reached (but the Seller shall be liable for the remaining \$[*****] of such Buyer Damages); provided that the foregoing limitation shall not apply to any breach or alleged breach of any representation or warranty set forth in **Section 5.1, 5.2, 5.3(b)(i), 5.4(b), 5.12, 5.30** or **5.32**, as to which the Seller shall be liable in full from the first dollar of loss;

(b) The Seller shall have no liability under **Section 10.2(a)(i)** or with respect to any breach by Seller of its obligations under **Section 7.8** to the extent, and only to the extent, that the aggregate amount of the Buyer Damages under such subsection exceeds the sum of \$[*****], provided, that the foregoing limitation shall not apply to any breach or alleged breach of any representation or warranty set forth in **Section 5.1, 5.2, 5.3(b)(i), 5.4(b), 5.12, 5.30** or **5.32** or any representation or warranty made fraudulently, as to which the Seller shall be liable in full; and

(c) No indemnification shall be required by the Seller under **Section 10.2(a)(i)** or with respect to any breach by Seller of its obligations under **Section 7.8** unless the Seller shall have received notice of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by the Buyer on or before the date 18 months after the Closing Date; provided that (i) with respect to breaches of the representations and warranties set forth in **Section 5.12**, or **5.24**, indemnification shall be required if the Seller shall have received notice of the claim prior to the date thirty days after the expiration of the statute of limitations applicable to claims by third parties giving rise to the breach of such representations and warranties; and (ii) the foregoing limitation shall not apply to any breach or alleged breach of any representation or warranty set forth in **Section 5.1, 5.2, 5.3(b)(i), 5.4(b), 5.30** or **5.32**.

(d) The amount of Damages recoverable by an Indemnified Party under this **Article X** with respect to a claim for indemnification shall be reduced by (i) the amount of any payment received from an insurance carrier or other third party indemnitor by such Indemnified Party (or an Affiliate thereof) with respect to the Damages to which such claim for indemnification relates. If an Indemnified Party (or an Affiliate) receives any insurance payment in connection with any claim for Damages for which it has already received an indemnification or other third party indemnity payment from the Indemnifying Party, it shall pay to the Indemnifying Party, within 30 days of receiving such insurance payment, an amount equal to the excess of (A) the amount previously received by the Indemnified Party under this **Article X** with respect to such claim plus the amount of the insurance payments received, over (B) the amount of Damages with respect to such claim which the Indemnified Party has become entitled to receive under this **Article X**.

10.7 Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price to the maximum extent allowable under applicable law.

10.8 Construction. The parties intend that each representation, warranty and covenant herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant, as the case may be.

10.9 Interest. Interest shall accrue from the date due on amounts owing under this Agreement, including all indemnification obligations hereunder, at the lesser of (i) one-half percent per month and (ii) the highest rate permitted by law, based on the actual number of days elapsed from the date the amount is due or owing until paid in full. An amount due or owing pursuant to an indemnification claim made pursuant to this **Article X** shall be deemed owing from the date the Indemnifying Party receives notice of such claim as provided in this **Article X**.

10.10 Remedies. Absent fraud, after the Closing the indemnification rights provided in this **Article X**, shall be the sole and exclusive remedy available to a party for any breach or alleged breach of this Agreement by the other party; provided, that the provisions of this **Section 10.10** shall not prevent any party from seeking the remedies of specific performance or injunctive relief in connection with a breach of a covenant or agreement of any party contained herein.

ARTICLE XI

TERMINATION

11.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Seller and the Buyer;

(b) by the Seller if the Buyer is in breach of any representation, warranty, covenant or agreement contained in this Agreement and such breach (i) would cause the conditions set forth in **Section 9.2(a)** or **Section 9.2(b)** not to be satisfied and (ii) is not cured within twenty days following delivery by the Seller to the Buyer of written notice of such breach;

(c) by the Buyer, if the Seller is in breach of any representation, warranty, covenant or agreement contained in this Agreement and such breach (i) would cause the conditions set forth in **Section 9.3(a)** or **Section 9.3(b)** not to be satisfied and (ii) is not cured within twenty days following delivery by the Buyer to the Seller of written notice of such breach

(d) by the Seller if all the conditions in **Section 9.2** shall not have been fulfilled as of October 31, 2006 or shall have become incapable of fulfillment (other than through the failure of the Seller to comply fully with any of its obligations under this Agreement) and such conditions shall not have been waived by the Seller;

(e) by the Buyer, if all of the conditions set forth in **Section 9.3** shall not have been fulfilled as of October 31, 2006 or shall have become incapable of fulfillment (other than through the failure of the Buyer to comply fully with its obligations under this Agreement) and such conditions shall not have been waived by the Buyer; or

(f) by either the Buyer or the Seller if the Closing has not taken place on or before October 31, 2006 for any reason other than the failure of the condition in **Section 9.1(b)**, or if the Closing has not taken place on or before November 11, 2006 by reason of the failure of the condition in **Section 9.1(b)**, or such later date agreed to by the parties.

11.2 Procedure and Effect of Termination. In the event of a termination of this Agreement by any party pursuant to **Section 11.1**, the terminating party shall give prompt written notice thereof to the other party, and the transactions contemplated hereby shall be abandoned, without further action by either of the parties hereto, and all further obligations hereunder of the parties shall terminate, except that the obligations in the last sentence of **Section 7.3(a)**, in **Article X** and in **Section 12.4** and **Section 12.5** shall survive, and each party may seek any remedy under **Article X**, or the remedies of specific performance or injunctive relief, for any violation or breach of this Agreement by the other party.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Jurisdiction, Venue and Service of Process. Subject to **Section 10.5**, if any party commences a Proceeding relating to or arising from this Agreement, the parties hereto agree that the United States District Court for the Eastern District of Massachusetts shall have sole and exclusive jurisdiction over any such Proceeding. If all such courts lack federal subject matter jurisdiction, the parties agree that the courts of the Commonwealth of Massachusetts in the city of Boston shall have sole and exclusive jurisdiction. Any of these courts shall be proper venue for any such Proceeding and the parties hereto waive any objection to such venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein in connection with any such Proceeding and agree to accept service of process to vest personal jurisdiction over them in any of these courts. Process in any Proceeding referred to in this **Section 12.1** may be served on any party anywhere in the world.

12.2 Remedies. Unless otherwise stated herein, to the extent permitted by law, all rights and remedies existing under this Agreement and any related agreements or documents are cumulative to, and not exclusive of, any rights or remedies otherwise available under applicable law. The parties acknowledge that the restrictions and obligations set forth in **Sections 8.4** and **8.5**, are necessary for the protection of the parties and that any breach thereof may cause the affected party irreparable damage, that the affected party's remedies at law in the event of such breach would be inadequate, and that, accordingly, the affected party shall be entitled to the issuance by a court of competent jurisdiction of an injunction in favor of the affected party enjoining the breach or threatened breach of such restrictions in the event of such breach. The foregoing provision shall not constitute a waiver of any other remedies any party may have in law or in equity.

12.3 Attorneys' Fees. In the event of any action for the breach of this Agreement or misrepresentation by any party, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses incurred in such action. Attorneys' fees incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. The preceding sentence is intended to be severable from the other provisions of this Agreement and to survive any judgment and, to the maximum extent permitted by law, shall not be deemed merged into any such judgment.

12.4 Publicity. The Seller and the Buyer shall coordinate all publicity relating to the transactions contemplated by this Agreement, and no party shall issue any press release, publicity statement or other public notice relating to this Agreement, or the transactions contemplated by this Agreement, without obtaining the prior consent of the Seller and the Buyer, except to the extent that either party and its legal counsel in good faith conclude such release, statement or notice is required by applicable Legal Requirements.

12.5 Expenses. Whether or not the transactions contemplated hereby are consummated, each party shall pay all costs and expenses incurred by such party in connection with this Agreement and the transactions contemplated hereby, including fees, expenses and disbursements of their respective counsel, accountants, representatives and investment bankers provided that the Seller has agreed to pay, and has reimbursed the Buyer for, one-half of the HSR filing fee.

12.6 Waiver of Compliance; Consents. The rights and remedies of the parties are cumulative and not alternative and may be exercised concurrently or separately. No failure or delay by any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party shall be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement. Any consent required or permitted by this Agreement is binding only if in writing.

12.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered by hand or a national overnight courier service, by facsimile with subsequent telephone confirmation, or three Business Days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties in the manner provided below:

(a) If to the Seller:

Nabi Biopharmaceuticals
5800 Park of Commerce Blvd., N.W.
Boca Raton, FL 33487
Facsimile: (561) 989-5801
Attention: Chief Financial Officer

With a copy to the General Counsel at the same address; and

With a copy to:

Nutter McClennen & Fish LLP
World Trade Center West
155 Seaport Blvd.
Boston, MA 02210
Facsimile: (617) 310-9000
Attention: James E. Dawson, Esq.

(b) If to the Buyer, to:

Fresenius USA Manufacturing, Inc.
95 Hayden Avenue
Lexington, Massachusetts 02420
Facsimile: (781) 402-9713
Attention: Law Department

With a copy to:

Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28426
Facsimile: (704) 378-4000
Attention: Kent J. McCready, Esq.

12.8 Binding Agreement; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns, and except as provided in **Article X** shall not confer upon any other Person any rights or remedies hereunder. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other parties, except that either party may assign its rights and obligations to any Affiliate of such party, or to any purchaser of the stock of such party or of substantially all the assets of such party or, in the case of the Buyer, of the Purchased Assets and Assumed Liabilities; provided, however, that in the case of an assignment, the assigning party shall remain primarily liable for any breach or non-performance of its assignee. Nothing in this Agreement is intended to relieve or discharge the obligation of any third person to any party to this Agreement.

12.9 Interpretation. This Agreement has been prepared by the Buyer and its advisors and reviewed by the Seller and their advisors. The parties agree that this Agreement is the product of all their efforts, and that it should not be interpreted in favor of any one party merely because of their efforts in preparing it. Any rule of law or legal decision that would require interpretation of any claimed ambiguity against the party drafting it shall have no application to this Agreement and is expressly waived.

12.10 Governing Law. The execution, interpretation and performance of this Agreement shall (except to the extent that such matter is pre-empted by federal law) be governed by the internal laws and judicial decisions of the Commonwealth of Massachusetts applicable to contracts made and to be performed in such state, without regard to conflict of law principles that would produce a contrary result.

12.11 Further Assurances. Subject to the terms and conditions of this Agreement, each of the parties hereto will use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Legal Requirement to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement provided that neither party shall be required to make any payments in excess of nominal amounts or undertake any material obligations in connection therewith. From time to time after the Closing Date, without further consideration, the Seller will, at its expense, execute and deliver, or cause to be executed and delivered, such documents to the Buyer as the Buyer may reasonably request in order to more effectively vest in the Buyer good title to the Purchased Assets provided that neither party shall be required to make any payments in excess of nominal amounts or undertake any material obligations in connection therewith. From time to time after the Closing Date, without further consideration, the Buyer will, at the Buyer's expense, execute and deliver such documents to the Seller as the Seller may reasonably request in order to consummate the purchase of the Purchased Assets and the assumption by the Buyer of the Assumed Liabilities pursuant to this Agreement.

12.12 Severability. If any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless the invalidity of any such provision substantially deprives either party of the practical benefits intended to be conferred by this Agreement. Notwithstanding the foregoing, any provision of this Agreement held invalid, illegal or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable, and the determination that any provision of this Agreement is invalid, illegal or unenforceable as applied to particular circumstances shall not affect the application of such provision to circumstances other than those as to which it is held invalid, illegal or unenforceable. To the extent permitted by law, the parties hereby to the same extent waive any Legal Requirement that renders any provision hereof prohibited or unenforceable in any respect.

12.13 Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed on signature pages exchanged by facsimile or other electronic means, in which event each party shall promptly deliver to the others such number of original executed copies as the others may reasonably request.

12.14 Merger and Modification; Amendment. This Agreement, including the Exhibits and Schedules hereto and together with the other Transaction Agreements, expresses the entire agreement between the parties hereto and supersedes any prior or contemporaneous written or oral understanding or agreement other than the Confidentiality Agreement, as provided in **Section 7.3(b)**. This Agreement may not be modified, amended, supplemented or waived except by a writing signed by all of the parties to this Agreement, and such writing must refer specifically to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

THE BUYER:

FRESENIUS USA MANUFACTURING, INC.

By: /s/ Rice Powell

Name: Rice Powell

Title: President

THE SELLER:

NABI BIOPHARMACEUTICALS

By: /s/ Thomas H. McLain

Name: Thomas H. McLain

Title: Chairman, President and Chief Executive Officer

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT, dated as of the 31st day of October, 2006 (this “**Amendment**”), is between **Nabi Biopharmaceuticals**, a Delaware corporation (the “**Seller**”), and **Fresenius USA Manufacturing, Inc.**, a Delaware corporation (the “**Buyer**”), and amends the Asset Purchase Agreement (the “**Purchase Agreement**”), dated as of October 11, 2006, by and between the Buyer and the Seller.

BACKGROUND STATEMENT

Pursuant to the Purchase Agreement, the Buyer agreed to purchase from the Seller, and the Seller agreed to sell to the Buyer, the Seller’s PhosLo Business.

The Buyer and the Seller desire to amend the Purchase Agreement as provided herein.

STATEMENT OF AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings given to them in the Purchase Agreement.

Section 2. Termination Date. Sections 11.1(d), (e) and (f) of the Purchase Agreement are hereby amended by substituting the date “November 14, 2006” for the dates “October 31, 2006” and “November 11, 2006” in each instance where such dates appear.

Section 3. Effectiveness of this Amendment. This Amendment shall be effective upon execution hereof by the parties hereto.

Section 4. Effect of Amendment. From and after the effective date of this Amendment, all references to the Purchase Agreement set forth in any other document or other agreement or instrument shall, unless otherwise specifically provided, be references to the Purchase Agreement as amended by this Amendment. This Amendment shall not constitute or be deemed to constitute an amendment, modification or waiver of any provision of the Purchase Agreement except as expressly set forth herein. Except as expressly amended hereby, the Purchase Agreement shall remain in full force and effect in accordance with its terms.

Section 5. Governing Law. The execution, interpretation and performance of this Amendment shall be governed by the internal laws and judicial decisions of the Commonwealth of Massachusetts

Section 6. Counterparts; Electronic Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment may be executed on signature pages exchanged by facsimile or other electronic means, in which event each party shall promptly deliver to the others such number of original executed copies as the others may reasonably request.

(This remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

NABI BIOPHARMACEUTICALS

By: /s/ Thomas H. McLain
Name: Thomas H. McLain
Title: Chairman, President and CEO

FRESENIUS USA MANUFACTURING, INC.

By: /s/ Rice Powell
Name: Rice Powell
Title: President

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT, dated as of the 14th day of November, 2006 (this "**Amendment**"), is between Nabi Biopharmaceuticals, a Delaware corporation (the "**Seller**"), and Fresenius USA Manufacturing, Inc., a Delaware corporation (the "**Buyer**"), and amends the Asset Purchase Agreement (the "**Purchase Agreement**"), dated as of October 11, 2006, by and between the Buyer and the Seller.

BACKGROUND STATEMENT

Pursuant to the Purchase Agreement, the Buyer agreed to purchase from the Seller, and the Seller agreed to sell to the Buyer, the Seller's PhosLo Business.

The Buyer and the Seller desire to amend the Purchase Agreement as provided herein.

STATEMENT OF AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings given to them in the Purchase Agreement.

Section 2. ASN Milestone. Section 3.11(b)(iv) of the Purchase Agreement is hereby amended by substituting the amount "\$3,000,000" for the amount "\$2,500,000."

Section 3. ASN Costs. The Seller hereby agrees to pay up to \$[*****] of the costs listed on Schedule 1 hereto, which are the costs of the PhosLo Business to be incurred in connection with the 2006 meeting of the American Society of Nephrology. If more than \$[*****] of such costs are paid by the Seller, the Buyer shall reimburse such costs to the Seller, up to a maximum amount of \$[*****], promptly upon request therefor. If the aggregate amount of the Seller's payments hereunder total less than \$[*****], the Seller shall, promptly upon the request of the Buyer, pay such shortfall to the Buyer as reimbursement of certain other expenses of the Buyer with respect to such meeting, so that the Seller's payments hereunder total \$[*****].

Section 4. Effectiveness of this Amendment. This Amendment shall be effective upon execution hereof by the parties hereto.

Section 5. Effect of Amendment. From and after the effective date of this Amendment, all references to the Purchase Agreement set forth in any other document or other agreement or instrument shall, unless otherwise specifically provided, be references to the

Purchase Agreement as amended by this Amendment. This Amendment shall not constitute or be deemed to constitute an amendment, modification or waiver of any provision of the Purchase Agreement except as expressly set forth herein. Except as expressly amended hereby, the Purchase Agreement shall remain in full force and effect in accordance with its terms.

Section 6. Governing Law. The execution, interpretation and performance of this Amendment shall be governed by the internal laws and judicial decisions of the Commonwealth of Massachusetts.

Section 7. Counterparts; Electronic Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment may be executed on signature pages exchanged by facsimile or other electronic means, in which event each party shall promptly deliver to the others such number of original executed copies as the others may reasonably request.

(This remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

NABI BIOPHARMACEUTICALS

By: /s/ Thomas H. McLain

Name: Thomas H. McLain

Title: Chairman, President and CEO

FRESENIUS USA MANUFACTURING, INC.

By: /s/ Rice Powell

Name: Rice Powell

Title: President

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date first above written.

NABI BIOPHARMACEUTICALS

By: _____
Name: Thomas H. McLain
Title: Chairman, President and CEO

FRESENIUS USA MANUFACTURING, INC.

By: /s/ Rice Powell _____
Name: Rice Powell
Title: President

NONCOMPETITION AND NONSOLICITATION AGREEMENT

between

FRESENIUS USA MANUFACTURING, INC.

and

NABI BIOPHARMACEUTICALS

November 14, 2006

NONCOMPETITION AND NONSOLICITATION AGREEMENT

THIS NONCOMPETITION AND NONSOLICITATION AGREEMENT (this "Agreement"), dated as of November 14, 2006, is between **Fresenius USA Manufacturing, Inc.**, a Delaware corporation, (the "Buyer"), and **Nabi Biopharmaceuticals**, a Delaware corporation (the "Seller").

Background Statement

The Buyer and the Seller are parties to an Asset Purchase Agreement dated as of October 11, 2006 (the "Purchase Agreement") pursuant to which the Buyer is purchasing the PhosLo Business.

The entering into of this Agreement by the Buyer and the Seller is a condition precedent to the closing of the transactions contemplated by the Purchase Agreement.

Statement of Agreement

The parties agree as follows:

1. Definitions.

(a) "**Restricted Business**" shall mean the business of developing, licensing, acquiring, manufacturing, marketing, distributing or selling (i) any phosphate binder or (ii) any product or device or therapeutic service for the treatment of hyperphosphaetemia.

(b) "**Ancillary Acquisition**" shall mean the acquisition by the Seller, or one of its Affiliates that is an entity, of a product or products (whether directly through an acquisition or license of assets or indirectly through an acquisition of capital stock of a company) as a part of the acquisition of a group of products which upon such acquisition would constitute a Restrictive Business in the Territory ("**Competitive Products**") in circumstances which do not involve a Sale of the Seller and where the Seller notifies the Buyer in advance of such acquisition of its intention to divest the Competitive Products as promptly as reasonably possible following the acquisition thereof.

(c) "**Sale of the Seller**" shall mean the sale or transfer by the Seller of all or substantially all of its assets, the merger of the Seller with or into another entity or the consummation of any other similar business transaction as a result of which the shareholders of the Seller immediately prior to such transaction do not continue to hold a majority of the outstanding voting securities of the surviving entity following such transaction.

(d) All other capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in the Purchase Agreement.

2. Noncompetition; Nonsolicitation; No-hire. As an inducement for the Buyer to enter into the Purchase Agreement and in consideration for the Buyer's consummation of the transactions contemplated thereby, the Seller agrees that:

(a) Until the 15th anniversary of the Closing Date or, if earlier, the date the Buyer, its Affiliates and their successors and assigns cease entirely to operate the PhosLo Business (the “Term”), the Seller shall not, and shall cause its Affiliates that are entities not to, directly or indirectly, (i) engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing or control of any Person engaged in, the Restricted Business or (ii) render any service to, or advise or consult with, any Person with respect to a Restricted Business, in each case anywhere in the world, including specifically the United States of America, Canada and Europe; provided, however, that (A) the Seller, together with its Affiliates that are entities, in the aggregate, may purchase or otherwise acquire up to (but not more than) two percent (2%) of any class of securities of any entity engaged in the Restricted Business if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and (B) the foregoing provisions of this **Section 2(a)** and **Section 2(b)** shall not apply in the following circumstances (i) during the first 12 months following an Ancillary Acquisition with respect to the Competitive Products acquired in the Ancillary Acquisition, (ii) a Person (or such Person’s Affiliates that are entities, other than the Seller) engaged in the Restricted Business acquires the Seller in a Sale of the Seller, but only if such Person engaged in the Restricted Business as of the closing of such Sale of the Seller and only if the Seller and its successors and assigns, and all Employees who are employed by the Seller or any of its Affiliates that are entities as of the closing of such Sale of the Seller, do not engage or participate in, or provide advice or render services with respect to, such Restricted Business, (iii) a Person (or such Person’s Affiliates that are entities, other than the Seller) acquires the Seller in a Sale of the Seller, and is not engaged in the Restricted Business as of the closing of such Sale of the Seller and later acquires or develops a Restricted Business, but only if the Seller and its successors and assigns, and all Employees who are employed by the Seller or any of its Affiliates that are entities as of the closing of such Sale of the Seller, do not engage or participate in, or provide advice or render services with respect to, such Restricted Business, or (iv) to the Seller and any of its Affiliates that are entities in connection with the development, licensing, acquisition, manufacturing, marketing, distribution or sale of New Formulation Products in any country in which the Seller re-acquires rights to the New Formulation Products pursuant to Section 8.10(e) of the Purchase Agreement. For seven (7) years after the Closing Date, the term “Employees” as used in this Section 2(a) shall be deemed to include Henrik S. Rasmussen and Paul Kessler.

(b) During the Term, the Seller shall not, and shall cause its Affiliates that are entities not to, directly or indirectly, whether for such Person’s own account or for any other Person solicit, induce or attempt to induce any supplier, patient, vendor, licensee or other Person to cease or reduce doing business with the Buyer or its Affiliates with respect to the PhosLo Business or in any way interfere with the relationship between any such supplier, patient, vendor, licensee or other Person and the Buyer or its Affiliates with respect to the PhosLo Business.

(c) For the period from the Closing Date through the first anniversary of the Closing Date, the Seller shall not, and shall cause its Affiliates that are entities not to, whether for such Person’s own account or the account of any other Person: (i) employ or engage as an employee, an independent contractor or otherwise any individual who was an Employee of the Seller and who was employed by the Buyer or an Affiliate of the Buyer in the PhosLo Business, or (ii) in any manner induce or attempt to induce any such Employee to terminate his or her employment with the Buyer or any of its Affiliates.

3. No-hire. As an inducement for the Seller to enter into the Purchase Agreement and in consideration for the Seller's consummation of the transactions contemplated thereby, the Buyer agrees that for the period from the Closing Date through the first anniversary of the Closing Date, the Buyer shall not, and shall cause its Affiliates that are entities not to, whether for such Person's own account or the account of any other Person: (i) employ or engage as an employee, an independent contractor or otherwise any individual who was (A) an Employee of the Seller listed on Schedule 7.7(a) to the Purchase Agreement or (B) an employee of the Seller (other than an Employee of the Seller not listed on Schedule 7.7(a) to the Purchase Agreement) with whom the Buyer had contact or of whom the Buyer became aware in connection with the Buyer's investigation of the PhosLo Business or negotiation of the Purchase Agreement or (ii) in any manner induce or attempt to induce any such employee to terminate his or her employment with the Seller or any of its Affiliates.

4. If **Section 2** or **3** of this Agreement is unenforceable because of its duration or its geographic coverage, or because it is too expansive in any other respect, the parties hereto agree to modify such **Section 2** or **3**, and that the court making such determination shall have the power to interpret and modify such **Section 2** or **3**, to reduce the duration, the geographic coverage, or such other provision, and to delete specific words or phrases herefrom ("blue-penciling"), so that such **Section 2** or **3** shall extend over the longest time, the largest geographic area and in any other respect so that it is enforceable to the maximum extent that is herein provided and permitted by law and, in its reduced or blue-penciled form, such provision shall then be enforceable and shall be enforced.

5. Acknowledgements by the Seller. The Seller acknowledges that (i) the PhosLo Business is international in scope; (ii) the products and services related to the PhosLo Business are or could be marketed throughout the world; (iii) the PhosLo Business competes with other businesses that are or could be located in any part of the world; (iv) the Buyer has required that the Seller make the covenants set forth in this Agreement as a condition to the Buyer's consummation of the transactions contemplated by the Purchase Agreement and the Buyer would not otherwise consummate such transactions; (v) the provisions of this Agreement are reasonable and necessary to protect and preserve the Buyer's interests in and operation of the PhosLo Business from and after the Closing; and (vi) the Buyer would be irreparably damaged if the Seller were to breach the covenants set forth in this Agreement. Accordingly, the Seller agrees that the covenants in this Agreement impose a reasonable restraint on the Seller and its Affiliates.

6. Injunctive Relief and Additional Remedy. The Seller and the Buyer acknowledge that the injury that would be suffered by the other party as a result of their breach of the provisions of this Agreement (including any provision of **Section 2** or **3**) would be irreparable and that an award of monetary damages alone to such other party Buyer for such a breach would be an inadequate remedy. The Buyer and the Seller shall have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and the Buyer or the Seller shall not be obligated to prove actual damages or post a bond or other security in seeking such relief.

7. Independent Agreement. Without limiting any party's equitable rights, remedies or defenses, to the extent available under applicable law, the existence of any claim or cause of action of a party, or its respective Affiliates against other party or its Affiliates,

whether predicated on the Purchase Agreement or otherwise, shall not constitute a defense to the enforcement by such party or its Affiliates of this Agreement.

8. Jurisdiction, Venue and Service of Process. The parties hereto agree that the United States District Court for the Eastern District of Massachusetts shall have sole and exclusive jurisdiction over any action, lawsuit or proceeding relating to or arising from this Agreement. If all such courts lack federal subject matter jurisdiction, the parties agree that the courts of the Commonwealth of Massachusetts in the city of Boston shall have sole and exclusive jurisdiction. Any of these courts shall be proper venue for any such action, lawsuit or proceeding and the parties hereto waive any objection to such venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein in connection with any such action, lawsuit or proceeding and agree to accept service of process to vest personal jurisdiction over them in any of these courts. Process in any action, lawsuit or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

9. Attorneys' Fees. In the event of any action for the breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses incurred in such action. Attorneys' fees incurred in enforcing any judgment in respect of this Agreement are recoverable as a separate item. The preceding sentence is intended to be severable from the other provisions of this Agreement and to survive any judgment and, to the maximum extent permitted by law, shall not be deemed merged into any such judgment.

10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered by hand or a national over-night courier service, by facsimile with subsequent telephone confirmation, or three Business Days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties in the manner provided below:

If to the Seller: Nabi Biopharmaceuticals
 5800 Park of Commerce Blvd, N.W.
 Boca Raton, FL 33487
 Facsimile: 561-989-5801
 Attention: Chief Financial Officer
 General Counsel

With a copy to: Nutter McClennen & Fish LLP
 World Trade Center West
 155 Seaport Blvd.
 Boston, MA 02210
 Facsimile: 617-310-9000
 Attention: James E. Dawson, Esq.

If to the Buyer, to: Fresenius USA Manufacturing, Inc.
 95 Hayden Avenue
 Lexington, Massachusetts 02420
 Facsimile: (781) 402-9713
 Attention: Law Department

With a copy to: Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28426
Facsimile: (704) 378-4000
Attention: Kent J. McCready, Esq.

11. Binding Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns, and shall not confer upon any other Person any rights or remedies hereunder. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto without the prior written consent of the other parties, except that either party may assign its rights and obligations to any Affiliate of such party, or to any purchaser of the stock of such party or of substantially all the assets of such party or, in the case of the Buyer, of the Purchased Assets and Assumed Liabilities; provided, however, that in the case of an assignment, the assigning party shall remain primarily liable for any breach or non-performance of its assignee.

12. Governing Law. The execution, interpretation and performance of this Agreement shall (except to the extent that such matter is pre-empted by federal law) be governed by the internal laws and judicial decisions of the Commonwealth of Massachusetts applicable to contracts made and to be performed in such state, without regard to conflict of law principles that would produce a contrary result.

13. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed on signature pages exchanged by facsimile or other electronic means, in which event each party shall promptly deliver to the others such number of original executed copies as the others may reasonably request.

IN WITNESS WHEREOF, the parties hereto have executed this Noncompetition and Nonsolicitation Agreement as of the date first above written.

BUYER

FRESENIUS USA MANUFACTURING, INC.

By: /s/ Rice Powell

Name: Rice Powell

Title: President

SELLER

NABI BIOPHARMACEUTICALS

By: /s/ Thomas. H. McLain

Name: Thomas H. McLain

Title: Chairman, Chief Executive Officer and President

[*****] A CONFIDENTIAL PORTION OF THE MATERIAL HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Execution Copy

Braintree Laboratories, Inc.
60 Columbian Street West
Braintree, MA 02185-0929

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard, N.W.
Boca Raton, FL 33487

Re: Asset Purchase Agreement dated as of June 23, 2003 between Braintree Laboratories, Inc. and Nabi Biopharmaceuticals

Gentlemen:

Reference is made to the Asset Purchase Agreement dated as of June 23, 2003 (the "Purchase Agreement") between Braintree Laboratories, Inc. ("Braintree") and Nabi Biopharmaceuticals ("Nabi") pursuant to which Braintree sold to Nabi certain assets related to PhosLo[®] and to the Promissory Note issued by Nabi to Braintree on August 4, 2003 in the original principal amount of \$25,000,000 (the "Note").

In connection with the proposed transfer by Nabi to Fresenius USA Manufacturing, Inc. ("Fresenius") of certain assets related to PhosLo pursuant to the terms of an Asset Purchase Agreement dated October 11, 2006 between Nabi and Fresenius (the "Fresenius Sale"), Nabi and Braintree have agreed to provide certain accommodations to each other as follows:

1. Effective upon the closing of the Fresenius Sale, Section 7.5(a)(iii) of the Purchase Agreement shall be automatically amended by deleting the reference therein to "\$[*****]" and inserting in lieu thereof "\$[*****]" and Section 7.5(a)(iv) of the Purchase Agreement shall be automatically amended by deleting the reference therein to "\$[*****]" and inserting in lieu thereof "\$[*****]."

2. Concurrently with the closing of the Fresenius Sale, Braintree and Nabi shall sign and become a party to the Escrow Agreement attached hereto as Exhibit A and in connection therewith, Nabi shall deposit in the escrow established pursuant to such agreement \$10,840,580.73, representing all amounts owing to Braintree to under Section 2.2(a)(iii) of the Purchase Agreement and under the Note.

3. In all other respects, the Purchase Agreement and the Note shall remain unmodified and in full force and effect.

4. Promptly after the execution of this letter agreement, Braintree will meet with representatives of Fresenius to begin planning for the transition of PhosLo to Fresenius in anticipation of the closing of the Fresenius Sale. Further, in connection with the closing of the Fresenius Sale, Braintree agrees to execute and deliver the letter agreement attached hereto as Exhibit B concurrently with the closing date of the Fresenius Sale.

5. In addition, notwithstanding the terms of the Manufacturing Agreement between Nabi and Braintree dated August 4, 2003, (i) prior to the closing of the Fresenius Sale at Nabi's request, and after the closing of the sale at Fresenius' request, Braintree will arrange for the destruction at Braintree's sole expense the inventory of PhosLo tablets as so requested by Nabi or Fresenius and (ii) at the request of Fresenius, Braintree shall re-label as reasonably requested by Fresenius at Braintree's sole expense any PhosLo inventory bearing a Nabi label.

If you are in agreement with the foregoing, please confirm that fact to us by signing this letter in the place indicated below and returning an original to me.

BRAINTREE LABORATORIES, INC.

By: /s/ Harry P. Keegan III

Agreed to and Acknowledged this 19th day of October, 2006.

Nabi Biopharmaceuticals

By: /s/ Thomas H. McLain

Nabi Biopharmaceuticals

RATIO OF EARNINGS TO FIXED CHARGES

(In thousands)	For the Year Ended				
	December 30, 2006	December 31, 2005	December 25, 2004	December 27, 2003	December 28, 2002
Fixed charges					
Interest expense	\$ 3,724	\$ 2,523	\$ 971	\$ 816	\$ 2,130
Interest capitalized	—	106	326	83	—
Estimate of interest within rental expense	151	183	156	149	218
Total fixed charges	3,875	2,812	1,453	1,048	2,348
(Loss) earnings					
(Loss) income from continuing operations before income taxes	(53,874)	(108,177)	(51,175)	(15,448)	1,738
Fixed charges	3,875	2,812	1,453	1,048	2,348
Amortization of capitalized interest	1,312	1,277	1,266	1,273	1,274
Interest capitalized	—	(106)	(326)	(83)	—
Total (loss) earnings	(48,687)	(104,194)	(48,782)	(13,210)	5,360
Ratio					
Adjusted (loss) earnings	(48,687)	(104,194)	(48,782)	(13,210)	5,360
Total fixed charges	3,875	2,812	1,453	1,048	2,348
Ratio of earnings to fixed charges	N/A	N/A	N/A	N/A	2.3

<i>Dollar amounts in thousands</i>	For the Year Ended				
	December 30, 2006	December 31, 2005	December 25, 2004	December 27, 2003	December 28, 2002
Coverage deficiency	\$ 52,562	\$ 107,006	\$ 50,235	\$ 14,258	N/A

For the years ended December 27, 2003, December 25, 2004, December 31, 2005 and December 30, 2006, Nabi Biopharmaceuticals did not generate sufficient earnings to cover its fixed charges by the above amounts.

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statements (Forms S-3 No. 333-42188, No. 333-107134, No. 333-108086, No. 333-112006, No. 333-121050, No. 333-125241 and No. 333-110813) and the related prospectuses of Nabi Biopharmaceuticals; and
- (2) Registration Statements (Forms S-8 No. 333-115691, No. 333-115688, No. 333-109017, No. 333-38866, No. 333-38864, No. 333-38868, No. 333-95269, No. 333-81009, No. 333-56037, No. 333-56071, No. 033-65069, No. 033-60795 and No. 333-134954) pertaining to various employee-related plans of Nabi Biopharmaceuticals;

of our reports dated March 9, 2007, with respect to the consolidated financial statements and schedule of Nabi Biopharmaceuticals, Nabi Biopharmaceuticals management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of Nabi Biopharmaceuticals, included in this Annual Report (Form 10-K) for the year ended December 30, 2006.

/s/ Ernst & Young LLP
Certified Public Accountants

Fort Lauderdale, Florida
March 9, 2007

Nabi Biopharmaceuticals
CERTIFICATIONS

I, Leslie Hudson, Ph.D., certify that:

1. I have reviewed this annual report on Form 10-K of Nabi Biopharmaceuticals;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2007

By: /s/ Leslie Hudson, Ph.D.
Leslie Hudson, Ph.D.
Chief Executive Officer and President

Nabi Biopharmaceuticals
CERTIFICATIONS

I, Jordan I. Siegel, certify that:

1. I have reviewed this annual report on Form 10-K of Nabi Biopharmaceuticals;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 15, 2007

By: /s/ Jordan I. Siegel

Jordan I. Siegel, Senior Vice President, Finance,
Chief Financial Officer and Treasurer

Nabi Biopharmaceuticals**SECTION 1350 CERTIFICATION**

The undersigned officers of Nabi Biopharmaceuticals (the "Company") hereby certify that, as of the date of this statement, the Company's annual report on Form 10-K for the year ended December 30, 2006 (the "Report") fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 and that, to the best of their knowledge, information contained in the Report fairly presents, in all material respects, the financial condition of the Company as of December 30, 2006 and the results of operations of the Company for the year ended December 30, 2006.

The purpose of this statement is solely to comply with Title 18, Chapter 63, Section 1350 of the United States Code, as amended by Section 906 of the Sarbanes-Oxley Act of 2002. This statement is not "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that Act or any other federal or state law or regulation.

Date: March 15, 2007 /s/ Leslie Hudson, Ph.D.

Name: Leslie Hudson, Ph.D.

Title: Chief Executive Officer and President

Date: March 15, 2007 /s/ Jordan I. Siegel

Name: Jordan I. Siegel

Title: Senior Vice President, Finance, Chief Financial Officer and Treasurer