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

FORM 10-Q

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

For the quarterly period ended September 24, 2005

OR

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

For the transition period from _____ to _____.

Commission File Number: 000-04829

Nabi Biopharmaceuticals
(Exact name of registrant as specified in its charter)

Delaware	**59-1212264**
(State or other jurisdiction of incorporation or organization)	**(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)

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 twelve 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 whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). ☒ Yes ☐ No

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

The number of shares outstanding of the registrant's common stock, par value $0.10 per share, at October 20, 2005 was 59,377,089 shares.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

Nabi Biopharmaceuticals

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except for share and per share amounts)	(UNAUDITED) September 24, 2005	December 25, 2004
Assets		
Current assets:		
Cash and cash equivalents	$ 55,262	$ 94,759
Marketable securities	81,250	8,350
Restricted cash	803	672
Trade accounts receivable, net	15,784	32,405
Inventories, net	27,270	20,175
Prepaid expenses and other current assets	32,562	6,227
Total current assets	212,931	162,588
Property, plant and equipment, net	114,595	115,406
Other assets:		
Intangible assets, net	83,210	89,728
Restricted cash	3,564	—
Other, net	718	449
Total assets	$ 415,018	$ 368,171
Liabilities and stockholders' equity		
Current liabilities:		
Trade accounts payable	$ 18,057	$ 21,943
Accrued interest payable	1,456	—
Accrued expenses	28,168	32,290
Notes payable and capital lease obligations, net	5,238	10,173
Total current liabilities	52,919	64,406
2.875% Convertible Senior Notes, net	109,103	—
Notes payable and capital lease obligations, net	8,210	13,671
Other liabilities	8,497	5,773
Total liabilities	178,729	83,850
Stockholders' equity:		
Convertible preferred stock, par value $.10 per share: 5,000,000 shares authorized; no shares outstanding	—	—
Common stock, par value $.10 per share: 125,000,000 shares authorized, 60,063,161 and 59,428,941 shares issued, respectively	6,006	5,943
Capital in excess of par value	317,891	313,494
Treasury stock, 805,769 and 803,811 shares at cost, respectively	(5,321)	(5,297)
Accumulated deficit	(82,386)	(29,516)
Other accumulated comprehensive income (loss)	99	(303)
Total stockholders' equity	236,289	284,321
Total liabilities and stockholders' equity	$ 415,018	$ 368,171

See accompanying notes to condensed consolidated financial statements.

Nabi Biopharmaceuticals

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(UNAUDITED)

(In thousands, except per share data)	For the Three Months Ended		For the Nine Months Ended	
	September 24, 2005	September 25, 2004	September 24, 2005	September 25, 2004
Sales	$ 30,768	$ 43,774	$ 82,724	$ 138,367
Costs and expenses:				
Costs of products sold, excluding amortization of intangible assets	14,328	17,495	44,559	55,033
Royalty expense	460	3,331	3,139	12,924
Gross margin	15,980	22,948	35,026	70,410
Selling, general and administrative expense	19,627	12,009	51,259	38,846
Research and development expense	17,410	17,718	51,242	46,301
Amortization of intangible assets	2,223	2,105	6,734	6,424
Other operating expense, principally freight	117	175	273	370
Operating loss	(23,397)	(9,059)	(74,482)	(21,531)
Interest income	1,266	428	2,744	1,112
Interest expense	(987)	(296)	(2,016)	(2,104)
Other income (expense), net	74	9	(111)	17
Loss before benefit (provision) for income taxes	(23,044)	(8,918)	(73,865)	(22,506)
Benefit (provision) for income taxes	6,926	(2,003)	20,995	(10,832)
Net loss	$ (16,118)	$ (10,921)	$ (52,870)	$ (33,338)
Basic and diluted loss per share	$ (0.27)	$ (0.18)	$ (0.89)	$ (0.57)
Basic and diluted weighted average shares outstanding	59,991	59,149	59,738	58,632

See accompanying notes to condensed consolidated financial statements.

Nabi Biopharmaceuticals

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)	(UNAUDITED) For the Nine Months Ended September 24, 2005	For the Nine Months Ended September 25, 2004
Cash flow from operating activities:		
Net loss	$ (52,870)	$ (33,338)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Depreciation and amortization	14,322	13,223
Accretion of discount on Convertible Senior Notes	75	—
Interest expense on non-interest bearing notes	592	933
Provision for doubtful accounts	8	364
Provision for slow moving or obsolete inventory	2,927	564
Write-off of loan origination fees	—	539
Gain on sale of assets	(74)	(119)
Non-cash compensation	681	578
Write-off of obsolete fixed assets	—	146
Deferred income taxes	(24,472)	5,867
Tax benefit from stock options exercised	—	4,965
Other, primarily foreign currency translation	401	(30)
Changes in assets and liabilities:		
Trade accounts receivable	16,614	1,992
Inventories	(10,022)	1,381
Prepaid expenses and other current assets	(1,995)	1,379
Other assets	(3,541)	(222)
Accounts payable and accrued liabilities	(4,079)	12,263
Total adjustments	(8,563)	43,823
Net cash (used in) provided by operating activities	(61,433)	10,485
Cash flow from investing activities:		
Expenditures for acquisition of products	—	(750)
Purchases of marketable securities	(152,450)	(79,100)
Proceeds from sales of marketable securities	79,550	19,000
Proceeds from sales of assets	74	179
Capital expenditures	(6,578)	(15,194)
Expenditures for manufacturing rights	(216)	(2,669)
Net cash used in investing activities	(79,620)	(78,534)
Cash flow from financing activities:		
Payment on notes payable and capital leases	(10,931)	(5,396)
Proceeds from issuance of convertible debt, net	108,730	—
Proceeds from exercise of employee stock options	3,757	8,369
Net cash provided by financing activities	101,556	2,973
Net decrease in cash and cash equivalents	(39,497)	(65,076)
Cash and cash equivalents at beginning of period	94,759	115,756
Cash and cash equivalents at end of period	$ 55,262	$ 50,680

See accompanying notes to condensed consolidated financial statements.

Nabi Biopharmaceuticals

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

NOTE 1 OVERVIEW

We are a biopharmaceutical company that leverages our experience and knowledge in powering the immune system to develop and market products that fight serious medical conditions. We are poised to capture large, commercial opportunities in our core business areas: Gram-positive bacterial infections, hepatitis and kidney disease (nephrology), and, opportunistically, in nicotine addiction. We have three products on the market today: PhosLo® (calcium acetate), Nabi-HB® [Hepatitis B Immune Globulin (Human)], and Aloprim™ [Allopurinol sodium (for injection)] and a number of products in various stages of clinical and preclinical development. We filed a Marketing Authorization Application, or MAA, in the European Union, or EU, for our product candidate, StaphVAX® [*Staphylococcus aureus* Polysaccharide Conjugate Vaccine], in December 2004 and the application was accepted for review in January 2005. We completed our confirmatory Phase III clinical trial of StaphVAX in the U.S. during the third quarter and expect to announce the results from this trial in late October or early November of 2005. StaphVAX is designed to prevent the most dangerous and prevalent strains of *S. aureus* bacterial infections. *S. aureus* bacteria are a major cause of healthcare associated infections and are becoming increasingly resistant to antibiotics. Our other products in development include Altastaph™ [*Staphylococcus aureus* Immune Globulin Intravenous (Human)], an antibody for prevention and treatment of *S. aureus* infections, NicVAX™ [Nicotine Conjugate Vaccine], a vaccine to treat nicotine addiction, and Civacir™ [Hepatitis C Immune Globulin (Human)], an antibody for preventing hepatitis C virus re-infection in HCV-positive liver transplant patients.

In addition to our biopharmaceutical business, we also collect specialty and non-specific antibodies for use in our products and we sell our excess production to pharmaceutical and diagnostic customers for the subsequent manufacture of their products. We invest the gross margins we earn from sales of our marketed products toward funding the development of our product pipeline.

On April 19, 2005, we completed a private offering of $100.0 million of 2.875% Convertible Senior Notes due 2025 to qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933, as amended. On May 13, 2005 the initial purchasers exercised $12.4 million of their option to purchase additional notes to cover over allotments. See Note 8.

We are incorporated in Delaware. Our global and U.S. operations are headquartered in Florida and our European operations are headquartered in Bray, Ireland. We maintain our global manufacturing operations in Florida, and our global research and development operations in Rockville, Maryland.

The condensed consolidated financial statements include the accounts of Nabi Biopharmaceuticals and its subsidiaries. All significant intercompany accounts and transactions were eliminated during consolidation. These statements should be read in conjunction with the Consolidated Financial Statements and Notes included in our Annual Report on Form 10-K for the year ended December 25, 2004.

In the opinion of management, the unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which are necessary to present fairly our consolidated financial position as of September 24, 2005 and December 25, 2004, the consolidated results of our operations for the three and nine months ended September 24, 2005 and September 25, 2004 and our cash flows for the nine months then ended. The interim results of operations are not necessarily indicative of the results that may occur for the full fiscal year.

NOTE 2 ACCOUNTING POLICIES

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 and reclassifications: Certain items in the 2004 condensed consolidated financial statements have been reclassified to conform to the current year's presentation, including the Company's investment in auction rate securities totaling $60.1 million at September 25, 2004 that are included in Marketable Securities, which were previously included in Cash and Cash Equivalents.

Revenue recognition: Our primary customers for biopharmaceutical products are pharmaceutical wholesalers. In accordance with our revenue recognition policy, revenue from biopharmaceutical product sales is recognized when title and risk of loss are transferred to the customer. Reported sales are net of estimated customer prompt pay discounts, contractual allowances in accordance with managed care agreements known as chargebacks, government payer 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. Revenues associated with federal research grants are recognized as the qualifying expenses under each grant are incurred.

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. For the three and nine months ended September 24, 2005, comprehensive loss included our net loss and the effect of foreign currency translation adjustments. Comprehensive loss was not materially different from net loss, as reported. As of September 24, 2005, $0.1 million of foreign currency income was included on our balance sheet in addition to net loss.

Stock-Based Compensation: On December 31, 2002, the FASB issued Statement of Financial Accounting Standards, or SFAS No. 148, *Accounting for Stock-Based Compensation – Transition and Disclosure*. This Statement amends SFAS No. 123, *Accounting for Stock-Based Compensation*, to provide alternative methods of transition for an entity that voluntarily changes to the fair value based method of accounting for stock-based employee compensation. It also amends the disclosure provisions of that Statement to require prominent disclosure about the effects on reported net income of an entity's accounting policy decisions with respect to stock-based employee compensation. Finally, this Statement amends Accounting Principles Board, or APB, Opinion No. 28, *Interim Financial Reporting*, to require disclosure about those effects in interim financial information. We continue to account for stock-based compensation based on the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*.

The following table summarizes our results as if we had recorded stock-based compensation expense for the three and nine months ended September 24, 2005 and September 25, 2004, based on the provisions of SFAS No. 123, as amended by SFAS No. 148:

(In thousands, except per share amounts)	For the Three Months Ended September 24, 2005	For the Three Months Ended September 25, 2004
Net loss:		
As reported	$ (16,118)	$ (10,921)
Add: Stock-based employee compensation expense included in reported net loss, net of taxes	62	—
Deduct: Total stock-based employee compensation expense determined under fair value based method, net of taxes	(1,390)	(1,142)
Pro forma	$ (17,446)	$ (12,063)
Basic and diluted loss per share:		
As reported	$ (0.27)	$ (0.18)
Add: Stock-based employee compensation expense included in reported net loss, net of taxes	—	—
Deduct: Total stock-based employee compensation expense determined under fair value based method, net of taxes	(0.02)	(0.02)
Pro forma	$ (0. 29)	$ (0.20)

(In thousands, except per share amounts)	For the Nine Months Ended September 24, 2005	For the Nine Months Ended September 25, 2004
Net loss:		
As reported	$ (52,870)	$ (33,338)
Add: Stock-based employee compensation expense included in reported net loss, net of taxes	62	129
Deduct: Total stock-based employee compensation expense determined under fair value based method, net of taxes	(4,268)	(3,425)
Pro forma	$ (57,076)	$ (36,634)
Basic and diluted loss per share:		
As reported	$ (0.89)	$ (0.57)
Add: Stock-based employee compensation expense included in reported net loss, net of taxes	—	—
Deduct: Total stock-based employee compensation expense determined under fair value based method, net of taxes	(0.07)	(0.06)
Pro forma	$ (0.96)	$ (0.63)

New accounting pronouncements: In April 2005, the SEC announced that Statement of Financial Accounting Standard, or SFAS, No. 123(R), *Share-Based Payment*, which requires all companies to measure compensation cost for all share-based payments (including employee stock options) at fair value, had been deferred. SFAS No. 123(R) requires companies to expense the fair value of all stock options that have future vesting provisions, are modified, or are newly granted beginning on the grant date of such options. We believe implementation of SFAS No. 123(R) will be material to our reported results of operations. Using the Black-Scholes model for valuing stock options under SFAS No. 123(R) would result in pre-tax expense for options granted in prior years in the amount of $11.2 million and $9.9 million in 2006 and 2007, respectively. SFAS No. 123(R) will become applicable to us beginning January 1, 2006.

In December 2004, the FASB announced that SFAS No. 151, *Inventory Costs*, is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. This Statement clarifies the accounting

for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). This Statement requires that those items be recognized as current-period charges regardless of whether they meet the criterion of "so abnormal" as defined in Accounting Principal Board 43. In addition, this Statement requires that allocation of fixed production overhead to the costs of conversion be based on the normal capacity of the production facilities. We do not expect the adoption of SFAS No. 151 to have a material impact on our financial condition, results of operations or cash flows.

In October 2005, the FASB announced that FSP No. 13-1, *Accounting for Rental Costs Incurred during a Construction Period*, is effective for reporting periods beginning after December 15, 2005. This Position concludes that rental costs incurred during and after a construction period are for the right to control the use of a leased asset during and after construction of a lessee asset, and that there is no distinction between the right to use a leased asset during the construction period and the right to use that asset after the construction period. This Position requires that rental costs associated with ground or building operating leases that are incurred during a construction period be recognized as rental expense, included in income from continuing operations. We do not expect the adoption of FSP No. 13-1 to have an impact on our financial condition, results of operations or cash flows.

NOTE 3 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)	September 24, 2005	December 25, 2004
Finished goods	$ 15,202	$ 11,475
Work in process	11,068	7,826
Raw materials	1,000	874
Total	$ 27,270	$ 20,175

Work in process inventory at September 24, 2005 and December 25, 2004 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, as well as pre-launch inventories of StaphVAX. In addition, we have made, are in the process of making and/or 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, in the EU or FDA, in the U.S., approval (i.e., pre-launch inventories). 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. As of September 24, 2005, we had approximately $3.8 million of pre-launch StaphVAX inventory and at December 25, 2004 we had approximately $2.3 million of pre-launch inventories of StaphVAX and Nabi-HB Intravenous, pending final approval.

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. During the second quarter of 2005, we wrote off $0.8 million of Nabi-HB Intravenous as a result of the comparison of pre-launch inventory shelf life not being sufficient compared to our projected timing for sales of the product.

If approval for these product candidates is not received, or approval is not 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. If our analysis indicated that we were required to write off the $3.8 million of StaphVAX pre-launch inventory recorded at September 24, 2005, we would consider this amount to be material to our 2005 operating results.

NOTE 4 LOSS PER SHARE

Basic loss per share is computed by dividing our net loss by the weighted average number of shares outstanding during the period. When the effects are not anti-dilutive, diluted earnings per share is computed by dividing our net loss by the weighted average number of shares outstanding and the impact of all dilutive potential common shares, primarily stock options. The dilutive impact of stock options is determined by applying the "treasury stock" method.

A total of 1,895,724 and 1,584,139 common stock equivalents have been excluded from the calculation of net loss per share in the three months ended September 24, 2005 and September 25, 2004, respectively, because their inclusion would be anti-dilutive. In addition, a total of 1,715,743 and 2,163,870 common stock equivalents have been excluded from the calculation of net loss per share in the nine months ended September 24, 2005 and September 25, 2004, respectively, because their inclusion would be anti-dilutive.

NOTE 5 OPERATING SEGMENT INFORMATION

The following table presents information related to our two reportable segments:

	For the Three Months Ended		For the Nine Months Ended	
(In thousands)	September 24, 2005	September 25, 2004	September 24, 2005	September 25, 2004
Sales:				
Biopharmaceutical products	$ 20,215	$ 32,823	$ 52,209	$ 103,307
Antibody products	10,553	10,951	30,515	35,060
Total	$ 30,768	$ 43,774	$ 82,724	$ 138,367
Gross margin:				
Biopharmaceutical products	$ 14,885	$ 21,882	$ 31,558	$ 66,893
Antibody products	1,095	1,066	3,468	3,517
Total	$ 15,980	$ 22,948	$ 35,026	$ 70,410
Operating loss:				
Biopharmaceutical products	$ (22,049)	$ (8,901)	$ (70,829)	$ (19,929)
Antibody products	(1,348)	(158)	(3,653)	(1,602)
Total	$ (23,397)	$ (9,059)	$ (74,482)	$ (21,531)

Selling and marketing expense and research and development expense are allocated almost fully to the biopharmaceutical products segment based on the allocation of effort within those functions. General and administrative expenses are allocated to each segment based primarily on relative sales levels.

On March 24, 2005, our agreement to distribute WinRho SDF ended and we ceased distribution of that product. Sales for the third quarter of 2004 included $7.8 million of WinRho SDF. WinRho SDF sales for the nine months ended September 24, 2005 were $6.2 million compared to $34.4 million for the same period in 2004.

(In thousands)	For the Three Months Ended		For the Nine Months Ended	
	September 24, 2005	September 25, 2004	September 24, 2005	September 25, 2004
Operating loss by Region:				
U.S.	$ (18,479)	$ (5,090)	$ (60,774)	$ (16,352)
Ex-U.S.	(4,918)	(3,969)	(13,708)	(5,179)
Total	$ (23,397)	$ (9,059)	$ (74,482)	$ (21,531)

Our ex-U.S. operating loss results from initial commercialization activities to expand our biopharmaceutical products business to the EU, and has been allocated wholly to our biopharmaceutical business.

The following table reconciles reportable segment operating loss to loss before benefit (provision) for income taxes:

(In thousands)	For the Three Months Ended		For the Nine Months Ended	
	September 24, 2005	September 25, 2004	September 24, 2005	September 25, 2004
Reportable segment operating loss	$ (23,397)	$ (9,059)	$ (74,482)	$ (21,531)
Unallocated interest income	1,266	428	2,744	1,112
Unallocated interest expense	(987)	(296)	(2,016)	(2,104)
Unallocated other income (expense), net	74	9	(111)	17
Loss before benefit (provision) for income taxes	$ (23,044)	$ (8,918)	$ (73,865)	$ (22,506)

NOTE 6 STOCK OPTIONS

During the first nine months of 2005, we granted options to purchase 265,000 shares of our common stock to our officers in connection with an annual officer stock option grant under our 2000 Equity Incentive Plan. In addition, we granted 1,507,372 options to purchase shares of our common stock to non-officer employees in conjunction with an annual non-officer employee stock option grant, their commencing employment, their attaining certain pre-established operations targets or in connection with attaining years of service levels under our 1998 Non-Qualified Employee Stock Option Plan and our 2000 Equity Incentive Plan. During the first nine months of 2005, we also granted options to purchase 90,000 shares of our common stock, to our non-employee directors in connection with an annual director stock option grant under our 2004 Stock Plan for Non-Employee Directors.

NOTE 7 TREASURY STOCK

On May 27, 2005, a member of our Board of Directors exercised stock options to purchase 7,500 shares of our common stock. In addition, on April 5, 2004, a former officer of the Company exercised stock options for 6,250 shares of our common stock. The purchases were paid for by delivery of 1,958 shares of common stock and 3,496 shares of common stock, respectively, valued at approximately $24 thousand and $57 thousand for the respective transactions. In each of the transactions, the shares delivered had been acquired more than six months previously. These shares have been accounted for as treasury stock.

NOTE 8 DEBT

Debt consists of the following:

In thousands	September 24, 2005	December 25, 2004
Current maturities:		
Notes payable, PhosLo acquisition	$ 5,014	$ 9,949
Capital lease obligations	224	224
Total current maturities	5,238	10,173
Long term debt, net of current maturities:		
Notes payable, PhosLo acquisition long-term	8,043	13,340
Capital lease obligations	167	331
Long term notes payable and capital lease obligations, net	8,210	13,671
2.875% Convertible Senior Notes, net	109,103	—
Total long-term debt	117,313	13,671
Total debt	$ 122,551	$ 23,844

On April 19, 2005, we issued $100 million of our 2.875% Convertible Senior 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 Convertible Senior Notes to cover over allotments.

The Convertible Senior Notes were issued pursuant to an indenture between U.S. Bank National Association, as trustee, and us. The Convertible Senior 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 Convertible Senior 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 Convertible Senior 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:

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

Interest on the Convertible Senior Notes is payable on each April 15 and October 15, beginning October 15, 2005. Interest of $1.5 million has been accrued through September 24, 2005. The $3.4 million discount granted to the initial purchaser and the $0.3 million of deferred costs are being amortized to interest expense through April 15, 2020, the maturity date of the Convertible Senior Notes.

On August 4, 2003, we acquired the worldwide rights to PhosLo from Braintree Laboratories, Inc., or Braintree. Under the terms of the agreement to acquire PhosLo, we agreed to pay $30.0 million in cash over the period ending March 1, 2007. The discounted value of the future payment obligation on September 24, 2005 was $13.1 million and has been reported as Notes payable, PhosLo acquisition. 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.

NOTE 9 COSTS ASSOCIATED WITH RELOCATION OF R&D FACILITY

We entered into a lease dated as of June 29, 2005 for a new expanded research and development facility in Gaithersburg, Maryland. The term of the lease commenced on June 29, 2005 with an initial term of 12.5 years, ending on December 31, 2017. Our obligation to pay rent commences January 1, 2006. The initial base rent will be approximately $2.3 million, adjusted annually by 3% as of January 1 of each year. Net rent outlays will be reduced by credits up to $1.1 million, $0.9 million, and $0.8 million in 2006, 2007 and 2008, respectively. For 2006, these credits are intended to be approximately equal to our rent payments for our Rockville, Maryland facility based on current facility lease obligations. We are also responsible for payments of operating expenses and taxes for the Gaithersburg, Maryland premises. The Landlord has agreed to fund approximately $13.3 million of tenant improvements to the Gaithersburg premises, including an allowance of $5.1 million for those improvements that is included in the base rent. The Landlord will loan an additional allowance of $8.2 million for the balance of tenant improvements to us. The outstanding principal under this loan will bear simple interest at 6% per annum for the first twenty-four months after the rent commencement date. However, if we repay the loan at any time in the first twenty-four months, then no interest will be due. We may terminate the lease with respect to all or part of the premises on or before November 1, 2005 by written notice accompanied by a $0.8 million termination fee.

We estimate that we will cease using the Rockville facilities on or about the second quarter of 2006. At such time, our remaining lease obligations for these facilities, net of anticipated sublease income, are estimated to be $1.5 million. Payments under these lease obligations will continue through 2008. Upon exiting these facilities we will record a charge for the fair value of our liability for the remaining lease obligations, estimated to be $1.4 million at the end of the second quarter of 2006, under the provisions of SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*. Any changes to the anticipated cease-use date of the facilities or other assumptions used in calculating the expected liability may result in a change in the estimated timing or amount of the charge.

In addition, we have identified certain assets that will no longer be used in our ongoing operations after the cease use date of the Rockville facilities. Accordingly, we have revised our depreciation estimates on those assets to reflect their shortened useful lives which has resulted in an increase in depreciation expense of $30 thousand in the quarter ended September 24, 2005.

NOTE 10 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, future product royalties will be reduced to 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 40% 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 for DSM to continue to supply product to us for a term of up to five years.

NOTE 11 CONTINGENT LIABILITIES AND CAPITAL COMMITMENTS

Under the terms of our agreement with DSM Pharmaceuticals, Inc., pursuant to which we acquired rights to Aloprim, we have a remaining minimum requirement to purchase $2.6 million of Aloprim over the period ending June 29, 2009. Our remaining purchase commitment requires us to purchase $0.2 million in 2005, $0.6 million in 2006, $0.7 million in 2007, $0.7 million in 2008 and $0.4 million in 2009.

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 12 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 (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 will be stayed until the earlier of 30 months or resolution of the patent infringement lawsuit. As of September 24, 2005, we had capitalized $70.8 million of intangible assets, net of accumulated amortization, on our balance sheet related to the PhosLo gelcap patent. In future periods, if we assess that circumstances have resulted in changes to the carrying value of the intangible assets or their estimated useful life, we will record those changes in the period of that assessment.

NOTE 13 CREDIT FACILITY

On March 26, 2004, we cancelled our credit agreement with Wells Fargo Foothill, Inc., part of Wells Fargo & Company, which had an original term through June 2006. As a result of canceling the credit facility we incurred an early termination penalty of $0.6 million that has been included in interest expense in the first nine months of 2004. By canceling 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, during the first nine months of 2004, we reported the write-off of previously capitalized loan origination fees of approximately $0.5 million recorded at the time of entering into the credit agreement that is also included in interest expense in the accompanying statement of operations.

NOTE 14 INCOME TAXES

During 2005, we anticipate recording a tax benefit primarily related to operating losses generated during the year. As such, we have recorded a $21.0 million income tax benefit for the nine months ended September 24, 2005, net of the impact of a valuation allowance. We have tax planning strategies that we believe are prudent and feasible, which we intend to implement prior to the expiration of the majority of our deferred tax assets. We have evaluated the need for a valuation allowance against our deferred tax assets. During the third quarter of 2005, we determined that a valuation allowance is necessary in the amount of $2.2 million for assets that are not currently expected to be realized in our tax planning. At September 24, 2005, we have recorded $5.0 million as a tax contingency reserve against certain of our deferred tax assets that is included in other long-term liabilities.

NOTE 15 SUPPLEMENTAL CASH FLOW INFORMATION

(In thousands)	For the Nine Months Ended	
	September 24, 2005	September 25, 2004
Interest paid	$ 6	$ 613
Discount paid on non-interest bearing notes	$ 1,101	$ 655
Income taxes paid (refunded)	$ 420	$ (1)
Supplemental non-cash financing and investing activities:		
Warrants exercised in exchange for common stock	—	$ 1,000
Stock options exercised in exchange for common stock	$ 93	$ 101

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is a discussion and analysis of the major factors contributing to our financial condition and results of operations for the three and nine months ended September 24, 2005 and September 25, 2004. The discussion and analysis should be read in conjunction with the Condensed Consolidated Financial Statements and Notes thereto.

OVERVIEW

We are a biopharmaceutical company that leverages our experience and knowledge in powering the immune system to develop and market products that fight serious medical conditions. We are poised to capture large, commercial opportunities in our core business areas: Gram-positive bacterial infections, hepatitis and kidney disease (nephrology), and, opportunistically, in nicotine addiction. We have three products on the market today: PhosLo® (calcium acetate), Nabi-HB® [Hepatitis B Immune Globulin (Human)], and Aloprim™ [Allopurinol sodium (for injection)] and a number of products in various stages of clinical and preclinical development. We filed a Marketing Authorization Application, or MAA, in the European Union, or EU, for our product candidate, StaphVAX [*Staphylococcus aureus* Polysaccharide Conjugate Vaccine], in December 2004 and the application was accepted for review in January 2005. We completed our confirmatory Phase III clinical trial of StaphVAX in the U.S. and expect to announce the results from this trial in late October or early November of 2005. StaphVAX is designed to prevent the most dangerous and prevalent strains of *S. aureus* bacterial infections. *S. aureus* bacteria are a major cause of healthcare associated infections and are becoming increasingly resistant to antibiotics. The company also filed MAA's in Europe to market Nabi-HB® Intravenous [Hepatitis B Immune Globulin (Human) Intravenous] under the trade name HEBIG™ for the prevention of hepatitis B virus re-infection in HBV-positive liver transplant patients; and for PhosLo®, which is already marketed in the U.S. Our other products in development include Altastaph™ [*Staphylococcus aureus* Immune Globulin Intravenous (Human)], an antibody for prevention and treatment of *S. aureus* infections, NicVAX™ [Nicotine Conjugate Vaccine], a vaccine to treat nicotine addiction, and Civacir™ [Hepatitis C Immune Globulin (Human)], an antibody for preventing hepatitis C virus re-infection in HCV-positive liver transplant patients.

In addition to our biopharmaceutical business, we also collect specialty and non-specific antibodies for use in our products and we sell our excess production to pharmaceutical and diagnostic customers for the subsequent manufacture of their products. We invest the gross margins we earn from sales of our marketed products toward funding the development of our product pipeline.

On April 19, 2005, we issued $100 million of our 2.875% Convertible Senior 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.

On March 24, 2005, our agreement to distribute WinRho SDF ended and we ceased distribution of that product.

RESULTS OF OPERATIONS

Information concerning our sales by operating segment is set forth in the following tables:

(In thousands, except percentages)	For the Three Months Ended September 24, 2005		For the Three Months Ended September 25, 2004	
Biopharmaceutical products:				
-PhosLo	$ 8,117	26.4%	$ 9,183	21.0%
-Nabi-HB	10,837	35.2	13,728	31.3
-WinRho SDF	—	—	7,771	17.8
-Other biopharmaceuticals	1,261	4.1	2,141	4.9
Biopharmaceutical subtotal	20,215	65.7	32,823	75.0
Antibody products:				
-Non-specific antibodies	6,410	20.8	6,330	14.4
-Specialty antibodies	4,143	13.5	4,621	10.6
Antibody subtotal	10,553	34.3	10,951	25.0
Total	$30,768	100.0%	$43,774	100.0%

(In thousands, except percentages)	For the Nine Months Ended September 24, 2005		For the Nine Months Ended September 25, 2004	
Biopharmaceutical products:				
-PhosLo	$15,068	18.2%	$ 28,314	20.5%
-Nabi-HB	28,453	34.4	34,862	25.2
-WinRho SDF	6,172	7.5	34,374	24.8
-Other biopharmaceuticals	2,516	3.0	5,757	4.2
Biopharmaceutical subtotal	52,209	63.1	103,307	74.7
Antibody products:				
-Non-specific antibodies	16,394	19.8	17,421	12.6
-Specialty antibodies	14,121	17.1	17,639	12.7
Antibody subtotal	30,515	36.9	35,060	25.3
Total	$82,724	100.0%	$138,367	100.0%

FOR THE THREE MONTHS ENDED SEPTEMBER 24, 2005 AND SEPTEMBER 25, 2004

Sales. Total sales for the third quarter of 2005 were $30.8 million compared to $43.8 million for the third quarter of 2004.

Biopharmaceutical sales totaled $20.2 million in the third quarter of 2005 compared to $32.8 million for the third quarter of 2004. Sales for the third quarter of 2004 included $7.8 million in sales of WinRho SDF, which we stopped distributing on March 24, 2005.

PhosLo® (calcium acetate). Sales of PhosLo totaled $8.1 million for the third quarter of 2005 compared to $9.2 million for the third quarter of 2004.

Based on review of third party data, total patient use of PhosLo in the third quarter of 2005 is consistent with patient use in the third quarter of 2004, despite the introduction of a third competitive product earlier in 2005 and an intense competitive environment. During the second quarter of fiscal 2005, wholesalers purchased excessive quantities of PhosLo in anticipation of an announced 40% price increase that took effect July 1, 2005. As a result, $5.2 million of revenue was deferred in the second quarter of 2005 in accordance with our revenue recognition policy. As a result of patient use exceeding shipments to wholesalers and wholesaler inventory levels being reduced in the third quarter of 2005, we reversed this deferral.

In planning for 2005, we announced that we were aggressively transitioning the market from the tablet formulation of PhosLo to the gelcap formulation of PhosLo. Based on review of inventory data from our wholesaler customers, we believe that the conversion to PhosLo gelcaps was virtually complete at the end of the third quarter of 2005 with less than one month’s supply of PhosLo tablets on hand at wholesaler customer locations.

Nabi-HB® [Hepatitis B Immune Globulin (Human)]. Sales of Nabi-HB totaled $10.8 million for the third quarter of 2005 compared to $13.7 million in the comparable quarter of 2004. Sales of Nabi-HB are closely correlated with the number of hepatitis B virus, or HBV, positive patients undergoing liver transplant in the U.S. Internally generated data indicates that for the nine-month period ended September 24, 2005, liver transplants for HBV-positive patients decreased compared to the corresponding period in 2004. The decrease in reported sales in the third quarter reflects the reported year to date decrease in liver transplants among HBV- positive patients partially offset by increased use of Nabi-HB in patients receiving ongoing maintenance therapy following their liver transplant.

WinRho SDF® [Rh_o(D) Immune Globulin Intravenous (Human)]. Our agreement with Cangene Corporation ended on March 24, 2005. Sales of WinRho for the third quarter of 2004 totaled $7.8 million.

Other biopharmaceutical products. Other biopharmaceutical products primarily include intermediate products manufactured in our plant and Aloprim™ [(Allopurinol sodium) for injection]. We also perform contract manufacturing for others. Other biopharmaceutical products sales for the third quarter of 2005 decreased in comparison to sales of these products during the third quarter of 2004 due primarily to lower sales of Aloprim following introduction of a competitive product in the second half of 2004, partially offset by increased contract manufacturing revenue in the third quarter of 2005.

Total antibody sales for the third quarter of 2005 were $10.6 million compared to $11.0 million for the third quarter of 2004.

Non-specific antibody sales. Sales of non-specific antibodies for the third quarter of 2005 totaled $6.4 million compared to $6.3 million for the third quarter of 2004.

Specialty antibody sales. Specialty antibody sales totaled $4.1 million in the third quarter of 2005 compared to $4.6 million in the third quarter of 2004, primarily reflecting lower sales of Rh_oD, anti-CMV and anti-HBs

antibodies offset by increased sales of anti-rabies and anti-tetanus antibodies. Sales of Rh_oD antibodies decreased due to the conclusion on December 31, 2004 of a contractual commitment to supply substantial quantities of this product to the purchaser of the majority of our antibody collection and laboratory testing business at low margins. There were no sales under this agreement in the third quarter of 2005. Anti-HBs antibody sales decreased as we retained all of the anti-HBs plasma collected in the third quarter of 2005 for the production of Nabi-HB in future periods. Also during the quarter, we allocated plasma production capacity for the production of anti-*S. aureus* plasma in preparation for the manufacture of Altastaph for use in future clinical trials.

Gross margin. Gross margin for the third quarter of 2005 was $16.0 million, or 52% of sales, compared to $22.9 million, or 52% of sales, for the third quarter of 2004. Gross margin measured in dollars decreased for the third quarter of 2005 in line with reduced biopharmaceutical revenues. Partially offsetting this factor, gross margin for the third quarter of 2005 included $0.3 million of excess plant capacity expense compared to excess plant capacity expense of $1.3 million for the third quarter of 2004 due to increased utilization of our manufacturing facility in the 2005 period.

Royalty expense for the third quarter of 2005 was $0.5 million, or 2% of biopharmaceutical sales, compared to $3.3 million, or 10% of biopharmaceutical sales, for the third quarter of 2004, reflecting the expiration of the WinRho SDF distribution agreement and an associated royalty obligation based on product sales.

Selling, general and administrative expense. Selling, general and administrative expenses were $19.6 million for the third quarter of 2005 compared to $12.0 million for the third quarter of 2004. This increase in selling, general and administrative expenses is primarily due to activities related to the future launch of StaphVAX, including ongoing market research, establishing initial commercial operations in Europe and pre-launch marketing activities.

Research and development expense. Research and development expense was $17.4 million for the third quarter of 2005 compared to $17.7 million for the third quarter of 2004. Consistent with our strategic focus, 79% of research and development expense in the third quarter of 2005 was incurred to support activity to develop products in our Gram-positive infections franchise. Patient enrollment in our confirmatory Phase III clinical trial of StaphVAX was completed in the third quarter of 2004 and the 12-month follow-up period of the trial was completed in the third quarter of 2005. We expect to announce top-line clinical trial results in late October or early November of 2005. In addition, during the third quarter of 2005 we continued to incur costs related to establishing vaccine capability in our manufacturing facility. During the third quarter of 2005, we also reported StaphVAX immunogenicity studies in orthopedic and cardiovascular surgery patients to support that StaphVAX may have applicability in protecting broader patient populations from life threatening *S. aureus* infections. To provide physicians with long-term dosing guidance post the expected launch of StaphVAX, we initiated a repeated dosing study designed to evaluate the ability of StaphVAX to provide continuous protection in patient populations who are at chronic risk for *S. aureus* infections. The repeated dosing trial will evaluate StaphVAX in end-stage renal disease (ESRD) patients on dialysis who are at high risk of contracting a *S. aureus* infection throughout their invasive and long-term treatment. We expect to submit our Biologics License Application, or BLA, for StaphVAX in the U.S. before the end of 2005.

During the third quarter of fiscal 2005, we produced quantities of anti-*S. aureus* plasma in preparation for the manufacture of clinical lots of Altastaph for use in future clinical trials. Further, in support of our next generation Gram-positive products, we continued the Phase I study of our *S. epidermidis* vaccine being developed to prevent *staphylococcus epidermidis* infections and initiated the first human clinical study for our vaccine being developed to prevent *S. aureus* type 336 infections. When combined with the current formulation of StaphVAX®, we believe this will allow our product to provide significant protection from essentially all clinically relevant *S. aureus* strains.

During the third quarter of 2005 we continued enrollment in the PhosLo EPICK study in pre-dialysis CKD patients and continued enrollment in the CARE2 clinical trial. Enrollment in the CARE2 clinical trial was completed early in the fourth quarter of 2005.

Amortization of intangible assets. Amortization expense was $2.2 million for the third quarter of 2005 compared to $2.1 million for the third quarter of 2004. This amortization is primarily related to the intangible assets recorded as part of the acquisition of PhosLo.

Interest income. Interest income for the third quarter of 2005 was $1.3 million compared to $0.4 million for the comparable period of 2004. Interest income is earned from investing cash and cash equivalents on hand in money market funds and marketable securities, including auction rate securities with maturities or interest reset periods of three months or less. The increase in interest income is primarily related to increased average cash balances for the period following issuance of $112.4 million of our 2.875% Convertible Senior Notes due 2025 during the second quarter.

Interest expense. Interest expense for the third quarter of 2005 was $1.0 million compared to $0.3 million of interest expense reported for the third quarter of 2004. Included in interest expense for the third quarter of 2005 is $0.8 million of accrued interest associated with our 2.875% Convertible Senior Notes due 2025. In addition, interest expense included $0.1 million and $0.3 million, respectively, during the third quarters of 2005 and 2004, for amortization of the discount on the notes payable entered into in connection with the acquisition of PhosLo.

Income taxes. During 2005, we anticipate recording a tax benefit primarily related to operating losses generated during the year. As such, we have recorded a $6.9 million income tax benefit for the third quarter of 2005, net of the impact of a valuation allowance, compared to a $2.0 million provision during the same quarter of 2004. We have planning strategies, that we believe are prudent and feasible, which we would implement prior to the expiration of the majority of our deferred tax assets. We have evaluated the need for a valuation allowance against our deferred tax assets. During the third quarter of 2005, we determined that a valuation allowance is necessary at September 24, 2005 in the amount of $2.2 million for tax assets that are not currently expected to be utilized in our tax planning. During the third quarter of 2005, we recorded $0.3 million of a tax contingency reserve against certain of our deferred tax assets.

FOR THE NINE MONTHS ENDED SEPTEMBER 24, 2005 AND SEPTEMBER 25, 2004

Sales. Total sales for the first nine months of 2005 were $82.7 million compared to $138.4 million for the first nine months of 2004.

Biopharmaceutical sales totaled $52.2 million for the first nine months of 2005 compared to $103.3 million for the first nine months of 2004. Sales for the first nine months of 2005 included $6.2 million in sales of WinRho SDF compared to sales of $34.4 million in the 2004 nine-month period. We stopped distributing WinRho SDF on March 24, 2005.

PhosLo. Sales of PhosLo for the first nine months of 2005 totaled $15.1 million compared to $28.3 million for the first nine months of 2004. Based on our review of third party data, total prescriptions for PhosLo increased slightly year-over-year in the first nine months of 2005 despite the launch of a new competitive product in the market and an intense competitive environment. During the first nine months of 2005 patient use of PhosLo exceeded shipments to wholesalers resulting in wholesaler inventory levels being reduced. Effective July 1, 2005 we announced a price increase of 40% for PhosLo. Because of the timing of prescription drug provider contract renewals, we anticipate that the impact from the price increase will be realized over the next three quarters. Sales in the 2004 period also benefited from increased manufacturing capacity to supply PhosLo gelcaps that allowed us to fill backorders from wholesalers.

In planning for 2005, we announced that we were aggressively transitioning the market from the tablet formulation of PhosLo to the gelcap formulation of PhosLo. Based on review of inventory data from our wholesaler customers, we believe that the conversion to PhosLo gelcaps was virtually complete at the end of the nine months ended September 24, 2005 with less than one month’s supply of PhosLo tablets on hand at wholesaler locations at period end.

Nabi-HB. Sales of Nabi-HB totaled $28.5 million for the first nine months of 2005 compared to $34.9 million in the comparable period of 2004. Based on our review of internal tracking data, we believe that HBV liver transplant activity for HBV-positive patients during the first nine months was below the comparable period in 2004 and is reflected in period-to-date sales of Nabi-HB. The effect of lower HBV liver transplant activity in 2005 has been partially offset by increased use of Nabi-HB among patients receiving maintenance therapy following liver

transplant. For the nine-month period to date, patient use of Nabi-HB, as reported on internal tracking data, is 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 new contract entered into during the first quarter. Under the terms of the agreement, we supply finished Nabi-HB product to Novation for distribution through their Novaplus® Private Label Program.

WinRho SDF. Sales of WinRho SDF totaled $6.2 million for the first nine months of 2005 compared to $34.4 million the first nine months of 2004. The decrease compared to the same period last year is due to the expiration of our agreement with Cangene Corporation on March 24, 2005.

Other biopharmaceutical products. Other biopharmaceutical products primarily include Aloprim, intermediate products manufactured in our plant and Autoplex T [Anti-Inhibitor Coagulant Complex, Heat Treated]. We also perform contract manufacturing for others. Other biopharmaceutical products sales decreased in comparison to sales of these products during the first nine months of 2004 primarily due to the lower sales of Aloprim following introduction of a competitive product in late 2004 and the conclusion of our Autoplex T distribution agreement in May 2004.

Total antibody sales for the first nine months of 2005 were $30.5 million compared to $35.1 million for the first nine months of 2004.

Non-specific antibody sales. Sales of non-specific antibodies for the first nine months of 2005 totaled $16.4 million compared to $17.4 million for the first nine months of 2004 due to lower production of non-specific antibodies in the period.

Specialty antibody sales. Specialty antibody sales totaled $14.1 million in the first nine months of 2005 compared to $17.6 million in the first nine months of 2004, primarily reflecting decreased sales of Rh_oD antibodies. This was due to the conclusion of a contractual commitment at the end of 2004 to supply substantial quantities of Rh_oD antibodies to the purchaser of the majority of our antibody collection and laboratory testing business at low margins. Anti-HBs antibody sales have also decreased as we retained the anti-HBs plasma collected in the first nine months of 2005 for the manufacture of Nabi-HB. This effect was partially offset by increased sales of anti-Rabies and anti-tetanus antibodies. Also during the nine months ended September 24, 2005, we allocated plasma production capacity for the production of anti-*S. aureus* plasma in preparation for the manufacture of Altastaph for use in future clinical trials.

Gross margin. Gross margin for the first nine months of 2005 was $35.0 million, or 42% of sales, compared to $70.4 million, or 51% of sales, for the first nine months of 2004. The decrease in gross margin for the first nine months of 2005 is primarily the result of the conclusion of the WinRho SDF and Autoplex T distribution agreements and lower sales of our biopharmaceutical products. Gross margin for the first nine months of 2004 benefited from non-performance penalty payments from the manufacturer of Autoplex T of $2.0 million under a license and distribution agreement that concluded May 11, 2004. Further, during the 2005 period, we recorded $1.9 million in inventory write downs including a $1.0 million write down of Nabi-HB inventory damaged at a contract fill location in the second quarter. Partially offsetting these negative margin factors, gross margin for the 2005 period benefited from increased utilization of our manufacturing facility. Excess plant capacity expense totaled $2.4 million and $6.4 million in 2005 and 2004, respectively. During 2004, our facility underwent minor modifications in order to be EU compliant resulting in lower utilization in the first nine months of 2004.

Royalty expense for the first nine months of 2005 was $3.1 million, or 6% of biopharmaceutical sales, compared to $12.9 million, or 13% of biopharmaceutical sales, for the first nine months of 2004, reflecting the expiration of the WinRho SDF distribution agreement and an associated royalty obligation based on product sales.

Selling, general and administrative expense. Selling, general and administrative expenses were $51.3 million for the first nine months of 2005 compared to $38.8 million for the first nine months of 2004. This increase in selling, general and administrative expenses is primarily due to activities related to the future launch of StaphVAX, including ongoing market research, establishing initial commercial operations in Europe and pre-launch marketing activities.

Research and development expense. Research and development expense was $51.3 million for the first nine months of 2005 compared to $46.3 million for the first nine months of 2004. Consistent with our strategic focus, 84% of research and development expense in the first nine months of 2005 was incurred

to support activity under our Gram-positive infections franchise. Patient enrollment in our confirmatory Phase III clinical trial of StaphVAX was completed in the third quarter of 2004 and the 12-month follow up period of the trial was completed in the third quarter of 2005. We expect to announce top-line clinical trial results in late October or early November of 2005. In addition, during the first nine months of 2005 we continued to incur costs related to establishing vaccine capability at our manufacturing facility. During the first nine months of 2005, we also completed StaphVAX immunogenicity studies in orthopedic and cardiovascular surgery patients to support that StaphVAX may have applicability in protecting broader patient populations from life threatening *S. aureus* infections. To provide physicians with long-term dosing guidance post the expected launch of StaphVAX, we initiated a repeated dosing study designed to evaluate the ability of StaphVAX to provide continuous protection in patient populations who are at chronic risk for *S. aureus* infections. The repeated dosing trial will evaluate StaphVAX in ESRD patients on dialysis who are at high risk of contracting a *S. aureus* infection throughout their invasive and long-term treatment. We expect to submit our BLA for StaphVAX before the end of 2005.

During the third quarter, we produced quantities of anti-*S. aureus* plasma in preparation for the manufacture of clinical lots of Altastaph for future use in clinical trials. Further, in support of our next generation Gram-positive products, we continued the phase I study of our *S. epidermidis* vaccine being developed to prevent *staphylococcus epidermidis* infections and initiated the first human clinical study for our vaccine being developed to prevent *S. aureus* type 336 infections. When combined with the current formulation of StaphVAX®, we believe this will allow our product to provide significant protection from essentially all *S. aureus* strains.

During the nine-month period we continued enrollment in the PhosLo EPICK study in pre-dialysis CKD patients and continued enrollment in the CARE2 clinical trial. Enrollment in the CARE2 clinical trial was completed early in the fourth quarter of 2005.

Amortization of intangible assets. Amortization expense was $6.7 million for the first nine months of 2005 compared to $6.4 million for the first nine months of 2004. This amortization is primarily related to the intangible assets recorded as part of the acquisition of PhosLo.

Interest income. Interest income for the first nine months of 2005 was $2.7 million compared to $1.1 million for the comparable period of 2004. Interest income is earned from investing cash and cash equivalents on hand in money market funds and marketable securities, including auction rate securities with maturities of three months or less. The increase in interest income reflects additional cash and cash equivalents available for investment 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 the first nine months of 2005 was $2.0 million compared to $2.1 million of interest expense reported for the first nine months of 2004. Included in interest expense for the first nine months of 2005 is $1.5 million of accrued interest associated with our 2.875% Convertible Senior Notes due 2025. In addition, interest expense included $0.5 million and $0.9 million for the first nine months of 2005 and 2004, respectively, for amortization of the discount on the notes payable entered into in connection with the acquisition of PhosLo. 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. During the first nine months of 2005, we capitalized interest of $0.1 million related to the construction of our vaccine manufacturing facility in Florida.

Income taxes. During 2005, we anticipate recording a tax benefit primarily related to operating losses generated during the year. As such, we have recorded a $21.0 million income tax benefit for the nine months ended September 24, 2005, net of a valuation allowance, compared to a provision of $10.8 million for the nine months ended September 25, 2004. We have tax planning strategies that we believe are prudent and feasible, which we would implement prior to the expiration of the majority of our deferred tax assets. We have evaluated the need for a valuation allowance against our deferred tax assets. During the first nine months of 2005, we determined that a valuation allowance is necessary in the amount of $2.2 million for tax assets that are not currently expected to be utilized in our tax planning. For the nine-month period, we recorded $0.4 million of a tax contingency reserve against certain of our deferred tax assets.

LIQUIDITY AND CAPITAL RESOURCES

Our cash, cash equivalents and marketable securities at September 24, 2005 totaled $136.5 million compared to $103.1 million at December 25, 2004. Cash used by operations for the nine months ended September 24, 2005 was $61.4 million reflecting the increased investment in research and development supporting our StaphVAX clinical activities and the development of other products in our Gram-positive infections franchise, reduction in accounts payable and accruals related to establishing our vaccine manufacturing capability, and royalties due Cangene Corporation related to distribution of WinRho SDF in the fourth quarter of 2004 and the first quarter of 2005.

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.

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 September 24, 2005, our remaining obligation, net of discount, was $13.1 million. During the first nine months of 2005, we repaid approximately $10.8 million of this obligation.

Capital expenditures were $6.6 million for the first nine months of 2005. Our capital expenditures are expected to total approximately $10 to $12 million for the full year 2005.

We entered into a lease dated as of June 29, 2005 for a new expanded research and development facility in Gaithersburg, Maryland. The term of the lease commenced on June 29, 2005 with an initial term of 12.5 years, ending on December 31, 2017. Our obligation to pay rent commences January 1, 2006. The initial base rent will be approximately $2.3 million, adjusted annually by 3% as of January 1 of each year. Net rent outlays will be reduced by credits up to $1.1 million, $0.9 million, and $0.8 million in 2006, 2007 and 2008, respectively. For 2006 these credits are intended to be approximately equal to our rent payments for our Rockville, Maryland facility, based on current facility lease obligations. We are also responsible for payments of operating expenses and taxes for the Gaithersburg, Maryland premises. The Landlord has agreed to fund approximately $13.3 million of tenant improvements to the Gaithersburg premises, including an allowance of $5.1 million for those improvements that is included in the base rent. The Landlord will loan an additional allowance of $8.2 million for the balance of tenant improvements to us. The outstanding principal under this loan will bear simple interest at 6% per annum for the first twenty-four months after the rent commencement date. However, if we repay the loan at any time in the first twenty-four months, then no interest will be due. We may terminate the lease with respect to all or part of the premises on or before November 1, 2005 by written notice accompanied by a $0.8 million termination fee. As of September 24, 2005, we had not drawn on either of the $5.1 million or $8.2 million allowances. Our total projected spending for the transition to the Gaithersburg facility, including the $13.3 million of tenant improvements funded by the landlord, is approximately $17 million to $20 million.

In connection with an agreement related to the retirement of our former Chief Executive Officer announced on June 20, 2003, as of September 24, 2005 we had an obligation of $1.2 million in cash payments extending through December 2006. The current portion of this obligation is recorded in accrued expenses and the long-term portion included in other liabilities at September 24, 2005.

During the first nine months of 2005, we realized $3.8 million from the exercise of employee stock options.

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 first nine months of 2005 or 2004. 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 believe that cash flow from operations, cash and cash equivalents and marketable securities on hand at September 24, 2005 will be sufficient to meet our anticipated cash requirements for operations and debt service for at least the next twelve months.

CRITICAL ACCOUNTING POLICIES

The consolidated financial statements include the accounts of Nabi Biopharmaceuticals and all of its wholly owned subsidiaries. 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 nine months ended September 24, 2005, we had biopharmaceutical product sales of $52.2 million. At September 24, 2005, we had $15.8 million of trade accounts receivable including $10.5 million from biopharmaceutical sales.

Our primary customers for biopharmaceutical products are pharmaceutical wholesalers. In accordance with our revenue recognition policy, revenue from biopharmaceutical product sales is recognized when title and risk of loss are transferred to the customer. Reported sales are net of estimated customer prompt pay discounts, contractual allowances in accordance with managed care agreements known as chargebacks, government payer rebates, customer returns and other wholesaler fees. At September 24, 2005, we had $6.6 million recorded in other current liabilities related to these contractual obligations as accrued sales deductions. 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 were greater than our assumptions we would then record additional expenses in that 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 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 estimated wholesaler inventory levels, as well as expected sell-through levels by our wholesaler customers to indirect customers. Our estimates of inventory at 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.

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

(In Thousands)	Accrued chargebacks	Accrued rebates	Accrued sales discounts	Other accrued sales deductions	Total sales deductions
Balance at December 25, 2004	$ 4,417	$ 2,580	$ 1,067	$ 488	$ 8,552
Provisions	3,119	2,020	4,498	860	10,497
Actual credits utilized during the nine months ended September 24, 2005	(4,620)	(2,637)	(4,538)	(691)	(12,486)
Balance at September 24, 2005	$ 2,916	$ 1,963	$ 1,027	$ 657	$ 6,563

Inventory and Reserves for Slow Moving or Obsolete Inventory

At September 24, 2005, we had inventory, net on hand of $27.3 million. During the nine months ended September 24, 2005, we recorded a provision for inventory valuation allowance of $2.9 million. We review inventory on hand at each reporting period to assess that 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 greater than our assumptions we will record additional expenses in that period.

We have made, are in the process of making and/or 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 EMEA or FDA marketing approval (i.e., pre-launch inventories). 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. As of September 24, 2005 we had approximately $3.8 million of pre-launch StaphVAX inventory and at December 25, 2004 we had approximately $2.3 million of pre-launch inventories of StaphVAX and Nabi-HB Intravenous, pending final approval.

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. During the second quarter of 2005, we wrote off $0.8 million of Nabi-HB Intravenous as a result of pre-launch inventory shelf life compared to the timing of our sales projections.

If approval for these product candidates is not received, or approval is not timely compared to our

estimates for product shelf life, we will write the related amounts of pre-launch inventory off in the period of that determination. If we were required to write off the $3.8 million recorded as pre-launch inventory at September 24, 2005, this amount would be considered by us to be material to our operating results for the nine months ended September 24, 2005.

Intangible Assets – PhosLo Intangibles

On August 4, 2003, we acquired the worldwide rights to PhosLo. Under the terms of the acquisition agreement we purchased patent rights, trade secrets, the PhosLo trademarks, regulatory approvals and licenses, certain customer and regulatory data and finished product inventory. All assets purchased, except for inventory, have been recorded at their estimated fair value, adjusted by a pro rata portion of the excess of purchase price, and are included in intangible assets.

Management believes the estimated remaining useful lives of the acquired intangible assets are as follows:

(Dollars in thousands)	September 24, 2005	Estimated Remaining Useful Life
PhosLo Intangibles		
Trademark/tradename	$ 1,423	15.5 years
Tablet patent	11,381	1.5 years
Gelcap patent	80,670	15.5 years
Customer relationships	2,337	2.8 years
Covenant not to compete	508	12.8 years
Total PhosLo related intangible assets	96,319	
Less accumulated amortization	(17,879)	
Total	$ 78,440	

The trademark/tradenames and gelcap patent useful lives are estimated as the remaining patent life of the gelcap patent based on our assessment of the market for phosphate binders to treat hyperphosphatemia in end stage renal failure patients including our assessment of competitive therapies, forecasted growth in the number of patients and trends in patient care. The tablet patent's useful life is estimated as the remaining patent life for the tablet patent in the U.S. based on the direct competitive benefits derived from the patent. The covenant not-to-compete is based on the seller's contractual agreement not to compete directly with PhosLo in dialysis markets for a period of 15 years. We have established a useful life of 5 years for customer relationships based on our review of the time that would be required to establish markets and customer relationships within the nephrology and dialysis marketplace. In future periods, if we assess that circumstances have resulted in changes to the carrying value of the intangible assets or their estimated useful life, we will record those changes in the period of that assessment.

Intangible Assets – Manufacturing Right

In October 2003, we entered into a contract manufacturing agreement with Cambrex Bio Science Baltimore, Inc., or Cambrex Bio Science. In connection with this agreement, at September 24, 2005 we had capitalized $2.7 million, net, as a manufacturing right on our balance sheet. We have commenced amortization of the Manufacturing Right. Due to StaphVAX being a new product and the exact period of future economic benefit that will be derived from the sale of StaphVAX being difficult to determine, we have elected to amortize the Manufacturing Right on a straight-line basis over the extended term of our contract manufacturing agreement with Cambrex Bio Science, which may be extended, at our option, through October 2013. If we determine that the manufacture of StaphVAX will not occur at Cambrex Bio Science's facility, or we assess that circumstances have resulted in changes to the carrying value of the intangible asset, we will adjust the carrying value of this Manufacturing Right in the period of that determination.

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 has 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. In the first nine months of 2005, we recorded additional depreciation of $1.6 million under this policy, including $0.6 million in the third quarter of 2005. For the comparable periods of 2004, we recorded additional depreciation of $2.1 million and $0.6 million, respectively.

Income Taxes

We follow Statement of Financial Accounting Standards, or SFAS, No. 109, *Accounting for Income Taxes*, 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. During 2005, we anticipate recording a tax benefit primarily related to operating losses generated during the year. As such, we have recorded a $21.0 million income tax benefit for the nine months ended September 24, 2005, net of a valuation allowance, compared to a provision of $10.8 million during the nine months ended September 25, 2004. We have prudent and feasible tax planning strategies, which we would implement prior to the majority of our deferred assets expiring. We have evaluated the need for a valuation allowance against our deferred tax assets. At September 24, 2005, we have determined that we do not have tax planning strategies that will utilize all of our deferred tax assets and as such, we have recorded a valuation allowance in the amount of $2.2 million. At September 24, 2005 we have recorded $5.0 million as a tax contingency reserve against certain of our deferred tax assets that is included in other long-term liabilities.

NEW ACCOUNTING PRONOUNCEMENTS

In April 2005, the SEC announced that SFAS No. 123(R), *Share-Based Payment*, which requires all companies to measure compensation cost for all share-based payments (including employee stock options) at fair value, has been deferred. SFAS 123(R) requires companies to expense the fair value of all stock options that have future vesting provisions, are modified, or are newly granted beginning on the grant date of such options. We believe implementation of SFAS No. 123(R) will be material to our reported results of operations. Using the Black-Scholes model for valuing stock options under SFAS No. 123(R) would result in pre-tax expense for options granted in prior years in the amount of $11.2 million and $9.9 million in 2006 and 2007, respectively. SFAS 123(R) will become applicable to us beginning January 1, 2006.

In December 2004, the FASB announced that SFAS 151, *Inventory Costs* is effective for inventory costs incurred during fiscal years beginning after June 15, 2005. This Statement clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs, and wasted material (spoilage). This

Statement requires that those items be recognized as current-period charges regardless of whether they meet the criterion of “so abnormal”, as defined in Accounting Principal Board 43. In addition, this Statement requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. We do not expect the adoption of SFAS No. 151 to have a material impact on our financial condition, results of operations or cash flows.

In October 2005, the FASB announced that FSP No. 13-1, *Accounting for Rental Costs Incurred during a Construction Period*, is effective for reporting periods beginning after December 15, 2005. This Position concludes that rental costs incurred during and after a construction period are for the right to control the use of a leased asset during and after construction of a lessee asset, and that there is no distinction between the right to use a leased asset during the construction period and the right to use that asset after the construction period. This Position requires that rental costs associated with ground or building operating leases that are incurred during a construction period be recognized as rental expense, included in income from continuing operations. We do not expect the adoption of FSP No. 13-1 to have an impact on our financial condition, results of operations or cash flows.

FORWARD LOOKING STATEMENTS

The part of this Quarterly Report on Form 10-Q captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations” contains certain forward-looking statements, which involve risks and uncertainties. These statements are based on current expectations, estimates and projections about the industries in which we operate, management’s beliefs and assumptions made by management. Readers should refer to a discussion under “Risk Factors” contained in our Annual Report on Form 10-K for the year ended December 25, 2004 concerning certain factors that could cause our actual results to differ materially from the results anticipated in such forward-looking statements. Said discussion and Risk Factors are hereby incorporated by reference into this Quarterly Report.

Item 3. 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 and one Luxembourg subsidiary. During the nine months ended September 24, 2005, we did not record any sales by our foreign subsidiaries. One subsidiary incurred expenses during this period, primarily relating to our initial activities to obtain regulatory approval in the EU for our pipeline products and products that we currently market in the U.S. 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 September 24, 2005, we had cash and cash equivalents and marketable securities in the amount of $55.3 million and $81.3 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 $13.1 million, net of imputed discount, and capital lease obligations of $0.4 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. The table below presents the principal amount and the weighted-average interest rates of our investment and debt portfolio:

(In millions, except for percentages)	Estimated Fair Value at September 24, 2005
Assets:	
Cash, cash equivalents and marketable securities	**$ 136.5**
Average interest rate	**2.7%**
Liabilities:	
2.875% Convertible Senior Notes due 2025	**$ 109.1**
Notes payable and capital lease obligations	**13.4**
Average interest rate	**3.1%**

Item 4. Controls and Procedures

Evaluation and Conclusion as of September 24, 2005

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 September 24, 2005. Based upon this evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of September 24, 2005. There has been no change in our internal control over financial reporting that occurred during our fiscal quarter ended September 24, 2005 that has materially affected, or is reasonably likely to materially affect our internal control over financial reporting.

PART II OTHER INFORMATION

Item 1. 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 (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 will be stayed until the earlier of 30 months or resolution of the patent infringement lawsuit.

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

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

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

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (1)
6/26/05-7/30/05	0	N/A	0	$ 3.1 million
7/31/05-8/27/05	0	N/A	0	$ 3.1 million
8/28/05-9/24/05	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 buy back of up to $5.0 million of our common stock in the open market or in privately negotiated transactions. We have acquired 345,883 shares of our common stock for a total of $1.9 million since the inception of the buy back program. Repurchased shares have been accounted for as treasury stock.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

None.

Item 5. Other Information

None.

Item 6. Exhibits

10.1	Employment Agreement dated as of September 1, 2005 between Joseph Johnson and Nabi Biopharmaceuticals
10.2	Change in Control Severance Agreement dated as of September 1, 2005 between Joseph Johnson and Nabi Biopharmaceuticals
10.3	Lease Agreement dated as of June 29, 2005 between ARE-30 West Watkins, LLC, and Nabi Biopharmaceuticals
31.1	Rule 13a-14(a)/15d-14(a) Certification
31.2	Rule 13a-14(a)/15d-14(a) Certification
32.1	Section 1350 Certification

SIGNATURES

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

Nabi Biopharmaceuticals

Date: October 21, 2005

By: /s/ Mark L. Smith

Mark L. Smith
Senior Vice President, Finance,
Chief Financial Officer,
Chief Accounting Officer and Treasurer

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Exhibit Index

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31.2	Rule 13a-14(a)/15d-14(a) Certification
32.1	Section 1350 Certification

Exhibit 10.1

NABI BIOPHARMACEUTICALS
5800 PARK OF COMMERCE BOULEVARD, N.W.
BOCA RATON, FLORIDA 33487

Effective as of September 1, 2005

Mr. Joseph Johnson
160 South Street
Hingham, Ma 02043

Dear Joe:

You have agreed to serve as Senior Vice President, responsible for Human Capital, Human Resources, IT, Strategy & Business Planning and Business Process ("Senior Vice President") for Nabi Biopharmaceuticals ("Nabi") which term for purposes of this Agreement shall include affiliates of Nabi Biopharmaceuticals. The following are the terms of such employment:

1. **TERM**: You will serve as a Senior Vice President for a period beginning as of the date hereof and ending on September 30, 2008, unless your employment is sooner terminated as provided below (the "Employment Period"). In the event that your employment by the Company continues beyond the Employment Period, the terms and conditions of this Agreement shall continue except that your continued employment by the Company may be terminated by either party upon thirty (30) days' prior notice unless you and the Company shall have entered into a written agreement to the contrary.

2. **SALARY:** Your salary will be $250,000 per year, payable bi-weekly during the Employment Period. Your salary will be subject to discretionary annual increases as determined by Nabi's Board of Directors.

3. **BONUS:** You will be entitled to participate in Nabi's VIP Management Incentive Program or any comparable bonus plan maintained by Nabi ("Bonus Plan"). Your participation in the Bonus Plan shall be subject to the terms and conditions of the Bonus Plan.

Unless the Employment Period is terminated for "cause" pursuant to Section 7(B) (b) below, if the Employment Period ends during a calendar year, your bonus compensation opportunity shall be pro rated based upon the number of full calendar months you were employed and the amount of bonus compensation which would have been payable with respect to such year pursuant to the Bonus Plan. If the Employment Period is terminated pursuant to Section 7 (B)(b) below, no bonus compensation shall be payable with respect to the calendar year during which the Employment Period is terminated.

Bonus payments, if applicable, shall be payable within 120 days after the end of the relevant calendar year.

4. **AUTO ALLOWANCE:** While an employee under the terms of this Agreement, you shall receive an auto allowance of not less than $1200.00 per month.

5. **BENEFITS:** During the Employment Period, you will be eligible to participate in such fringe benefits programs as are accorded to other similarly situated Nabi employees. In addition, Nabi shall pay you an Executive Bonus, grossed up for taxes, so that you can make a $12,000 contribution to your Supplemental Executive Retirement Plan (the "SERP") and provide you at Nabi's cost with term life insurance of $500,000 in excess of the term life insurance coverage Nabi provides to its employees generally. Nabi shall cover the cost of financial planning services up to $3000.00/year. Nabi shall also pay your reasonable social dues at a single club.

6. **DUTIES AND EXTENT OF SERVICES:**

(A) During the Employment Period, you agree to devote substantially all of your working time, and such energy, knowledge, and efforts as is necessary to the discharge and performance of your duties provided for in this Agreement and such other reasonable duties and responsibilities consistent with your position as are assigned to you from time to time by the person to whom you report. You shall be located primarily in Nabi's Boca Raton, Florida facilities, but shall travel to other locations from time to time as shall be reasonably required in the course of performance of your duties.

(B) During the Employment Period, you shall serve as a Senior Vice President. You shall have such duties as are delegated to you by the person to whom you report provided that such duties shall be reasonably consistent with those duties assigned to executive officers having similar titles in organizations comparable to Nabi.

7. **TERMINATION:**

(A) The Employment Period shall terminate upon your death. You may also terminate the Employment Period upon thirty (30) days' prior written notice to Nabi. Any termination pursuant to this Section 7(A) shall not affect any bonus compensation applicable to the year of such termination, provided that, if applicable, any bonus compensation payable pursuant to Section 3 of this Agreement shall be pro rated as provided for in Section 3.

(B) Nabi may terminate the Employment Period (a) in the event Nabi reasonably determines that you are unable to perform the essential functions of your position, with or without reasonable accommodation, for any three (3) consecutive months as the result of mental or physical incapacity or (b) for "cause", which is defined as (i) acts of fraud or embezzlement or other felonious acts by you, (ii) your refusal to comply with reasonable directions in connection with the performance of your duties as provided for in Section 6 of this Agreement after notice of such failure is delivered to you, (iii) failure to comply with the provisions of Section 9 or 10 of this

Agreement or (iv) your gross negligence in connection with the performance of your duties as provided for in this Agreement, provided that, in the event of a proposed termination under clause (ii) or clause (iv) of this clause (B), you shall receive ten (10) days' prior written notice of such proposed termination and within such period you shall be afforded an opportunity to be heard by Nabi's Board of Directors or a duly appointed committee of the Board as to whether grounds for termination under these clauses exists.

(C) Nabi may otherwise terminate the Employment Period upon thirty (30) days' prior notice to you.

(D) Your confidentiality and non-competition agreements set forth in Sections 9 and 10 below and your agreement to cooperate set forth in Section 11 below shall survive the termination of your employment regardless of the reasons therefor.

8. **SEVERANCE**

(A) In the event that (a) your employment terminates pursuant to Section 7C or (b) after the expiration of the Employment Period, if your employment continues as provided in Section 1, either you give notice of termination of employment to the Company or the Company gives you notice of termination of employment other than for cause (as defined above) or disability, and provided that (i) within thirty (30) days prior to the expiration of the Employment Period Nabi had not offered to renew this Agreement on terms no less favorable to you than the terms then in effect, and (ii) within ninety (90) days following the expiration of the Employment Period Nabi has not tendered to you a new employment agreement executed on behalf of Nabi and containing such no less favorable terms, you shall receive the benefits set forth in Sections 8B, 8C and 8D. In the event your employment terminates pursuant to Section 7B (a), or as a result of your death, you shall receive the benefit set forth in Section 8D. Notwithstanding the foregoing provisions of this Section 8A, in the event your employment terminates under circumstances that entitle you to receive compensation and other benefits pursuant to the September 1, 2005 Change of Control Severance Agreement between you and Nabi (the "Change of Control Severance Agreement"), you shall not receive the benefits set forth in Section 8B, 8C and 8D.

(B) Based on the effective date of such termination and subject to the following provisions of this Section 8(B), Nabi will pay you severance pay as defined in (i) and (ii) below ("Severance Pay") and maintain in effect such fringe benefits as are accorded to other similarly situated employees (to the extent allowed under, and subject to the limitations of, applicable plans) for the following periods: (i) if at the date of termination you shall have been employed by Nabi for less than twelve months, you shall receive Severance Pay equal to your monthly base salary as in effect at the time of such termination and benefit continuation for nine (9) months and (ii) if at the date of termination you shall have been employed by Nabi for twelve months or more, you shall receive Severance Pay equal to your monthly base salary and benefit continuation for eighteen months. Severance Pay shall be made in equal bi-weekly installments.

(C) The Company shall pay for executive outplacement services up to $18,000 by an organization selected by Nabi in its sole discretion.

(D) Provided that at the date your employment terminates you shall have been employed by Nabi for a period of at least twelve months, all of your non-vested stock options, restricted stock or similar incentive equity instruments ("Options") shall immediately vest. All such "Options" shall be exercisable for twelve (12) months past your termination date, except that no "Options" shall be exercisable beyond the original "Option" expiration date. To the extent the terms of any "Options" are inconsistent with this Agreement, the terms of this Agreement shall control.

(E) All payments or benefits to you under this Section 8 (other than payments or benefits already accrued and otherwise due under Nabi's employee benefit plans or programs, or as a result of your death) will not be given unless you execute (and do not rescind) a written employment termination agreement in a form prescribed by Nabi, containing terms consistent with this Agreement as well as a general release of all claims against Nabi and related parties with respect to all matters occurring prior to or on the date of the release, including (but not limited to) employment matters or matters in connection with your termination. (F) It is the intent of you and Nabi that the provisions of this Section 8 and all amounts payable to you hereunder meet the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, to the extent applicable to this Agreement and such payments. Recognizing such intent and the lack of guidance currently available under Section 409A, you and Nabi agree to cooperate in good faith in preparing and executing, at such time as sufficient guidance is available under Section 409A and from time to time thereafter, such amendments to this Section 8 as may reasonably be necessary solely for the purpose of assuring that this Section 8 and all amounts payable to you hereunder meet the requirements of Section 409A.

9. **CONFIDENTIALITY:** You acknowledge that your duties with Nabi will give you access to trade secrets and other confidential information of Nabi and/or its affiliates, including but not limited to information concerning production and marketing of their respective products, customer lists, and other information relating to their present or future operations (all of the foregoing, whether or not it qualifies as a "trade secret" under applicable law, is collectively called "Confidential Information"). You recognize that Confidential Information is proprietary to each such entity and gives each of them significant competitive advantage.

Accordingly, you shall not use or disclose any of the Confidential Information during or after the Employment Period, except for the sole and exclusive benefit of the relevant company. Upon any termination of the Employment Period, you will return to the relevant company's office all documents, computer electronic information and files, e.g., diskettes, floppies etc. and other tangible embodiments of any Confidential Information. You agree that Nabi would be irreparably injured by any breach of your confidentiality agreement, that such injury would not be adequately compensable by monetary damages, and that, accordingly, the offended company may

specifically enforce the provisions of this Section by injunction or similar remedy by any court of competent jurisdiction without affecting any claim for damages.

10. **NON-COMPETITION:**

(A) You acknowledge that your services to be rendered are of a special and unusual character and have a unique value to Nabi the loss of which cannot adequately be compensated by damages in an action at law. In view of the unique value of the services, and because of the Confidential Information to be obtained by or disclosed to you, and as a material inducement to Nabi to enter into this Agreement and to pay to you the compensation referred to above and other consideration provided, you covenant and agree that, during the term of your employment by Nabi and for a period of one (1) year after termination of such employment for any reason whatsoever, you will not, directly or indirectly, (a) engage or become interested, as owner, employee, consultant, partner, through stock ownership (except ownership of less than five percent of any class of equity securities which are publicly traded), investment of capital, lending of money or property, rendering of services, or otherwise, either alone or in association with others, in the operations, management or supervision of any type of business or enterprise engaged in any business which is competitive with any business of Nabi (a "Competitive Business"), (b) solicit or accept orders from any current or past customer of Nabi for products or services offered or sold by, or competitive with products or services offered or sold by, Nabi, (c) induce or attempt to induce any such customer to reduce such customer's purchase of products or services from Nabi, (d) disclose or use for the benefit of any Competitive Business the name and/or requirements of any such customer or (e) solicit any of Nabi's employees to leave the employ of Nabi or hire or negotiate for the employment of any employee of Nabi. By way of clarification, a "Competitive Business" is not any business or enterprise in the health care industry; it is only a business or enterprise in the health care industry that is competitive with any business of Nabi. Notwithstanding the foregoing, nothing contained in this Section 10A shall be deemed to prohibit you from being employed by or providing services to a Competitive Business following a "Change of Control" (as defined in the Change of Control Agreement) and termination of your employment if the nature of such employment or services do not compete with any business engaged in by Nabi immediately prior to the Change in Control.

(B) You have carefully read and considered the provisions of this Section and Section 9 and having done so, agree that the restrictions set forth (including but not limited to the time period of restriction and the world wide areas of restriction) are fair and reasonable (even if termination is at our request and without cause) and are reasonably required for the protection of the interest of Nabi, its officers, directors, and other employees. You acknowledge that upon termination of this Agreement for any reason, it may be necessary for you to relocate to another area, and you agree that this restriction is fair and reasonable and is reasonably required for the protection of the interests of Nabi, their officers, directors, and other employees.

(C) In the event that, notwithstanding the foregoing, any of the provisions of this Section or Section 9 shall be held to be invalid or unenforceable, the remaining provisions thereof shall nevertheless continue to be valid and enforceable as though invalid or unenforceable parts had

not been included therein. In the event that any provision of this Section relating to time period and/or areas of restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or areas such court deems reasonable and enforceable, said time period and/or areas of restriction shall be deemed to become, and thereafter be, the maximum time period and/or area which such court deems reasonable and enforceable.

(D) With respect to the provisions of this Section, you agree that damages, by themselves, are an inadequate remedy at law, that a material breach of the provisions of this Section would cause irreparable injury to the aggrieved party, and that provisions of this Section 10 may be specifically enforced by injunction or similar remedy in any court of competent jurisdiction without affecting any claim for damages.

11. **LITIGATION AND REGULATORY COOPERATION:** During and after your employment with Nabi, you shall reasonably cooperate with Nabi in the defense or prosecution of any claims now in existence or which may be brought in the future against or on behalf of Nabi which relate to events or occurrences that transpired while you were employed by Nabi; provided, however, that such cooperation shall not materially and adversely affect you or expose you to an increased probability of civil or criminal litigation. Your cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of Nabi at mutually convenient times. During and after your employment with Nabi, you also shall cooperate fully with Nabi in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while you were employed by Nabi. Nabi shall reimburse you for all out-of-pocket costs and expenses incurred in connection with your performance under this Section 11, including, but not limited to, reasonable attorneys' fees and costs.

12. **MISCELLANEOUS:** This Agreement and the rights and obligations of the parties pursuant to it and any other instruments or documents issued pursuant to it shall be construed, interpreted and enforced in accordance with the laws of the State of Florida, exclusive of its choice-of-law principles. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The provisions of this Agreement shall be severable and the illegality, unenforceability or invalidity of any provision of this Agreement shall not affect or impair the remaining provisions hereof, and each provision of this Agreement shall be construed to be valid and enforceable to the full extent permitted by law. In any suit, action or proceeding arising out of or in connection with this Agreement, the prevailing party shall be entitled to receive an award of the reasonable related amount of attorneys' fees and disbursements incurred by such party, including fees and disbursements on appeal. This Agreement**,** the Change of Control Severance Agreement and the Indemnification Agreement dated September 11, 2000 are a complete expression of all agreements of the parties relating to the subject matter hereof, and all prior or contemporaneous oral or written understandings or agreements shall be null and void except to the extent set forth in this Agreement.

This Agreement cannot be amended orally, or by any course of conduct or dealing, but only by a written agreement signed by the party to be charged therewith. All notices required and allowed hereunder shall be in writing, and shall be deemed given upon deposit in the Certified Mail, Return Receipt Requested, first-class postage and registration fees prepaid, and correctly addressed to the party for whom intended at its address set forth under its name below, or to such other address as has been most recently specified by a party by one or more counterparts, each of which shall constitute one and the same agreement. All references to genders or number in this Agreement shall be deemed interchangeably to have a masculine, feminine, neuter, singular or plural meaning, as the sense of the context required.

If the foregoing confirms your understanding of our agreements, please so indicate by signing in the space provided and returning a signed copy to us.

Nabi Biopharmaceuticals
5800 Park of Commerce Boulevard, N.W.
Boca Raton, Florida 33487

BY: /s/ THOMAS H. MCLAIN
Thomas H. McLain
Chairman of the Board, CEO and President

Accepted and agreed:

/s/ JOSEPH JOHNSON
Mr. Joseph Johnson
160 South Street
Hingham, Ma 02043

Exhibit 10.2

Nabi Biopharmaceuticals

5800 Park of Commerce Boulevard, N.W.
Boca Raton, FL 33487

Change of Control Severance Agreement

Effective as of September 1, 2005

Mr. Joseph Johnson
160 South Street
Hingham, Ma 02043

Dear Joe:

The Board of Directors of Nabi Biopharmaceuticals (the "Corporation") and the Compensation Committee (the "Committee") of the Board have determined that it is in the best interests of the Corporation and its shareholders for the Corporation to agree, as provided herein, to pay you termination compensation in the event you should leave the employ of the Corporation under the circumstances described below.

The Board and the Committee recognize that the continuing possibility of a sale or change of control of the Corporation is unsettling to you and other key employees of the Corporation. Therefore, these arrangements are being made to help assure a continuing dedication by you to your duties to the Corporation by diminishing the inevitable distraction to you from the personal uncertainties and risks created by a pending sale or change of control of the Corporation. In particular, the Board and the Committee believe it important, should the Corporation receive proposals from third parties with respect to its future, to enable you, without being influenced by the uncertainties of your own situation, to assess and advise the Board whether such proposals would be in the best interests of the Corporation and its shareholders and to take such other action regarding such proposals as the Board might determine to be appropriate, including being available to assist in any transition should there be a sale or change of control of the Corporation. The Board and the Committee also wish to demonstrate to executives of the Corporation that the Corporation is concerned with the welfare of its executives and intends to see that loyal executives are treated fairly.

1. In view of the foregoing and in further consideration of your continued employment with the Corporation, the Corporation will pay you as termination compensation a lump sum amount, determined as provided below, in the event that (a) within six months after a Change of Control of the Corporation you terminate your employment with the Corporation for Good Reason or you die or you become disabled, or (b) within twelve months after a Change of Control of the Corporation your employment with the Corporation is terminated by the Corporation for any reason, or (c) within the period beginning on the sixth monthly

anniversary of a Change of Control of the Corporation and ending on the twelfth monthly anniversary thereof, you terminate your employment with the Corporation for any reason (including, without limitation, death or disability). The lump sum compensation so payable (hereinafter referred to as the "Lump Sum Amount") shall be an amount equal to two times the sum of (a) the higher of (i) your current annual base salary or (ii) your base salary immediately prior to the Change of Control plus (b) the target Bonus you could have earned for the fiscal year in which the Change of Control occurred. The Lump Sum Amount shall be paid to you within five days after the date of termination of your employment (hereinafter referred to as the "Termination Date").

2. In addition, in the event your employment with the Corporation terminates under circumstances entitling you to receive the Lump Sum Amount:

(a) Any compensation and other amounts previously deferred by you, together with accrued interest thereon, if any, to which you are entitled, and any accrued vacation pay and accrued paid leave bank amounts not yet paid by the Corporation, shall be paid to you within five days of such termination.

(b) All other amounts accrued or earned by you through the date of such termination and amounts otherwise owing under the Corporation's plans and policies shall be paid to you within five days of such termination.

(c) The Corporation shall maintain in full force and effect, for the continued benefit of you and/or your family for twenty-four months after the Termination Date, all employee welfare benefit plans and any other employee benefit programs or arrangements (including, without limitation, medical and dental insurance plans, disability and life insurance plans and car allowance programs) in which you were entitled to participate immediately prior to the Change of Control, provided that your continued participation is possible under the general terms and provisions of such plans and programs. In the event that your participation in any such plan or program is barred, the Corporation shall arrange to provide you with benefits substantially similar to those which you are entitled to receive under such plans and programs. To the extent permissible, all such benefits shall be assignable by you.

(d) All outstanding stock options which you hold shall vest immediately upon a Change of Control and shall be exercisable for (i) the remainder of the option term(s) or (ii) a period of five years from the Termination Date, whichever is shorter.

(e) The Corporation shall provide outplacement services for you by its designated organization at a level consistent with the Corporation's career transition policy.

(f) You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by you as the result of employment by another employer after the Termination

Date, or otherwise. The Corporation's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which it may have against you or others.

3. Any termination by you for Good Reason shall be communicated by a written notice given within 120 days of your having actual notice of the events giving rise to a right to terminate for Good Reason and which (i) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination for Good Reason and (ii), if the Termination Date is other than the date of receipt of such notice, specifies the Termination Date (which date shall not be more than 15 days after the giving of such notice). Your failure to set forth in the notice of termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of yours hereunder or preclude you from asserting such fact or circumstance in enforcing your rights hereunder.

4. For purposes of this Agreement:

(a) "Bonus" means bonus or incentive compensation payable by the Corporation to you pursuant to plans which the Corporation now or hereafter maintains.

(b) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(c) A "Change of Control" shall be deemed to have taken place if (i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Corporation representing 25% or more of the combined voting power of the Corporation's then outstanding securities; (ii) (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were shareholders of the Corporation immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities or (B) a liquidation or dissolution of the Corporation; or (iii) as the result of a tender offer, exchange offer, merger, consolidation, sale of assets or contested solicitation of proxies or stockholder consents or any combination of the foregoing transactions (a "Transaction"), the persons who were directors of the Corporation immediately before the Transaction shall cease to constitute a majority of the Board of Directors of the Corporation or of any parent of or successor to the Corporation immediately after the Transaction occurs.

(d) "Good Reason" means:

(i) The assignment to you of any duties inconsistent in any material adverse respect with your position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as in effect on the date of the Change of Control, or any other action by the Corporation which results in

a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Corporation promptly after receipt of notice from you;

(ii) Any reduction of your base salary or the failure by the Corporation to provide you with an incentive compensation program, welfare benefits, retirement benefits and other benefits which in the aggregate are no less favorable than the benefits to which you were entitled prior to the Change of Control;

(iii) The Corporation's requiring you to be based at any office or location more than 15 miles from that location at which you are employed on the date of the Change of Control, except for travel reasonably required in the performance of your responsibilities;

(iv) Any action taken or suffered by the Corporation as of or following the Change of Control (such as, without limitation, transfer or encumbrance of assets or incurring of indebtedness) which materially impairs the ability of the Corporation to make any payments due or which may become due to you under this Agreement; or

(v) any failure by the Corporation to obtain the assumption and agreement to perform this Agreement by a successor as contemplated by Section 10.

5.(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Corporation to you or for your benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then you shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by you of all taxes (including any interest or penalties imposed with respect to such taxes), including any Excise Tax, imposed upon the Gross-Up Payment, you retain an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 5(c), all determinations required to be made under this Section 5, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment, shall be made by a nationally recognized accounting firm (the "Accounting Firm") which shall provide detailed supporting calculations both to the Corporation and you within 15 business days of the date your employment with the Corporation terminates, or such earlier time as is requested by the Corporation. If the Accounting Firm determines that no Excise Tax is payable to you, it shall furnish you with an opinion that you have substantial authority not to report any Excise Tax on your federal income tax return. Any determination by the Accounting Firm shall be binding upon the Corporation and you. As a result of the

uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Corporation should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Corporation exhausts its remedies pursuant to Section 5(c) and you thereafter are required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Corporation to you or for your benefit.

(c) You shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after you know of such claim and shall apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid. You shall not pay such claim prior to the expiration of the thirty-day period following the date on which you give such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Corporation notifies you in writing prior to the expiration of such period that it desires to contest such claim, you shall:

(i) give the Corporation any information reasonably requested by the Corporation relating to such a claim,

(ii) take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with regard to such claim by an attorney reasonably selected by the Corporation,

(iii) cooperate with the Corporation in good faith in order effectively to contest such claim, and

(iv) permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold you harmless, on an after-tax basis, for an Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation of the foregoing provisions of this Section 5(c), the Corporation shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct you to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and you agree to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; provided, however, that if the Corporation directs you to pay such claim and sue for a refund, the Corporation shall advance the amount of such payment to

you, on an interest-free basis and shall indemnify and hold you harmless, on an after-tax basis, from any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations related to payment of taxes for your taxable year with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Corporation's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and you shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), you become entitled to receive any refund with respect to such claim, you shall (subject to the Corporation's complying with the requirements of Section 5(c)) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), a determination is made that you shall not be entitled to any refund with respect to such claim and the Corporation does not notify you in writing of its intent to contest such denial of refund prior to the expiration of thirty days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

6. Anything in this Agreement to the contrary notwithstanding, if your employment with the Corporation is terminated prior to the date on which a Change of Control occurs, and it is reasonably demonstrated by you that such termination (a) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (b) otherwise arose in connection with or in anticipation of a Change of Control, then for all purposes of this Agreement, a Change of Control shall be deemed to have occurred the date immediately prior to the date of such termination.

7. This Agreement shall be binding upon and inure to the benefit of you, your estate and the Corporation and any successor or assign of the Corporation, but neither this Agreement nor any rights arising hereunder may be assigned or pledged by you. If you should die while any amount would still be payable to you hereunder if you had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee, or other designee or, if there be no such designee, to your estate.

8. For purposes of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed, in your case, to the address set forth on the first page of this Agreement and, in the Corporation's case, to the address of its principal office (all notices to the Corporation to be directed to the attention of the President of the Corporation with a copy to the Secretary of the Corporation) or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

9. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by you and such officer as may be specifically designated by the Board of Directors of the Corporation. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the time or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Florida without regard to principles of conflicts of laws.

10. The Corporation will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Corporation to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform it if no such succession had taken place. As used in this Agreement, “Corporation” shall mean the Corporation as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. Nothing in this Agreement shall prevent or limit your continuing or future participation in any benefit, bonus, incentive or other plan or program provided by the Corporation and for which you may qualify, nor shall anything herein limit or otherwise prejudice such rights as you may have under any other agreements with the Corporation. Amounts which are vested benefits or which you are otherwise entitled to receive under any plan or program of the Corporation at or subsequent to any Change of Control shall be payable in accordance with such plan or program. To the extent the terms of any other agreements you may have with the Corporation are inconsistent with this Agreement, the terms of this Agreement shall control.

12. If you assert any claim in any contest (whether initiated by you or by the Corporation) as to the validity, enforceability or interpretation of any provision of this Agreement, the Corporation shall pay your legal expenses (or cause such expenses to be paid), including, without limitation, your reasonable attorneys’ fees, on a quarterly basis, upon presentation of proof of such expenses in a form reasonably acceptable to the Corporation, provided that you shall reimburse the Corporation for such amounts, plus simple interest thereon at the 90-day United States Treasury Bill rate as in effect from time to time, compounded annually, if a court of competent jurisdiction shall find that you did not have a good faith and reasonable basis to believe that you would prevail as to at least one material issue presented to such court.

13. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

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

If you are in agreement with the foregoing, please so indicate by signing and returning to the Corporation the enclosed copy of this letter, whereupon this letter shall constitute a binding agreement under seal between you and the Corporation.

Very truly yours,

Nabi Biopharmaceuticals

By /s/ THOMAS H. MCLAIN
Thomas H. McLain
Chairman, CEO and President

Agreed:

/s/ JOSEPH JOHNSON
Mr. Joseph Johnson

160 South Street
Hingham, Ma 02043

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this 29th day of June, 2005, between ARE-30 WEST WATKINS, LLC, a Delaware limited liability company ("**Landlord**"), and NABI BIOPHARMACEUTICALS, a Delaware corporation ("**Tenant**").

Address: 30 West Watkins Mill Road, Gaithersburg, Maryland 20878

Premises: The entire 3-story building located at 30 West Watkins Mill Road, Gaithersburg, Maryland, containing 102,815 rentable square feet, as measured (which measurement shall be subject to verification by Tenant's architect prior to the Rent Commencement Date, with any variation being reflected in an amendment to this Lease to be subsequently entered into by the parties to adjust any numbers or figures which are predicated on the square footage being 102,815 square feet) in accordance with the 1996 Standard Method of Measuring Floor Area in Office Buildings, as adopted by the Building Owners and Managers Association (ANSI/BOMA Z65.1-1996) ("**BOMA**"), and shown on **Exhibit A**.

Project: The project known as "Alexandria Technology Center-Gaithersburg I" which consists of the buildings and/or land located at 2 West Watkins Mill Road, 30 West Watkins Mill Road, and 1201 Clopper Road, Gaithersburg, Maryland, which buildings contain a total of 361,400 rentable square feet as measured in accordance with BOMA, as the same may be expanded by Landlord from time to time (with any expansion to be measured in accordance with BOMA and the size of the Project revised accordingly), together with all improvements thereon and appurtenances thereto as described on **Exhibit B-1**.

Building: That specific building in the Project located at 30 West Watkins Mill Road, Gaithersburg, Maryland and shown on **Exhibit A**.

Land: That parcel of land more particularly identified on **Exhibit B-2**.

Base Rent: $22.50 per rentable square foot of the Premises per annum; payable monthly as set forth in this Lease.

Rentable Area of Premises: 102,815 sq. ft.

Rentable Area of Project: 361,400 sq. ft.

Rentable Area of Building: 102,815 sq. ft.

Security Deposit: $3,563,657.50.

Tenant's Share of Operating Expenses: 100%

Building's Share of Project: 28.45%, subject to equitable adjustment in the event of the expansion of the Project.

Rent Adjustment Percentage: 3%

Commencement Date: The date of this Lease.

Base Term: A term beginning on the Commencement Date (as defined in Section 2(b)) and ending on December 31, 2017.

Permitted Use: General office and laboratory purposes, research, development, testing, production and manufacturing purposes, and the sale or distribution of biological and pharmaceutical products and related products.

Address for Rent Payment:

135 N. Los Robles Avenue, Suite 250
Pasadena, CA 91101
Attention: Accounts Receivable

AFTER AUGUST 1, 2005

385 East Colorado Blvd., Suite 299
Pasadena, CA 91101
Attention: Accounts Receivable

Landlord's Notice Address:

135 N. Los Robles Avenue, Suite 250
Pasadena, CA 91101
Attention: Corporate Secretary

AFTER AUGUST 1, 2005

385 East Colorado Blvd., Suite 299
Pasadena, CA 91101
Attention: Accounts Receivable

Tenant's Notice Address:

NABI Biopharmaceuticals
30 W. Watkins Mill Road
Gaithersburg, Maryland 20878
Attention: Peter Marissael

Landlord's Additional Notice Address:

946 Clopper Road
Gaithersburg, MD 20878
Attention: Lawrence J. Diamond

Tenant's Additional Notice Address:

NABI Biopharmaceuticals
5800 Park of Commerce Blvd. NW
Boca Raton, FL 33487
Attention: (i) Raafat Fahim
(ii) Anna Mack, Esq.
(iii) Accounts Payable

The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

☑ **EXHIBIT A** – PREMISES DESCRIPTION

☑ **EXHIBIT B-1** - DESCRIPTION OF PROJECT

☑ **EXHIBIT B-2** – LAND DESCRIPTION

☑ **EXHIBIT C** - WORK LETTER

☑ **EXHIBIT D** - COMMENCEMENT DATE
☑ **EXHIBIT E** - RULES AND REGULATIONS
☑ **EXHIBIT F** – TENANT'S PERSONAL PROPERTY
☑ **EXHIBIT G** – EXPANSION PROJECTS
☑ **EXHIBIT H** – PARKING MAP
☑ **EXHIBIT I** – DESCRIPTION OF BASE BUILDING
☑ **EXHIBIT J** – DRAWING OF LOT LINE ADJUSTMENT
☑ **EXHIBIT K** – TENANTS WITH SUPERIOR EXPANSION RIGHT

1. **Lease of Premises**. Upon and subject to all of the terms and conditions hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The portions of the Project which are for the non-exclusive use of tenants of the Project are collectively referred to herein as the "**Common Areas**." Landlord reserves the right to modify Common Areas (including the Lot Line Adjustment, as defined herein), provided that such modifications do not materially adversely affect Tenant's use of the Premises for the Permitted Use, access to or egress from the Premises, Tenant's parking rights under this Lease, or any utilities or drainage systems serving the Premises. If Landlord develops a building on any portion of the Project which materially obstructs the visibility of the Building from West Watkins Mill Road or from Clopper Road, then Landlord, at Tenant's request, shall provide a monument sign for the Project, prominently displaying Tenant's name, at the corner of West Watkins Mill Road and Clopper Road, which monument sign may display the names of other tenants at the Project, and in addition, Landlord will install a sign identifying Tenant at the entrance to the loop road leading to the Building, and will install directional signs (bearing Tenant's name), as reasonably necessary, along the loop road indicating the direction to the Building.

2. **Delivery; Acceptance of Premises; Commencement Date; Termination Right**.

(a) Landlord shall deliver the Premises to Tenant on the Commencement Date ("**Delivery**" or "**Deliver**"). If Landlord fails to timely Deliver the Premises, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, and this Lease shall not be void or voidable except as provided herein.

(b) The "**Commencement Date**" shall be the date of this Lease. The "**Rent Commencement Date**" shall be January 1, 2006. Landlord acknowledges that Tenant may occupy and commence its operations in the Premises prior to the Rent Commencement Date, and Tenant shall not be obligated to pay Rent for any period prior to the Rent Commencement Date. The "**Term**" of this Lease shall be the Base Term, as defined above on the first page of this Lease and the Extension Term which Tenant may elect pursuant to Section 40 hereof.

Except as set forth in the Work Letter, if applicable, and except as set forth in this paragraph and in Section 7 with respect to Initial Code Items: (i) Tenant shall accept the Premises in their condition as of the Commencement Date, subject to all applicable Legal Requirements (as defined in Section 7 hereof); (ii) Landlord shall not be liable to Tenant for

damages for any defects in the Premises; and (iii) Tenant's taking possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken. Landlord shall Deliver the Premises to Tenant in good condition, with all Building Systems (as defined in Section 13 below) which are then in the Building in proper working order. During the period from the date of Delivery through and including June 30, 2006 (the "**Warranty Period**"), Landlord shall be responsible, at Landlord's cost, for any defects in the original construction of the base Building ("**Defect**" or "**Defects**"), as the Building was constructed in accordance with a shell building description prepared by Gaudreau, Inc., Faisant Associates, Inc. and Schlesinger/Pitz and Associates, Inc., which description is attached to this Lease as **Exhibit I**, the "**Base Building**". If any Defect reasonably and necessarily requires replacement or repair (during the Warranty Period), Tenant shall so notify Landlord in writing. If, after 30 days after delivery of Tenant's notice (or such shorter period which shall be reasonable in light of the circumstances if such circumstances may be deemed to constitute an emergency which materially interferes with Tenant's ability to use a material portion of the Premises or interferes materially with Tenant's operations at the Premises, provided that in its notice to Landlord Tenant states the circumstances which constitute an emergency and the period of time after which Tenant will perform any replacement or repair if Landlord has not agreed to do so), Landlord has not agreed to perform the replacement or repair of such Defect, Tenant shall deliver to Landlord a second written notice requesting that Landlord perform such replacement or repair of such Defect. Any notice sent under circumstances deemed to constitute an emergency shall not require a second notice. Landlord shall be responsible for making any reasonable and necessary repair or replacement of any Defect that Tenant initially provides Landlord with notice of during the Warranty Period (which shall be at Landlord's cost). If, after notice as set forth in this Section 2(b), Landlord does not agree to perform the replacement or repair, Tenant may replace or repair such Defect, and demand arbitration, in accordance with the terms of Section 43 of this Lease below, of the question of whether the replacement or repair of the Defect was reasonable and necessary. If the Arbitrator finds that the replacement or repair of the Defect was reasonable and necessary, Landlord shall reimburse Tenant for the cost of the replacement or repair (and if Landlord fails to do so as provided in Section 43 hereof, Tenant shall have the rights to set off its costs against Base Rent as provided in Section 43). If the Arbitrator finds such matter was not reasonable and necessary, then Tenant shall not be entitled to be reimbursed for the cost of such replacement or repair.

(c) Tenant agrees and acknowledges that, except as expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings and negotiations which are not contained herein. Landlord in executing this Lease does so in reliance upon Tenant's representations, warranties, acknowledgments and agreements contained herein.

(d) The parties acknowledge that the Premises shall be built out in two distinct phases: office space of not less than 15,000 rentable square feet (the "**Office Component**"), and laboratory, warehouse, pilot plant and related office space comprising the remainder of the

Premises (the "**Laboratory Component**"), as such portions of the Premises shall be shown with more particularity on the TI Design Drawings, as defined in the Work Letter. Tenant shall have the option to terminate this Lease in its entirety, or with respect to the Laboratory Component only, by delivering to Landlord written notice of Tenant's clear and unambiguous intent to do so, not later than 5 p.m. (PDT), November 1, 2005, which notice shall be accompanied by payment of the Termination Fee, as defined below. If Tenant timely exercises its option to terminate this Lease in its entirety as set forth in this Section 2(d), the Lease shall terminate as of the date of Tenant's notice. If Tenant terminates this Lease in its entirety, Tenant shall within 30 days of the date of termination also reimburse Landlord for that amount of the TI Allowance (as defined in the Work Letter) that has been disbursed by Landlord. Notwithstanding the foregoing, if Landlord elects in its reasonable discretion to keep for the benefit of any subsequent lessee any of the Tenant Improvements which are standard in office uses, and were paid for from the Office Component, then Tenant shall not be required to pay back the portion of the Office Component used to pay for Tenant Improvements which Landlord elects to keep and use. Within one year of the date of Tenant's notice to terminate, Landlord shall notify Tenant if Landlord intends to keep and use any portion of the Tenant Improvements paid for with the Office Component, and Tenant shall be permitted to defer payment of the Office Component of the TI Allowance until it receives such notice from Landlord. If, after such notice indicating that Landlord elects not to keep and use some or all of the Tenant Improvements paid for from the Office Component, Landlord decides to keep and use the same, Landlord shall reimburse Tenant for the applicable portion of the TI Allowance relating to such kept and used items to the extent that Tenant shall have paid back the same to Landlord under the prior sentence.

If Tenant elects to terminate this Lease with respect to the Laboratory Component only, then this Lease shall remain in full force and effect, and from and after the date of Tenant's notice of termination, the "Premises" shall mean the Office Component only, and Tenant shall have no further rights or obligations with respect to the Laboratory Component. If this Lease remains in full force and effect with respect to the Office Component: (i) Tenant shall not be required to pay "Additional TI Allowance Rent" (as such term is defined in Section 3) during the Term; (ii) Base Rent shall be calculated on the actual size of the Office Component, as reasonably determined by Landlord and Tenant; (iii) The following provisions of this Lease shall be deemed deleted from this Lease: Section 3(c) (Base Rent Credit); Section 38 (Signs; Exterior Appearance); Section 39 (Right to Expand); Section 40 (Right to Extend Term); and Section 41 (Right to Purchase Building); (iv) the Tenant Improvements with respect to the Office Component shall be Building standard improvements only; (v) the Security Deposit amount shall be modified to be an amount equal to one year's Base Rent on the Office Component; (vi) Section 10 of the Lease (Parking) shall be amended to read as follows:

"Subject to all matters reflected in the Official Records of Montgomery County, Maryland, and subject further to Force Majeure or a Taking (as defined in Section 19 below), Tenant shall have the right to use Tenant's pro rata share of the parking area for the Building (the "**Parking Area**"), shown more particularly on the parking map attached hereto as **Exhibit H**. The use of the Parking Area shall be at no cost to Tenant during the initial Term of this Lease. If any other tenant of the Project interferes unreasonably with Tenant's use of the Parking Area, Tenant, after delivering notice of such interference to the other tenant, may request that Landlord send a written notice to such other tenant requesting that

such other tenant cease interfering with Tenant's use of the Parking Area. Upon receipt of such request, Landlord shall send such other tenant such written notice."

and (vii) the first sentence of Section 42 (Roof Rights) shall be amended to read as follows:

"Tenant shall be permitted to use a portion of the roof top of the Building, as reasonably designated by Landlord, to place satellite dish(es), communication antennae or other equipment integral to Tenant's operations (collectively such equipment is referred to herein as "**Roof Equipment**"), subject to the following:".

If Tenant elects to terminate this Lease with respect to the Laboratory Component only, then for the remainder of the Term, Landlord shall have the option to terminate this Lease in its entirety upon not less than 90 days written notice to Tenant. If Landlord elects to terminate this Lease, this Lease shall terminate as of the date set forth in Landlord's termination notice as the termination date. The "**Termination Fee**" shall mean $771,112.00.

3. **Rent**.

(a) **Base Rent**. The Security Deposit shall be due and payable upon delivery by Tenant of an executed copy of this Lease to Landlord. The first month's Base Rent shall be due and payable not less than thirty (30) days prior to, but not more than sixty (60) days prior to the Rent Commencement Date. Tenant shall have no obligation to pay Rent as to any portion of the Premises prior to the Rent Commencement Date. If Tenant's obligation to pay Rent with respect to a portion of the Premises shall occur on a date other than the first day of any calendar month, then Rent shall be prorated for such partial month based on the actual number of days in such month. From and after the Rent Commencement Date, Tenant shall pay to Landlord in advance, without demand, abatement, deduction or set-off, except as expressly set forth otherwise in this Lease, monthly installments of Base Rent on or before the first day of each calendar month during the Term in lawful money of the United States of America, at the office of Landlord for payment of Rent set forth above, or to such other person or at such other place as Landlord may from time to time designate in writing. If the expiration or termination of this Lease occurs on a date other than the last day of any calendar month, then Rent shall be prorated for such partial month based on the actual number of days in such month.

(b) **Independent Obligations**. Except as otherwise specifically set forth herein, the obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent due hereunder except for any abatement as may be expressly provided in this Lease.

(c) **Base Rent Credit**. The parties acknowledge that Tenant is currently the tenant under leases for properties located at 12264-12266 Wilkins Avenue, Bays A-UL, B, H, I and J, and 12270, 12276 and 12280 Wilkins Avenue, Rockville, Maryland (the "**Other Leases**"). Tenant shall be entitled to a credit (the "**Rent Credit**") against Base Rent payable under this Lease for base rent payable under the Other Leases, which Rent Credit shall not exceed the following amounts in the respective calendar years:

Calendar Year 2006:	$	1,114,920.00
Calendar Year 2007	$	889,957.00
Calendar Year 2008:	$	846,533.00
Total:	$	2,851,410.00

The Rent Credit shall be applied in equal monthly installments against the obligation to pay Base Rent under this Lease. Landlord shall be entitled to demand and receive evidence of payment of base rent (or that base rent is due) under the Other Leases prior to giving the credit described above. Tenant shall be entitled to receive all of such credit notwithstanding that any of the premises under the Other Leases may be sublet, assigned or licensed to parties unrelated to Tenant, and that Tenant may receive sublease rent and other consideration from such other parties under subleases, assignments, licenses or other occupancy agreements.

(d) **Additional TI Allowance Rent.** In addition to Base Rent, from and after the Rent Commencement Date, Tenant shall pay monthly as additional rent, "**Additional TI Allowance Rent**", as follows. For the first 24 months following the Rent Commencement Date, the Additional Tenant Improvement Allowance (as defined in the Work Letter) shall accrue simple interest at the rate of 6% per annum, which amount shall be added to the outstanding principal amount of the Additional Tenant Improvement Allowance. Notwithstanding the foregoing, at any time during the first 24 months after the Rent Commencement Date, Tenant may elect to repay the full amount of the Additional Tenant Improvement Allowance upon not less than 90 days written notice to Landlord, and if Tenant pays off the Additional Tenant Improvement Allowance prior to the end of such period of 24 months, then Tenant shall not be required to pay interest on the Additional Tenant Improvement Allowance. Commencing on the first day of the 25th month after the Rent Commencement Date, if the Additional Tenant Improvement Allowance remains unpaid, the full amount of the Additional Tenant Improvement Allowance with accrued, unpaid interest added to principal shall be amortized with annual interest of 9% over the remaining Base Term of the Lease, and Tenant shall pay monthly, at the same time and in the same manner as set forth herein for the payment of Base Rent (excluding, however, the adjustment of Base Rent described in Section 4), the monthly amortized amount of the Additional Tenant Improvement Allowance. If at any time during the term of this Lease, this Lease is terminated as a result of a default by Tenant, then the full unamortized amount of the Additional Tenant Improvement Allowance with accrued, unpaid interest to date shall become immediately due and payable as Additional Rent. Commencing on the first day of the 25th month after the Rent Commencement Date, Tenant shall have the right to pay off all or a portion of the unamortized amount of the Additional Tenant Improvement Allowance with accrued, unpaid interest to date, subject to the following limitations: Tenant may pay off a portion of such amount 3 times during the remainder of the Base Term; Tenant shall give Landlord not less than 6 months prior written notice of Tenant's intent to pay off all or a portion of such amount (which notice shall specify the amount Tenant shall pay); any partial payment in respect of such amount shall not be less than 25% of the outstanding principal balance of the Additional Tenant Improvement Allowance.

(e) **Additional Rent.** In addition to Base Rent and Additional TI Allowance Rent, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) Tenant's Share of "Operating Expenses" (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation,

any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

(f) The term "**Rent**" shall mean collectively, Base Rent, Additional Rent, Tenant's Share of Operating Expenses, and all other amounts payable by Tenant to Landlord hereunder.

4. **Base Rent Adjustments**. Base Rent shall be increased on each anniversary of the Rent Commencement Date (each an "**Adjustment Date**") by multiplying Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such Adjustment Date. Base Rent, as so adjusted, shall thereafter be due as provided herein.

5. **Operating Expense Payments**. Landlord shall deliver to Tenant a written estimate of Operating Expenses for the upcoming calendar year during the Term (the "**Annual Estimate**"), which may be reasonably revised by Landlord from time to time during such calendar year. Thereafter, during each month of the Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12th of Tenant's Share of the Annual Estimate, which amount shall be adjusted upon receipt by Tenant of a subsequent Annual Statement. Payments for any fractional calendar month shall be prorated.

The term "**Operating Expenses**" means all reasonable costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the management, operation, maintenance, servicing and repair of the Building (including the Building's Share of Project identified in the basic lease provisions on the first page of this Lease of all non-capital expenditure costs and expenses of any kind or description incurred or accrued by Landlord with respect to the Project which are not specific to the Building or any other building located in the Project) (including, without duplication, Taxes (as defined in Section 9), capital repairs and improvements to the Building which are intended to reduce Operating Expenses and only to the extent that such capital repairs and improvements actually reduce Operating Expenses, amortized over the useful life (reasonably determined between Landlord and Tenant) of such capital items ("**Included Capital Items**"), and administration rent for management services in the amount of 1.0% of Base Rent), excluding only:

(a) the original construction costs of the Building and other portions of the Project and costs of correcting defects in the original construction of the Building or associated parking facilities, or equipment therein;

(b) capital expenditures for expansion of the Project, and capital expenditures for repairs, replacements, installations or improvements to the Project (outside of the Building);

(c) costs, including permit, license and inspection costs, associated with alterations or improvements of the Premises, the premises of other tenants or occupants of the Project or vacant leaseable space in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project;

(d) interest, points, fees and principal payments of Mortgages (as defined in Section 27) and other debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of base rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(e) depreciation of the Building, fixtures or equipment (except for capital improvements, to the extent costs of which are includable in Operating Expenses);

(f) costs associated with any concessions or incentives granted to tenants in the Project; marketing costs including leasing commissions, space planners' fees, attorneys' fees, advertising expenses, expenses incurred in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Project;

(g) legal fees and other expenses incurred in the enforcement of leases, or legal fees incurred in connection with the development of other buildings in the Project;

(h) costs of utilities outside normal business hours sold to tenants of the Project;

(i) all costs and expenses incurred by Tenant or any other tenants of the Project and paid for or payable directly by Tenant or such other tenants either to third parties or to Landlord under agreements for direct payment or reimbursement for benefits or services or Taxes, whether or not actually paid;

(j) salaries and benefits paid to officers and executives of Landlord and Landlord's managing agent for the Building and the Project and salaries, wages, benefits and other compensation paid to officers and employees of Landlord who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project;

(k) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses;

(l) any bad debt losses, rental income losses, and reserves for bad debts or rent losses from other Project tenants;

(m) costs associated with the operation of the business of the person or entity which constitutes Landlord, as distinguished from the costs of operation of the Project, including accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Project, costs of any disputes between Landlord and its employees, and outside fees paid in connection with disputes with other tenants;

(n) costs of repairs or replacements caused by the exercise of any condemnation rights by any public or quasi-public authority;

(o) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with disputes with tenants, other occupants, or prospective tenants, and costs and expenses, including legal fees, incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;

(p) costs incurred by Landlord due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of any lease of space in the Project or any Legal Requirement;

(q) penalties, fines or interest incurred as a result of Landlord's inability or failure to make payment of Taxes and/or to file any tax or informational returns when due, or from Landlord's failure to make any payment of Taxes required to be made by Landlord hereunder before delinquency or to timely pay any other amounts due and payable by Landlord;

(r) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Project to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(s) costs of Landlord's charitable or political contributions, or of fine art maintained at the Project;

(t) costs in connection with services (including electricity), items or other benefits of a type which are not standard for the Project and which are not available to Tenant without specific charges therefor, but which are provided to another tenant or occupant of the Project, whether or not such other tenant or occupant is specifically charged therefor by Landlord;

(u) costs incurred in the sale or refinancing of the Project or any portion thereof;

(v) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project;

(w) management fees or administrative fees for managing the Premises or the Project in excess of the administrative rent of 1.0% of the then Base Rent under this Lease; and

(x) Taxes on any portion of the Project other than the Building and the Land.

All repairs, replacements and improvements to the Land (apart from the Building) shall be performed by Landlord, and the cost of such items shall be treated as an Operating Expense of the Project (provided the same are not capital items) and not an Operating Expense of the Building.

Landlord will cooperate with Tenant in applying for real property tax abatement/deferral for the Land and the Building, including without limitation the "Miller Legislation" and Landlord

agrees that any tax decreases or other credits attributable to Tenant's occupancy of the Building shall be passed through exclusively to Tenant, after deducting the amount of any costs incurred by Landlord in cooperating with Tenant as set forth in this section.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required, not to exceed 80 days), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within thirty (30) days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of actual Operating Expenses for such year Landlord shall pay the excess to Tenant within thirty (30) days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within sixty (60) days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord. If, during such sixty (60) day period, Tenant reasonably and in good faith questions or contests the accuracy of Landlord's statement of Tenant's Share of Operating Expenses, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project for the calendar year to which the Annual Statement relates and such other information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). Tenant shall have until the date that is sixty (60) days after the date the Expense Information is made available to Tenant to review the Expense Information. If after Tenant's review of the Expense Information during such period of sixty (60) days after the Expense Information is made available to Tenant, Tenant objects to the Expense Information, and Landlord and Tenant cannot resolve any differences about such matter, then Tenant shall have the right to have an independent public accounting firm selected by Tenant (at Tenant's sole cost and expense) and approved by Landlord (which approval shall not be unreasonably withheld or delayed), audit and/or review the Expense Information for the year in question (**"Independent Review**"). The Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded Tenant's Share of Operating Expenses for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of Rent or (ii) pay the excess to Tenant within thirty (30) days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than Tenant's Share of Operating Expenses for the calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than five percent (5%), then (a) Landlord shall within thirty (30) days following completion of the Independent Review, reimburse Tenant for all costs incurred by Tenant for the Independent Review. Notwithstanding anything set forth herein to the contrary, if the Project is not at least ninety-five percent (95%)

occupied on average during any year of the Term, Tenant's Share of Operating Expenses (related to the Project as opposed to individual buildings in the Project) for such year shall be computed as though the Project had been ninety-five percent (95%) occupied on average during such year, and only expenses that vary with occupancy shall be so adjusted.

Tenant shall be responsible for managing the Building, and shall manage the Building in a manner consistent with first class laboratory/office properties in the area in which the Building is located. Tenant will pay the costs incurred by Tenant in managing the Building, other than those expenses for which Landlord is responsible hereunder. Tenant will pay to Landlord Tenant's Share of Operating Expenses of all Taxes for the Land and the Building, and insurance for the Building, plus a management fee per year in an amount not to exceed one percent (1%) of Base Rent (as described in the second paragraph of Section 5). Any costs incurred directly by Tenant in managing, operating and repairing the Building shall not be included also in Operating Expenses for the Building. Landlord will manage, as an Operating Expense of the Project, the parking area and other areas outside of the Building on the Land and all Common Areas of the Project, and Tenant will pay Building's Share of Project of such costs. Landlord shall perform all landscaping, snow removal or sweeping tasks on the Land, and such costs shall be included in Operating Expenses (to the extent the same are non-capital in nature).

Tenant shall not make any capital expenditure, or cause the repair or replacement of any capital item, including any Included Capital Item, except as provided herein. Nothing in this Section 5 shall be deemed to prohibit Tenant from making Installations, as provided in Section 12(c). If any capital item of the Building, including an Included Capital Item, reasonably requires replacement or repair, or if any other capital replacement or repair in connection with the Premises is reasonable and necessary under the circumstances, Tenant shall so notify Landlord in writing. If, after 30 days after delivery of Tenant's notice (or such shorter period which shall be reasonable in light of the circumstances if such circumstances may be deemed to constitute an emergency which materially interferes with Tenant's ability to use a material portion of the Premises or interferes materially with Tenant's operations at the Premises, provided that in its notice to Landlord Tenant states the circumstances which constitute an emergency and the period of time after which Tenant will perform any replacement or repair if Landlord has not agreed to do so), Landlord has not agreed to perform the replacement or repair of such capital item, Tenant shall deliver to Landlord a second written notice requesting that Landlord perform such replacement or repair of such capital item. Any notice sent under circumstances deemed to constitute an emergency shall not require a second notice. Landlord shall be responsible for making any reasonable and necessary capital repair or replacement (which shall be at Landlord's cost except to the extent such capital item is an Included Capital Item), provided that nothing herein is intended to impose on Landlord the obligation to add new or upgraded Building Systems, Installations or capital improvements to the Building which do not exist as of the Commencement Date. Upon receipt of notice stating that Tenant believes a capital repair or replacement is reasonably necessary, Landlord shall notify Tenant if such capital repair or replacement, if made, will be required to be removed at Tenant's cost at the end of the term of this Lease, provided that Tenant shall not be obligated to remove any repair or replacement of items that exist as of the Commencement Date. If, after notice as set forth in this Section 5, Landlord does not agree to perform the replacement or repair of a capital item, Tenant may replace or repair such capital item, and demand arbitration, in accordance with the terms of Section 43 of this Lease below, of the question of whether the replacement or repair of the

capital item was reasonable and necessary in light of all of the circumstances of this Lease. If the Arbitrator finds that the replacement or repair of the capital item was reasonable and necessary, Landlord shall reimburse Tenant for the cost of the replacement or repair (or if such item is an Included Capital Item, the cost of such item shall be amortized and included in Operating Expenses as provided in this Section 5). If Landlord does not reimburse Tenant for such item following the determination of the Arbitrator, Tenant shall be entitled to its rights to set off the amount of the determination against Base Rent as set forth in Section 43. If the Arbitrator finds such matter was not reasonable and necessary, then Tenant shall not be entitled to be reimbursed for the cost of such capital replacement or repair, and Landlord may require Tenant to remove such capital replacement or repair at the end of the Term of this Lease, and restore any damage caused by such removal, provided that Landlord has notified Tenant that such capital replacement or repair must be removed as provided in this Section 5.

6. **Security Deposit**. Tenant shall deposit with Landlord, upon delivery of an executed copy of this Lease to Landlord, a security deposit (the "**Security Deposit**") for the performance of all of Tenant's obligations hereunder, in the amount set forth in the provisions on page 1 of this Lease, which Security Deposit shall be in the form of an unconditional and irrevocable letter of credit (the "**Letter of Credit**"): (i) in form and substance satisfactory to Landlord in its reasonable discretion, (ii) naming Landlord as beneficiary, (iii) expressly allowing Landlord to draw upon it at any time from time to time by delivering to the issuer notice that Landlord is entitled to draw thereunder, (iv) issued by an FDIC-insured financial institution satisfactory to Landlord, and (v) redeemable by presentation of a sight draft in the state of Landlord's choice. If Tenant does not provide Landlord with a substitute Letter of Credit complying with all of the requirements hereof at least ten (10) days before the stated expiration date of any then current Letter of Credit, Landlord shall have the right to draw the full amount of the current Letter of Credit and hold the funds drawn in cash without obligation for interest thereon as the Security Deposit. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of a Default (as defined in Section 20), Landlord may use all or any part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Default, without prejudice to any other remedy provided herein or provided by law. Upon any such use of all or any portion of the Security Deposit, Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to the amount set forth on Page 1 of this Lease. Tenant hereby waives the provisions of any law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. Upon bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for periods prior to the filing of such proceedings. Upon any such use of all or any portion of the Security Deposit, Tenant shall, within fifteen (15) days after demand from Landlord, restore the Security Deposit to its original amount. If Tenant shall perform every provision of this Lease to be performed by Tenant, the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of

this Lease), shall be returned to Tenant within sixty (60) days after the expiration or earlier termination of this Lease.

If at any time during the Term Tenant pays off the full amount of the Additional Tenant Improvement Allowance so that Tenant is no longer obligated to pay Additional TI Allowance Rent, then the amount of the Security Deposit as shown on the Letter of Credit shall be reduced to the amount of one month of Base Rent at the time. So long as Tenant is not in default under this Lease, if Tenant has not paid off the Additional Tenant Improvement Allowance, on the second and fourth anniversaries of the Rent Commencement Date, the amount of the Security Deposit shown on the Letter of Credit shall decrease by an amount equal to 15% of the original amount of the Security Deposit. So long as Tenant is not in default under this Lease, if Tenant has not paid off the Additional Tenant Improvement Allowance, on the sixth and eighth anniversaries of the Rent Commencement Date, the amount of the Security Deposit shown on the Letter of Credit shall decrease by an amount equal to 20% of the original amount of the Security Deposit.

If Landlord transfers its interest in the Building or this Lease, Landlord shall either (a) transfer any Security Deposit then held by Landlord to a person or entity assuming Landlord's obligations under this Section 6, or (b) return to Tenant any Security Deposit then held by Landlord and remaining after the deductions permitted herein. Upon such transfer to such transferee and the assumption in writing by such transferee of all of Landlord's obligations under this Lease, or upon the return of the Security Deposit to Tenant, Landlord shall have no further obligation with respect to the Security Deposit, and Tenant's right to the return of the Security Deposit shall apply solely against Landlord's transferee. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee, and no interest shall accrue thereon.

7. **Use**.

(a) The Premises shall be used solely for the Permitted Use set forth in the basic lease provisions on page 1 of this Lease, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "**ADA**") (collectively, "**Legal Requirements**" and each, a "**Legal Requirement**"). Tenant shall, upon five (5) days' written notice from Landlord, discontinue any use of the Premises which is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement, provided that Tenant shall have the right to challenge any such declaration by a Governmental Authority and, during the pendency of such challenge, Tenant shall have the right to continue its use of the Premises so long as the same shall be lawful. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section. Tenant will use the Premises in a careful, safe and proper manner and

will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord or other tenants or occupants of the Project, including conducting or giving notice of any auction, liquidation, or going out of business sale on the Premises, or using or allowing the Premises to be used for any unlawful purpose. Tenant shall not place any machinery or equipment weighing 1,000 pounds or more in or upon the Premises or transport or move such items through the Common Areas of the Project or in the Building elevators without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord acknowledges that Tenant will need to place certain heavy equipment on the first floor of the Building, and will cooperate with Tenant in determining the location for placement of such equipment.

(b) Landlord shall be responsible for the compliance of the Premises (including all Building Systems and all points of ingress and egress) and the Common Areas of the Project with all Legal Requirements (including without limitation the ADA) as of the Commencement Date (the "**Initial Code Items**") regardless of when such non-compliance is discovered. Tenant shall be responsible for the compliance of the Premises with Legal Requirements (including without limitation the ADA) from and after the Commencement Date, but not for Initial Code Items. Tenant shall pay the Building's Share of the Project of the cost incurred by Landlord in bringing the Common Areas of the Project into compliance with Legal Requirements arising after the Commencement Date, but such cost shall not include capital expenditure items. Notwithstanding any other provision herein to the contrary, except to the extent any of the same relate to Initial Code Items, Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, "**Claims**") arising out of or in connection with the failure of the Premises to comply with Legal Requirements, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirements.

8. **Holding Over**. If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4 hereof) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, Tenant shall become a tenant at sufferance upon the terms of this Lease except that the monthly Base Rent shall be equal to one hundred thirty-five percent (135%) of Base Rent in effect during the last thirty (30) days of the Term for the first sixty (60) days of such period that Tenant remains in possession, and two hundred percent (200%) of such amount thereafter until Tenant surrenders the Premises in accordance with the terms of this Lease. No

holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

Reference is made to Tenant's obligation to pay Continuing Rent pursuant to the terms of Section 12(c), Section 28 and Section 30 of this Lease. Notwithstanding any provision in this Lease to the contrary, Tenant's obligation to pay Continuing Rent in all instances under this Lease shall not continue beyond a period of 90 days after the date of termination of this Lease, unless the obligation of Tenant with respect to the surrender of the Premises that remains unsatisfied as of the date of termination of this Lease is a matter which Landlord, acting diligently, cannot reasonably resolve within 90 days, in which case the obligation to pay Continuing Rent shall continue for up to 180 days after the date of termination, but not thereafter.

9. **Taxes**. Landlord shall pay, as part of Operating Expenses, all taxes, levies, assessments and governmental charges of any kind (collectively referred to as "**Taxes**") imposed by any federal, state, regional, municipal, local or other governmental authority or agency, including, without limitation, quasi-public agencies (collectively, "**Governmental Authority**") during the Term, including, without limitation, all Taxes: (i) imposed on or measured by or based, in whole or in part, on rent payable to Landlord under this Lease, or (ii) based on the square footage, assessed value or other measure or evaluation of any kind of the Land or the Building, or (iii) assessed or imposed by or on the operation or maintenance of any portion of the Land or the Building, including parking, or (iv) assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by, any Governmental Authority, or (v) imposed as a license or other fee on Landlord's business of leasing space in the Project. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens securing Taxes. In any year, Tenant may request in writing the right to contest Taxes, and Landlord shall notify Tenant, within thirty (30) days of delivery of Tenant's notice, if Landlord will or will not contest Taxes. If Landlord notifies Tenant that Landlord will not contest Taxes, then Tenant shall have the right to contest Taxes for the applicable tax year. Landlord will cooperate with Tenant's efforts to contest the amount of any Taxes. Taxes shall not include any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Project is increased by a value attributable to improvements in or alterations to the Premises, whether owned by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, higher than the base valuation on which Landlord from time-to-time allocates Taxes to all tenants in the Project, Landlord shall have the right, but not the obligation, to pay such Taxes. Landlord's determination of any excess assessed valuation shall be binding and conclusive, absent manifest

error. The amount of any such payment by Landlord shall constitute Additional Rent due from Tenant to Landlord immediately upon demand.

10. **Parking**. Subject to all matters reflected in the Official Records of Montgomery County, Maryland, and subject further to Force Majeure or a Taking (as defined in Section 19 below), Tenant shall have the exclusive right to use the parking area for the Building (the "**Parking Area**"), shown more particularly on the parking map attached hereto as **Exhibit H**. The use of the Parking Area shall be at no cost to Tenant during the initial Term of this Lease. Landlord shall not have any right to use, and shall not grant any other person any right to park in or place any equipment in any portion of the Parking Area. If any other tenant of the Project uses the Parking Area without Tenant's consent, Tenant, after delivering notice of such unauthorized use of the Parking Area to the other tenant, may request that Landlord send a written notice to such other tenant requesting that such other tenant cease the unauthorized use of the Parking Area, and that Landlord post a sign at Landlord's cost in the Parking Area stating that the Parking Area is for the exclusive use of Tenant. Upon receipt of such request, Landlord shall send such other tenant such written notice, and post such sign.

Landlord's affiliate, ARE-Metropolitan Grove, LLC, is the owner of the property located at 1201 Clopper Road ("**1201 Clopper**"), which is part of the Project. ARE-Metropolitan Grove, LLC has granted a tenant at 1201 Clopper the right to expand its premises. In order to facilitate that right, Landlord has agreed to adjust the lot line between the Land and 1201 Clopper so that a portion of the tax parcel comprising the Land will be transferred to 1201 Clopper (the "**Lot Line Adjustment**"). ARE-Metropolitan Grove, LLC has agreed to grant Landlord an easement so that Landlord may convey to Tenant the full use of that portion of the Land so transferred to 1201 Clopper. A drawing of the Lot Line Adjustment is attached to this Lease as **Exhibit J**.

11. **Utilities, Services**. Landlord shall provide, subject to the terms of this Section 11, water, electricity, heat, light, power, telephone, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services) (collectively, "**Utilities**"). Utilities for the Premises shall be separately metered, and Tenant shall pay directly to the Utility provider, prior to delinquency, any Utilities and services which may be furnished to Tenant or the Premises during the Term. Tenant shall pay, as part of Operating Expenses, its share of all charges for jointly metered Utilities based upon consumption, as reasonably determined by Landlord, or Utilities for the common areas of the Project. Except as expressly set forth in this Section 11, no interruption or failure of Utilities, from any cause whatsoever other than the willful misconduct or gross negligence of Landlord, Landlord's employees, agents or contractors, shall result in eviction or constructive eviction of Tenant, termination of this Lease or the abatement of Rent. In the event of an interruption or failure of Utilities caused by the willful misconduct or gross negligence of Landlord, Landlord's employees, agents or contractors causes the Premises to be untenantable for a period of 3 consecutive business days, then Base Rent shall be abated until such Utilities are restored.

Tenant shall have the right to install an emergency generator and a storage shed on the Land outside of the Building, in locations to be reasonably designated by Landlord. Landlord shall have no obligation with respect to the maintenance or operation of any emergency generator. Landlord shall have the right to require Tenant to remove any emergency generator or

storage shed at the end of the term of this Lease. Tenant shall maintain any emergency generator or storage shed, and keep the same in good condition.

12. **Alterations and Tenant's Property**.

(a) Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems not involving any modifications to the structure or connections (other than by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration may adversely affect the structure of the Building, or cause permanent and adverse change to Building Systems, unless Tenant, at Tenant's sole cost and expense, installs additional equipment, reasonably acceptable to Landlord, which has the effect of substantially remedying such adverse effect or permanent and adverse change, in Landlord's reasonable judgment. Otherwise, Landlord's consent to any Alterations shall not be unreasonably withheld or delayed, except as provided herein. Tenant may construct nonstructural Alterations in the Premises without Landlord's prior approval if the cost of work for such Alterations does not exceed $50,000, and the aggregate cost of all such work in any 12 month period does not exceed $100,000 (a "**Notice-Only Alteration**"), provided Tenant notifies Landlord in writing of such intended Notice-Only Alteration, and such notice shall be accompanied (if applicable to the work involved) by plans, specifications, work contracts and such other information concerning the nature and cost of the Notice-Only Alteration as may be reasonably requested by Landlord, which notice and accompanying materials shall be delivered to Landlord not less than ten (10) business days in advance of any proposed construction. If Landlord approves any Alterations, Landlord may impose such reasonable conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's sole and absolute discretion. Any request for approval shall be in writing, delivered not less than ten (10) business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all persons performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. Tenant shall pay to Landlord, as Additional Rent, on demand an amount equal to Landlord's out of pocket expenses for plan review, coordination, scheduling and supervision of work. Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors.

(b) For any Alteration reasonably expected to cost more than $200,000, Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure

payment for the completion of all Alterations work free and clear of liens. For any Alteration, Tenant shall provide (and cause each contractor or subcontractor to provide) certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Alterations, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (ii) "as built" plans for any such Alteration which ordinarily requires as built plans.

(c) Other than (i) the items, if any, listed on **Exhibit F** attached hereto, (ii) any items agreed by Landlord in writing to be included on **Exhibit F** in the future, (iii) any trade fixtures, machinery, equipment and other personal property not paid for out of the TI Allowance (as defined in the Work Letter) and (iv) any trade fixtures, machinery, equipment and other personal property paid for out of the Additional Tenant Improvement Allowance which is paid off by Tenant in the form of Additional TI Allowance Rent or otherwise, including without limitation walk in cold rooms, walk in warm rooms, glass washing equipment and autoclaves, which may be removed without material damage to the Premises, which damage shall be repaired (including capping or terminating utility hook-ups behind walls) by Tenant during the Term (collectively, "**Tenant's Property**"), all property of any kind paid for with the TI Allowance (except as otherwise set forth herein), all Alterations, real property fixtures, built-in machinery and equipment, built-in casework and cabinets and other similar additions and improvements built into the Premises so as to become an integral part of the Premises such as fume hoods which penetrate the roof or plenum area, built-in cold rooms, built-in warm rooms, deionized water systems, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch (collectively, "**Installations**") shall be, at the end of the term, surrendered with the Premises as a part thereof in accordance with Section 28 following the expiration or earlier termination of this Lease (unless Landlord has otherwise required the removal of such Installations as set forth in this Section 12(c)). Landlord shall, at the time its approval of any Installation is requested, or at the time it receives notice of a Notice-Only Alteration, notify Tenant if it has elected to cause Tenant to remove such Installation upon the expiration or earlier termination of this Lease; provided that in no event shall Tenant be obligated to remove any of the Tenant Improvements, as defined in the Work Letter (or any replacement thereof), or any other Installations made prior to the date with is 6 months after the Rent Commencement Date. If Landlord so elects in writing at the time of its approval of such installation, but subject to the prior sentence, Tenant shall remove such Installation upon the expiration or earlier termination of this Lease and restore any damage caused by or occasioned as a result of such removal, including, when removing any of Tenant's Property which was plumbed, wired or otherwise connected to any of the Building Systems, capping off all such connections behind the walls of the Premises and repairing any holes. During any such restoration period, Tenant shall pay Rent to Landlord ("**Continuing Rent**") as provided herein as if said space were otherwise occupied by Tenant, subject to the limitations of Section 8 above. The parties acknowledge that Tenant may be financing with borrowed funds ("**Tenant's Financing**") certain of the Installations, or the repayment of the Additional Tenant Improvement Allowance. During the period that any of Tenant's Financing is outstanding, Tenant shall be deemed to be the owner of any Installations which are not Landlord's Property or part of the Base Building, and may grant to the lender under Tenant's Financing a security

interest in such property. Upon the satisfaction of Tenant's obligations under Tenant's Financing and the reconveyance of the interest of Tenant's lender in such property, such property shall be deemed to be the property of Landlord, unless such property is listed on **Exhibit F**. All property listed on **Exhibit F** shall be and will remain the sole property of Tenant, unless otherwise indicated on **Exhibit F**. "**Landlord's Property**" shall mean mechanical systems, plumbing systems, electrical systems, fixed walls, and anything inside of fixed walls, dropped ceilings, and anything above dropped ceilings or flooring. Under no circumstances shall Landlord's Property be deemed to be Tenant's Property at any time, and Tenant shall have no right to grant to any lender a security interest in Landlord's Property.

13. **Landlord's Repairs**. Landlord, as an Operating Expense of the Building, shall maintain (and repair and replace as reasonably necessary) all of the structural and exterior components of the Building including the roof, and Landlord will manage, as an Operating Expense of the Project, the parking area and other areas outside of the Building on the Land and all Common Areas of the Project ("**Landlord's Maintenance**"), in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's agents, servants, employees, invitees and contractors (individually, a "**Tenant Party**," and collectively, "**Tenant Parties**") excluded. Landlord's ability to include the costs of maintenance (including repairs and replacements) in Operating Expenses shall be subject to the provisions of Section 5. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense. Tenant shall cooperate reasonably with Landlord so that Landlord may perform Landlord's Maintenance. If Landlord fails to perform any of Landlord's Maintenance which is reasonably and necessarily required, Tenant shall so notify Landlord in writing. If, after 30 days after delivery of Tenant's notice (or such shorter period which shall be reasonable in light of the circumstances if such circumstances may be deemed to constitute an emergency which materially interferes with Tenant's ability to use a material portion of the Premises or interferes materially with Tenant's operations at the Premises, provided that in its notice to Landlord Tenant states the circumstances which constitute an emergency and the period of time after which Tenant will perform any replacement or repair if Landlord has not agreed to do so), Landlord has not agreed to perform Landlord's Maintenance, Tenant shall deliver to Landlord a second written notice requesting that Landlord perform Landlord's Maintenance. Any notice sent under circumstances deemed to constitute an emergency shall not require a second notice. If, after notice as set forth in this Section 13, Landlord does not agree to perform Landlord's Maintenance, Tenant may perform Landlord's Maintenance, and demand arbitration, in accordance with the terms of Section 43 of this Lease below, of the question of whether that certain Landlord's Maintenance was reasonable and necessary. If the Arbitrator finds: (a) that Landlord's Maintenance was reasonable and necessary, (b) that Landlord failed to timely perform Landlord's Maintenance as required under this Lease, and (c) the cost to Tenant of performing Landlord's Maintenance exceeded what would have been Tenant's obligation to pay for Landlord's Maintenance as a part of Operating Expenses as provided in this Section 13 (such amount, the "**Excess Cost to Tenant**"), then Landlord shall reimburse Tenant for the Excess Cost to Tenant (and if Landlord fails to do so as provided in Section 43 hereof, Tenant shall have the rights to set off the Excess Cost to Tenant against Base Rent as provided in Section 43). If the Arbitrator finds in favor of Landlord, then Tenant shall not be entitled to be reimbursed for the Excess Cost to Tenant.

14. **Tenant's Repairs**. Subject to Section 13 hereof, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, interior windows, interior walls, the interior side of demising walls, HVAC, plumbing, fire sprinklers, elevators and all other building systems serving the Premises and other portions of the Building (the "**Building Systems**"). Such repair and replacement may include capital expenditures and repairs whose benefit may extend beyond the Term, which capital repairs shall be subject to the provisions of Section 5. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within fifteen (15) days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may perform such work and shall be reimbursed by Tenant within fifteen (15) days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the reasonable costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party and any repair that benefits only the Premises.

15. **Mechanic's Liens**. Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within fifteen (15) days after receipt of notice of the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification**. Tenant hereby indemnifies and agrees to defend, save and hold Landlord harmless from and against any and all Claims for injury or death to persons or damage to property occurring within the Premises, arising directly or indirectly out of use or occupancy of the Premises or a breach or default by Tenant in the performance of any of its obligations hereunder, unless caused by the willful misconduct or gross negligence of Landlord. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises), except as otherwise specifically set forth in this Lease. Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records), except as otherwise specifically set forth in this Lease.

Landlord hereby indemnifies and agrees to defend, save and hold Tenant harmless from and against any and all Claims for injury or death to persons or damage to property occurring within the Project outside of the Premises and arising directly or indirectly out of any act or omission of Landlord or from a breach or default by Landlord in the performance of any of its obligations hereunder, unless caused by the willful misconduct or gross negligence of Tenant. Landlord shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project, or of any other third party. Landlord shall use commercially reasonable efforts to ensure that Landlord's agents and contractors maintain reasonable and customary levels of insurance

17. **Insurance**.

(a) Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project. Landlord shall further procure and maintain commercial general liability insurance with a per occurrence limit of not less than $2,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem reasonably necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

(b) Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; commercial general liability insurance, with a minimum limit of not less than $2,000,000 per occurrence for bodily injury and property damage with respect to the Premises. The commercial general liability insurance policy shall name Landlord, its officers, directors, employees, managers and agents (collectively, "**Landlord Parties**"), as additional insureds. The commercial general liability insurance policy shall be issued by insurance companies which have a rating of not less than policyholder rating of A- and financial category rating of at least Class VIII in "AM Best's Insurance Guide"; shall not be cancelable for nonpayment of premium unless at least ten (10) days prior written notice shall have been given to Landlord from the insurer; contain a hostile fire endorsement and a contractual liability endorsement. If the commercial general liability insurance policy insures on a claims-made basis, then Tenant shall keep the policy in full force and effect (with Landlord Parties continuing to be named as an additional insured), and deliver to Landlord evidence of the same, for a period of three (3) years (the "**Tailing Period**") after the termination of this Lease. Copies of such policies (if requested by Landlord), or certificates of insurance showing the limits of coverage required hereunder and

showing Landlord as an additional insured shall be delivered to Landlord by Tenant upon commencement of the Term and upon each renewal of said insurance (including during the Tailing Period). Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, at least five (5) days prior to the expiration of such policies, furnish Landlord with renewal certificates.

(c) In each instance where insurance is to name Landlord as an additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to: (i) any lender of Landlord holding a security interest in a portion of the Project including the Premises or any portion thereof, (ii) the landlord under any lease wherein Landlord is tenant of the real property on which the Premises is located, if the interest of Landlord is or shall become that of a tenant under a ground or other underlying lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage any portion of the Project including the Premises.

(d) The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, and their respective officers, directors, employees, managers and agents ("**Related Parties**"), in connection with any loss or damage thereby insured against. Neither party nor its respective Related Parties shall be liable to the other for loss or damage caused by any risk insured against under property insurance required to be maintained hereunder, and each party waives any claims against the other party, and its respective Related Parties, for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its respective Related Parties shall not be liable for, and Tenant hereby waives all claims against such parties for business interruption of Tenant resulting from any occurrence in or upon the Premises or the Project from any cause whatsoever. If the foregoing waivers shall contravene any law with respect to exculpatory agreements, the liability of Landlord or Tenant shall be deemed not released but shall be secondary to the other's insurer.

(e) Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender and/or to bring coverage to levels then being generally required of new tenants within the Project.

18. **Restoration**.

(a) If, at any time during the Term, the Building or the Premises are damaged or destroyed by a fire or other insured casualty, Landlord shall notify Tenant within sixty (60) days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "Restoration Period"). If the Restoration Period is estimated to exceed 12 months from the date of such fire or other casualty (the "**Maximum Restoration Period**"), Tenant may elect to terminate this Lease by written notice to Landlord delivered within fifteen (15) business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless Tenant so elects to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any reasonable deductible to be treated as a current Operating Expense), promptly restore the Premises (excluding the improvements installed by Tenant or by

Landlord and paid for by Tenant), subject to delays arising from the collection of insurance proceeds, from Force Majeure events or as needed to obtain any license, clearance or other authorization of any kind required to enter into and restore the Premises issued by any Governmental Authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials (as defined in Section 30) in, on or about the Premises (collectively referred to herein as "**Hazardous Materials Clearances**"); provided, however, that if repair or restoration of the Premises is not Substantially Complete as of the end of the Maximum Restoration Period (as extended by delays arising from the collection of insurance proceeds, from Force Majeure events or from delays in obtaining Hazardous Materials Clearances, provided that any extension due to Force Majeure events shall not exceed 60 days), Tenant may by written notice to Landlord delivered within five (5) business days of the expiration of the Maximum Restoration Period, elect to terminate this Lease, in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 75 days after the later of: (i) the date of discovery of such damage or destruction, or (ii) the date all required Hazardous Materials Clearances are obtained, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Landlord or Tenant.

(b) Unless Tenant elects to terminate this Lease as set forth in subsection (a) immediately above, Tenant, at its expense, subject to receipt of sufficient insurance proceeds, shall promptly perform, subject to delays arising from the collections of insurance proceeds, from Force Majeure events or from obtaining Hazardous Materials Clearances, all repairs or restoration to the Premises as are necessary to restore the Premises to tenantable conditions which existed immediately prior to such damage or destruction.

(c) Notwithstanding anything to the contrary in this Section 18, either Landlord or Tenant may terminate this Lease by written notice to the other party given within fifteen (15) business days of the date of discovery of any damage, if the Premises are damaged during the last year of the Term by fire or other casualty and Landlord reasonably estimates that it will take more than 3 months to repair or restore such damage, or if insurance proceeds are not available for such repair or restoration. Notwithstanding the foregoing, if within fifteen (15) business days of the date of such damage during the last year of the Term, Tenant notifies Landlord in writing that Tenant elects to exercise the Extension Right (as defined in Section 40 below) then Landlord shall repair such damage (subject to receipt of sufficient insurance proceeds, with any reasonable deductible to be treated as a current Operating Expense). The Extension Term shall commence upon substantial completion of the restoration of the Premises to the tenantable condition which existed prior to such damage and the expiration of any unexpired portion of the initial Term, provided that if the restoration of the Premises is not completed by the end of the Maximum Restoration Period, Tenant shall have the termination rights set forth in Section 18(a) above. Rent shall be abated from the date all required Hazardous Material Clearances are obtained until the Premises are repaired and restored, in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

(d) The provisions of this Lease, including this Section 18, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or

destruction of, all or any part of the Premises, or any other portion of the Project, and any statute or regulation which is now or may hereafter be in effect shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Project, the parties hereto expressly agreeing that this Section 18 sets forth their entire understanding and agreement with respect to such matters.

19. **Condemnation**.

If the whole or any material part of the Premises or the Project, or all means of access to the Premises is taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would reasonably either prevent or materially interfere with Tenant's use of the Premises or materially interfere with or impair Landlord's ownership or operation of the Project, then upon written notice by Landlord or Tenant to the other party, to be delivered within fifteen (15) days of receipt of notice of any Taking, this Lease shall terminate and Rent shall be apportioned as of said date. In electing to terminate this Lease as a result of a Taking, Landlord shall not act arbitrarily, or treat Tenant substantially differently from any other Tenant at the Project whose tenancy is affected by such Taking. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, Landlord shall promptly restore the Premises and the Project as nearly as is commercially reasonable under the circumstances to their condition prior to such partial Taking and the rentable square footage of the Building, the rentable square footage of the Premises, Tenant's Share of Operating Expenses and the Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. Upon any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures and equipment and any leasehold improvements paid for by Tenant, if a separate award for such items is made to Tenant. Tenant hereby waives any and all rights it might otherwise have pursuant to any provision of state law to terminate this Lease upon a partial Taking of the Premises or the Project

20. **Events of Default**. Each of the following events shall be a default ("**Default**") by Tenant under this Lease:

(a) **Payment Defaults**. Tenant shall fail to pay any installment of Rent or any other payment hereunder when due; provided that the first 2 times in any Lease year that Tenant fails to timely pay Rent, Tenant shall not be in default unless such failure shall continue beyond seven (7) days business days after receipt of written notice from Landlord.

(b) **Insurance**. Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, or Landlord shall receive a notice of nonrenewal of any such insurance and Tenant shall fail to obtain replacement insurance at least ten (10) days after written notice to Tenant from Landlord of such failure.

(c) **Abandonment**. Tenant shall abandon the Premises without taking reasonable precautions for the security or maintenance of the Premises, and without complying with the provisions of Section 28 below regarding surrender of the Premises.

(d) **Improper Transfer**. Tenant shall assign, sublease or otherwise transfer or attempt to transfer all or any portion of Tenant's interest in this Lease or the Premises except as expressly permitted herein, or Tenant's interest in this Lease shall be attached, executed upon, or otherwise judicially seized and such action is not released within 90 days of the action.

(e) **Liens**. Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within fifteen (15) days after Tenant receives notice that any such lien is filed against the Premises.

(f) **Insolvency Events**. Tenant or any guarantor or surety of Tenant's obligations hereunder shall: (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); (C) become the subject of any Proceeding for Relief which is not dismissed within 90 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity) and such insolvency or failure to maintain legal existence is not remedied within thirty (30) days.

(g) **Estoppel Certificate or Subordination Agreement.** Tenant fails to execute any document required from Tenant under Sections 23 or 27 within ten (10) business days after a second notice requesting such document.

(h) **Other Defaults**. Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 20, and, except as otherwise expressly provided herein, such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant.

Any notice given under Section 20(h) hereof shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice; provided that if the nature of Tenant's default pursuant to Section 20(h) is such that it cannot be cured by the payment of money and reasonably requires more than thirty (30) days to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes the same to completion; provided, however, that such cure shall be completed no later than sixty (60) days from the date of Landlord's notice.

21. **Landlord's Remedies**.

(a) **Payment by Landlord; Interest**. Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, make such payment or perform such act, and Landlord shall use commercially reasonable efforts to notify Tenant of any such payment or performance. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to twelve percent (12%) per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as additional Rent.

(b) **Late Payment Rent**. Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within seven (7) days after the date such payment is due, Tenant shall pay to Landlord an additional sum of three percent (3%) of the overdue Rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the seventh (7^{th}) day after the date due until paid. Notwithstanding the foregoing provisions, the first time in any calendar year that Tenant fails to pay Rent when due, Tenant shall not be liable for the aforementioned late charge or interest unless such failure to pay continues for more than five (5) business days after delivery of written notice from Landlord.

(c) **Re-Entry.** Upon a Default by Tenant, beyond applicable cure periods, Landlord shall have the right, immediately or at any time thereafter, without further notice to Tenant (unless otherwise provided herein), through the use of legal process, to enter the Premises, without terminating this Lease or being guilty of trespass, and do any and all acts as Landlord may deem necessary, proper or convenient to cure such Default, for the account and at the expense of Tenant, any notice to quit or notice of Landlord's intention to re-enter being hereby expressly waived, and Tenant agrees to pay to Landlord as Additional Rent all damage and/or expense incurred by Landlord in so doing, including interest at the Default Rate, from the due date until the date payment is received by Landlord.

(d) **Termination.** Upon a Default by Tenant, beyond applicable cure periods, Landlord shall have the right to terminate this Lease and Tenant's right to possession of the Premises and, with or without legal process, take possession of the Premises and remove Tenant, any occupant and any property therefrom, using such force as may be necessary, without being guilty of trespass and without relinquishing any rights of Landlord against Tenant, any notice to quit, or notice of Landlord's intention to re-enter being hereby expressly waived. Landlord shall be entitled to recover damages from Tenant for all amounts covenanted to be paid during the remainder of the Term (except for the period of any holdover by Tenant, in which case the amounts stated at Section 8 herein shall apply), which may be accelerated by Landlord at its option (with such future payments to be discounted to present value at the discount rate of the Federal Reserve Bank at the time of award plus 1%), together with (i) all expenses of any proceedings (including, but not limited to, legal expenses and attorney's fees) which may be

necessary in order for Landlord to recover possession of the Premises, (ii) the expenses of the re-renting of the Premises (including, but not limited to, any commissions paid to any real estate agent, advertising expense and the costs of such alterations, repairs, replacements or modifications that Landlord, in its sole judgment, considers advisable and necessary for the purpose of re-renting), and (iii) interest computed at the Default Rate from the due date until paid; provided, however, that there shall be credited against the amount of such damages all amounts received by Landlord from re-renting, and, if Landlord elects to accelerate payment of any amount to be paid in the future, there shall be credited against damages any other amounts which Tenant can prove Landlord should reasonably be expected to receive in the future by re-renting the Premises (with such future amounts to be discounted to present value at the discount rate of the Federal Reserve Bank at the time of award plus 1%), taking into account the limitations on Landlord's obligations to mitigate damages (as set forth in Section 21(e) below), the reasonably expected period of time necessary to find a replacement tenant, the specialized nature of the Premises, the conditions of the real estate market in the area of the Premises, the availability of competitive properties similar to the Premises, and the condition of the Premises. Landlord shall in no event be liable in any way whatsoever for failure to re-rent the Premises or, in the event that the Premises are re-rented, for failure to collect the rent thereof under such re-renting. No act or thing done by Landlord shall be deemed to be an acceptance of a surrender of the Premises, unless Landlord shall execute a written agreement of surrender with Tenant. Tenant's liability hereunder shall not be terminated by the execution of a new lease of the Premises by Landlord, unless that new lease expressly so states. In the event Landlord does not exercise its option to accelerate the payment of amounts owed as provided hereinabove, then Tenant agrees to pay to Landlord, upon demand, the amount of damages herein provided after the amount of such damages for any month shall have been ascertained (taking into account any amounts collected from reletting); provided, however, that any expenses incurred by Landlord shall be deemed to be a part of the damages for the month in which they were incurred. Separate actions may be maintained each month or at other times by Landlord against Tenant to recover the damages then due, without waiting until the end of the term of this Lease to determine the aggregate amount of such damages. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or being dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease.

(e) **Mitigation of Damages**. After a Default by Tenant, any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise, but Landlord shall, subject to the limitations set forth in this Section 21(e), attempt to mitigate damages arising by reason of Tenant's Default. Landlord's efforts to mitigate damages shall not require Landlord to expend any substantial sum of money in connection with any effort to relet the Premises (other than commercially reasonable real estate brokerage commissions and attorneys' fees in the negotiation of a new lease, which shall form a part of Landlord's damages as set forth in Section 21(d) above), to change the use of the Premises, to lease the Premises to any person desiring to lease either less than 50% of the rentable square footage of the Premises or the remaining unleased portion of the Premises, to lease the Premises to any person whose financial resources are substantially less than Tenant's as

of the date of this Lease, to lease the Premises to any person to whom Landlord objects because of the nature of the scientific research being done or work product being developed (or intended) by such person or because of such person's history of culpability in Environmental Claims (as defined in Section 30 below), or to lease the Premises to any person desiring to lease any portion of the Premises for a term which is less than 5 years, or if less than 5 years remain in the Term of this Lease, for the remainder of the Term.

(f) **Lien for Rent**. Upon any default by Tenant in the payment of Rent or other amounts owed hereunder, Landlord shall have a lien upon the property of Tenant in the Premises for the amount of such unpaid amounts, and Tenant hereby specifically waives any and all exemptions allowed by law. In such event, Tenant shall not remove any of Tenant's property from the Premises except with the prior written consent of Landlord, and Landlord shall have the right and privilege, at its option, to take possession of all Tenant's property in the Premises, to store the same on the Premises, or to remove it and store it in such place as may be selected by Landlord, at Tenant's risk and expense. If Tenant fails to redeem the personal property so seized, by payment of whatever sum may be due Landlord hereunder (including all storage costs), Landlord shall have the right, after twenty (20) days written notice to Tenant of its intention to do so, to sell such personal property so seized at public or private sale and upon such terms and conditions as may appear advantageous to Landlord, and after the payment of all proper charges incident to such sale, apply the proceeds thereof to the payment of any balance due to Landlord on account of rent or other obligations of Tenant pursuant to this Lease. In the event there shall then remain in the hands of Landlord any balance realized from the sale of said personal property, the same shall be paid over to Tenant. The exercise of the foregoing remedy by Landlord shall not relieve or discharge Tenant from any deficiency owed to Landlord which Landlord has the right to enforce pursuant to any of the provisions of this Lease. Tenant shall also be liable for all expenses incident to the foregoing process, including any auctioneer or attorney's fees or commissions. Notwithstanding the foregoing provisions of this Section 21(d), the parties acknowledge that Tenant intends to obtain financing in order to make improvements to and acquire property for use at the Premises and for other purposes. For any personal property, accounts receivable, intellectual property or fixtures of Tenant, Landlord hereby agrees to subordinate its interest in such property of Tenant to the interest of any lender of Tenant, provided that Landlord shall not, and nothing in this Lease shall be deemed to require Landlord to subordinate its interest in any property paid for by Landlord, any structural components of the Building, or any part of Building Systems.

(g) **Other Remedies**. In addition to the foregoing, Landlord, at its option, without further notice or demand to Tenant, shall have all other rights and remedies provided at law or in equity.

22. **Assignment and Subletting**.

(a) **General Prohibition**. Without Landlord's prior written consent, not to be unreasonably withheld, delayed or conditioned, subject to and on the conditions described in this Section 22, Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. If Tenant is a corporation, partnership or

limited liability company, the shares or other ownership interests thereof which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby fifty percent (50%) or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22.

(b) **Permitted Transfers**. If Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises (or any portion thereof) other than pursuant to a Permitted Assignment (as defined below) then at least fifteen (15) business days, but not more than forty-five (45) days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its proposed final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within fifteen (15) business days after receipt of the Assignment Notice, grant such consent or refuse such consent, in its reasonable discretion (provided that it shall be reasonable for Landlord to withhold its consent to any assignment or subletting to an assignee or subtenant whose business or financial reputation is objectionable in Landlord's reasonable judgment, or that is at that time negotiating with Landlord for the lease of other space in the Project).

Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to a Tenant Affiliate (as defined below) shall not be required, provided that Landlord shall have the right to approve the form of any such sublease or assignment (provided the approval of such form shall not be unreasonably withheld, conditioned or delayed). In addition, Tenant shall have the right to assign this Lease, upon thirty (30) days prior written notice to Landlord but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of more than fifty percent 50%) of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring the Lease, and (ii) the net worth (as determined in accordance with generally accepted accounting principles ("GAAP")) of the assignee is not less than the net worth (as determined in accordance with GAAP) of Tenant as of the date of this Lease, and (iii) such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease arising after the effective date of the assignment (a "**Permitted Assignment**"). For purposes of this Lease, "**Tenant Affiliate**" shall refer to any of the following: (i) a corporation, limited liability company, limited partnership, business trust, business corporation or other business entity in which Tenant directly or indirectly owns a

majority of the voting interests, or (ii) an entity or person controlled directly or indirectly by Tenant or under common control with Tenant, which purchases all or substantially all of the assets of Tenant, or which merges with Tenant pursuant to a valid statutory merger. For purposes of this Lease, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a person or entity means the possessing, directly or indirectly, of (A) the power to appoint a majority of the members of the Board of Directors or other governing board of such person or entity, (B) the power to directly or indirectly cause the direction of the management and policies of such person or entity or (C) the ownership of fifty percent 50%) or more of the voting ownership interests or securities of such person or entity

(c) **Additional Conditions**. As a condition to any such assignment or subletting, whether or not Landlord's consent is required, Landlord may require:

(i) that any assignee or subtenant agree, in writing at the time of such assignment or subletting, that if Landlord gives such party notice that Tenant is in default under this Lease beyond applicable notice and cure periods, if any, such party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability except to credit such payment against those due under the Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, in no event shall Landlord or its successors or assigns be obligated to accept such attornment; and

(ii) A list of Hazardous Materials, certified by the proposed assignee or sublessee to be true and correct, which the proposed assignee or sublessee intends to use, store, handle, treat, generate in or release or dispose of from the Premises, together with copies of all documents relating to such use, storage, handling, treatment, generation, release or disposal of Hazardous Materials by the proposed assignee or subtenant in the Premises or on the Project, prior to the proposed assignment or subletting, including, without limitation: permits; approvals; reports and correspondence; storage and management plans; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); and all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks. Neither Tenant nor any such proposed assignee or subtenant is required, however, to provide Landlord with any portion(s) of the such documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities.

(d) **No Release of Tenant, Sharing of Excess Rents**. Notwithstanding any assignment or subletting, Tenant shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. If the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the rental payable under this Lease, (excluding however, any Rent payable under this Section, the actual and reasonable brokerage fees, legal and marketing costs and any design or construction fees directly related to and required pursuant to

the terms of any such sublease, and the cost of any furniture, fixtures or equipment paid for by Tenant as an inducement to the prospective assignee or sublessee) ("**Excess Rent**") then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder fifty percent (50%) of such Excess Rent within ten (10) days following receipt thereof by Tenant. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

(e) **No Waiver**. The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or any sublessees of the Premises from obtaining the consent of Landlord to any further assignment or subletting nor shall it release Tenant or any assignee or sublessee of Tenant from full and primary liability under the Lease. The acceptance of Rent hereunder, or the acceptance of performance of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

(f) **Prior Conduct of Proposed Transferee.** Notwithstanding any other provision of this Section 22, if (i) Landlord has a reasonable and objective basis for the belief that the proposed assignee or sublessee poses a threat to contaminating the Project with Hazardous Materials if Landlord consents to such assignment or subletting, including without limitation because of such person's business reputation, a history of multiple enforcement orders with respect to Hazardous Materials against such person by any applicable Governmental Authority, or any other reasonable and objective basis, or (ii) because of the existence of a pre-existing environmental condition in the vicinity of or underlying the Project, the risk that Landlord would be targeted as a responsible party in connection with the remediation of such pre-existing environmental condition would be materially increased or exacerbated by the proposed use of Hazardous Materials by such proposed assignee or sublessee, Landlord shall have the absolute right to refuse to consent to any assignment or subletting to any such party.

23. **Estoppel Certificate**. Tenant shall, within ten (10) business days of receipt of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging, to its actual knowledge, that there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be reasonably requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease.

24. **Quiet Enjoyment**. So long as Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

25. **Prorations**. All prorations required or permitted to be made hereunder shall be made on the basis of a three hundred sixty (360) day year and thirty (30) day months.

26. **Rules and Regulations**. Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project provided that any amendments to the rules and regulations attached hereto as **Exhibit E** shall not be binding on Tenant to the extent that any of same detract from Tenant's rights under this Lease or its occupancy of the Premises or its business operations at the Premises. The current rules and regulations are attached hereto as **Exhibit E**. If there is any conflict between said rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project and shall not enforce such rules and regulations in a discriminatory manner.

27. **Subordination**.

(a) Subject to the terms of this Section 27, this Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however that so long as there is no Default hereunder, Tenant's right to possession of the Premises and its rights under this Lease shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the election of the Holder of any such Mortgage, to attorn to any such Holder. Tenant agrees upon demand to execute, acknowledge and deliver such subordination, non-disturbance and attornment agreement in a commercially reasonable and mutually agreeable form, confirming such subordination, attornment and the non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 hereof. Notwithstanding the foregoing, any such Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, ground leases, master leases, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust.

(b) Landlord represents and warrants to Tenant, as of the Commencement Date there is currently no Mortgage encumbering the Project. If at any time after the date of this Lease Landlord should desire to place a Mortgage on the Project, Landlord agrees that it will

cause the Holder of such Mortgage to enter into a subordination and non-disturbance agreement in connection with this Lease whereby such Holder agrees that, so long as no Default shall have occurred and be continuing under this Lease, the leasehold estate granted to Tenant and the rights of Tenant pursuant to this Lease to quiet and peaceful possession of the Premises shall not be terminated, modified, affected or disturbed by any action which the Mortgagee may take to foreclose any such Mortgage, and that any successor landlord shall recognize this Lease and the rights of Tenant hereunder as being in full force and effect.

28. **Surrender**. Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the condition of the Premises upon completion of Tenant's Work, subject to any subsequent Alterations or Installations permitted by Landlord to remain in the Premises, free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than Landlord or Landlord's employees, agents or contractors (collectively, "**Tenant HazMat Operations**") and released of all Hazardous Materials Clearances, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted. At least 3 months prior to the surrender of the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any Governmental Authority) to be taken by Tenant in order to surrender the Premises (including any Installations permitted by Landlord to remain in the Premises) at the expiration or earlier termination of the Term, free from any residual impact from the Tenant HazMat Operations and otherwise released for unrestricted use and occupancy (the "**Surrender Plan**"). Such Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant, which approval shall not be unreasonably withheld or delayed. In connection with the review and approval of the Surrender Plan, upon the reasonable request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning Tenant HazMat Operations as Landlord shall request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the right, at Landlord's cost, to cause Landlord's environmental consultant to inspect the Premises as may be reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of the Lease, free from any residual impact from Tenant HazMat Operations. Under no circumstances shall Tenant be responsible for the migration onto the Premises from off-site of any Hazardous Materials which Tenant did not cause, contribute to or exacerbate. Landlord shall have the unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties.

If Tenant shall fail to prepare or submit a Surrender Plan approved by Landlord, or if Tenant shall fail to complete the approved Surrender Plan, or if such Surrender Plan, whether or not approved by Landlord, shall fail to adequately address any residual effect of Tenant HazMat Operations in, on or about the Premises, Landlord shall have the right to take such actions as Landlord may deem reasonable or appropriate to assure that the Premises and the Project are surrendered free from any residual impact from Tenant HazMat Operations, the cost of which

actions shall be reimbursed by Tenant as Additional Rent, without regard to the limitation set forth in the first paragraph of this Section 28.

Tenant shall immediately return to Landlord all keys and/or access cards to parking, the Project, restrooms or all or any portion of the Premises furnished to or otherwise procured by Tenant. If any such access card or key is lost, Tenant shall pay to Landlord, at Landlord's election, either the cost of replacing such lost access card or key or the cost of reprogramming the access security system in which such access card was used or changing the lock or locks opened by such lost key. Any Tenant's Property, Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and/or disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Term, including the obligations of Tenant under Section 30 hereof, shall survive the expiration or earlier termination of the Term, including, without limitation, indemnity obligations, payment obligations to pay Continuing Rent (subject to the limitations of Section 8 hereof) and obligations concerning the condition and repair of the Premises.

29. **Waiver of Jury Trial**. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

30. **Environmental Requirements**.

(a) **Prohibition/Compliance/Indemnity**. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises or the Project (including without limitation the Land) in violation of applicable Environmental Requirements (as hereinafter defined) by Tenant or any Tenant Party. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Materials in the Premises during the Term or any holding over results in contamination of the Premises, the Land, the Project or any adjacent property or if contamination of the Premises, the Land, the Project or any adjacent property by Hazardous Materials brought into, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises by anyone other than Landlord and Landlord's employees, agents and contractors otherwise occurs during the Term or any holding over, Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Premises, the Building or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether

or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (collectively, "**Environmental Claims**") which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Land, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Land, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense and in accordance with applicable Environmental Requirements as are necessary to return the Premises, the Building, the Project or any adjacent property to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises, the Building or the Project. Landlord shall deliver to Tenant a copy of Landlord's most recent Phase I Environmental Site Assessment of the Building (the "**Phase I Report**") and a "**Phase II Report**", which Tenant shall keep strictly confidential. Under no circumstances shall Tenant be responsible for Environmental Claims which existed prior to Tenant's occupancy of the Premises and are identified in either the Phase I Report of the Phase II Report, and which Tenant did not cause, contribute to or exacerbate. Further, under no circumstances shall Tenant be responsible for the migration onto the Premises from off-site of any Hazardous Materials which Tenant did not cause, contribute to or exacerbate.

(b) **Business.** Landlord acknowledges that it is not the intent of this Section 30 to prohibit Tenant from using the Premises for the Permitted Use. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all then applicable Environmental Requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials Tenant intends to be brought upon, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises and setting forth any and all governmental approvals or permits required in connection with the presence, use, storage, handling, treatment, generation, release or disposal of such Hazardous Materials on or from the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List from time to time upon request of Landlord (but not more than once per year, unless Landlord has an objective basis for believing Tenant has violated the terms of this Section 30). Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**") relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials prior to the Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a Governmental Authority: permits; approvals; reports and correspondence; storage and management plans, notice of violations of any Legal Requirements; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); all closure

plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks; and a Surrender Plan (to the extent surrender in accordance with Section 28 cannot be accomplished in 3 months). Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities.

(c) **Tenant Representation and Warranty**. Tenant hereby represents and warrants to Landlord that Tenant is not subject to any pending enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority). If Landlord determines that this representation and warranty was not true as of the date of this lease, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion.

(d) **Testing**. At any time, and from time to time, prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises and the Project to determine if contamination has occurred as a result of Tenant's use of the Premises. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. If contamination has occurred for which Tenant is liable under this Section 30, Tenant shall pay all costs to conduct such tests. If no such contamination is found, Landlord shall pay the costs of such tests (which shall not constitute an Operating Expense). Landlord shall provide Tenant with a copy of all third party, non-confidential reports and tests of the Premises made by or on behalf of Landlord during the Term without representation or warranty and subject to a confidentiality agreement. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions for which Tenant is responsible under the terms of this Lease which are identified by such testing in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights which Landlord may have against Tenant.

(e) **Underground Tanks**. No underground storage tanks storing Hazardous Materials shall be permitted on the Premises or the Project. Tenant, however, shall have no obligation to remove any existing underground storage tanks. If any other storage tank storing Hazardous Materials is to be hereafter placed on the Premises or the Building by Tenant, Tenant shall obtain Landlord's prior approval, which shall be determined in Landlord's sole discretion, and install, use, monitor, operate, maintain, upgrade and manage such storage tanks, maintain appropriate records, obtain and maintain appropriate insurance, implement reporting procedures, and take or cause to be taken all other actions necessary or required under applicable state and federal Legal Requirements, as such now exists or may hereafter be adopted or amended in connection with the installation, use, maintenance, management, operation, upgrading and closure of such storage tanks.

(f) **Tenant's Obligations**. Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of the Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the

removal from the Premises of any Hazardous Materials (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Surrender Plan), Tenant shall continue to pay Continuing Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Continuing Rent shall be prorated daily.

(g) **Definitions.** As used herein, the term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Governmental Authority regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the Project, or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. As used herein, the term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "**operator**" of Tenant's "**facility**" and the "**owner**" of all Hazardous Materials brought on the Premises by Tenant or any Tenant Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

31. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or landlord a reasonable opportunity to cure the default, not to exceed an additional thirty (30) days beyond the cure period of Landlord; provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. Notwithstanding the foregoing, in the event Landlord defaults under the Lease and such default will immediately, materially and adversely affect Tenant's ability to conduct its business in the Premises, then Tenant shall provide immediate notice to Landlord of such default, which notice shall indicate clearly that the alleged default will immediately, materially and adversely affect Tenant's ability to conduct its business in the Premises, and in such event Landlord shall have two (2) business days to commence a cure of such default and diligently prosecute such cure to completion. If Landlord fails to cure such default, then Tenant shall be entitled to commence and prosecute such cure to completion and shall be entitled to recover the costs of any such cure. Tenant may demand Arbitration of the question of whether Landlord has met its obligations pursuant to Section 43 hereof, and if Tenant receives a ruling in its favor from the Arbitrator, and Landlord fails to pay Tenant, Tenant shall be entitled to the set off rights set forth in Section 43. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. The foregoing provision

shall not apply to any failure of Landlord to make repairs to portions of the Project which do not include the Building or the Land, which shall be governed by the separate provision of Section 13.

All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter, except to the extent such obligations arise during its period of ownership, unless assumed by any successor. The term "**Landlord**" in this Lease shall mean only the owner for the time being of the Premises. Upon the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Term upon each new owner for the duration of such owner's ownership.

32. **Inspection and Access**. Upon giving prior notice as required in this Section 32, Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last year of the Term, to prospective tenants or for any other business purpose. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate Common Areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects Tenant's use, parking rights or occupancy of the Premises for the Permitted Use. Landlord will deliver prior written notice (the "**Restriction Notice**") to Tenant of any such easement, dedication, designation or restriction which will affect the Premises, which notice shall state that it is being given pursuant to Section 32 of this Lease. If any such easement, dedication, designation or restriction described in a Restriction Notice will materially, adversely affect Tenant's use, parking rights or occupancy of the Premises for the Permitted Use, Landlord shall obtain Tenant's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. After receiving a Restriction Notice, Tenant, acting in good faith, shall notify Landlord in writing within ten (10) business days if Tenant believes the matter described in the Restriction Notice will materially, adversely affect Tenant's use, parking rights or occupancy. If Tenant does not deliver timely notice, the subject of the Restriction Notice shall be deemed not to materially, adversely affect Tenant. If Tenant delivers notice and Landlord disagrees, Landlord may within ten (10) business days demand in writing arbitration pursuant to Section 43 hereof of the question of whether the matter which is the subject of the Restriction Notice will materially, adversely affect Tenant's use, parking rights or occupancy of the Premises. If Landlord fails to make such written demand for arbitration within such ten (10) business day period, then Tenant's consent shall be deemed to be required. If the Arbitrator rules in Tenant's favor, then Tenant's consent to the matter set forth in the Restriction Notice shall be required. If the Arbitrator rules in Landlord's favor, then Tenant's consent shall not be required.

At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions. Tenant shall at all times, except in the case of

emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder.

33. **Security**. Tenant acknowledges and agrees that security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Landlord is not providing any security services with respect to the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises, except to the extent caused by the gross negligence or willful misconduct of Landlord or its employees. Tenant shall be solely responsible for the personal safety of Tenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Premises and/or the Project. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

34. **Force Majeure**. Neither Landlord nor Tenant shall be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, weather, natural disasters, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the applicable party ("**Force Majeure**").

35. **Brokers, Entire Agreement, Amendment**. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker)** in connection with this transaction and that no Broker brought about this transaction, other than Scheer Partners as Tenant's representative. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than the broker, if any named in this Section 35, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

36. **Limitation on Landlord's Liability**. NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY: (A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC RESEARCH, SCIENTIFIC EXPERIMENTS, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES, AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM UNLESS ANY SUCH LOSS, DAMAGE OR INJURY TO TENANT'S PERSONAL PROPERTY ARISES SOLELY AND DIRECTLY FROM LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN WHICH CASE LANDLORD'S LIABILITY FOR SUCH LOSS, DAMAGE OR INJURY SHALL IN NO EVENT EXCEED $10,000,000; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR

ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE BUILDING AND THE LAND AND THE RENTS THEREFROM OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE BUILDING AND THE LAND OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF EXCEPT AS PROVIDED IN THIS SECTION 36, LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

37. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable.

38. **Signs; Exterior Appearance**. Tenant shall not, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion: (i) place permanent coatings on the interior or exterior of the any windows; (ii) attach any awnings, exterior lights, decorations, balloons, flags, pennants, banners, painting or other projection to any outside wall of the Project, (ii) place any bottles, parcels, or other articles on the window sills, (iii) place any equipment, furniture or other items of personal property on any exterior balcony, or (iv) paint, affix or exhibit on any part of the Premises or the Project any signs, notices, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Tenant shall have sole and exclusive control over any Interior signs on doors and any directory tablet. Tenant shall have the sole and exclusive right to Building monument and Building signage at Tenant's sole cost, subject to Landlord's reasonable approval of the size, color and content of any sign, and subject further to the requirement that any sign comply with the requirements of Applicable Law.

Notwithstanding the foregoing, Tenant, its corporate affiliates, or its assignees under Section 22, shall have the exclusive right at its sole cost and expense, to affix to the exterior façade of the Building along the roof line, a sign bearing such party's corporate logo. Any such sign may be sufficiently large and prominently placed so as to make such logo reasonably visible and identifiable to vehicular and pedestrian traffic around the Building. Any such sign shall further (i) be subject to Landlord's reasonable approval as to placement, size and design, and (ii) shall be erected pursuant to and in conformance with all local building codes, related ordinances and any applicable covenants. Tenant shall procure, at its sole cost and expense, any and all permits necessary to affix any such sign to the Building.

39. **Right to Expand**.

(a) Tenant shall have the right, but not the obligation, to expand the Premises by up to an additional 120,000 rentable square feet (approximately, but in no event less than the maximum developable floor area ratio of the property identified as 2 West Watkins Mill Road, listed on **Exhibit G**) (the "**Expansion Right**") to include any Available Space upon the terms and conditions in this Section 39. For purposes of this Section 39(a), "**Available Space**" shall mean any space located within the properties identified on **Exhibit G**, now or hereafter owned by Landlord and/or Landlord's Affiliates (herein collectively the "**Expansion Projects**") which Landlord decides, in Landlord's discretion, is available for leasing and is not in the possession of another tenant, not subject to any option by any other person to lease such space which pre-dates the date of this Lease, and not being used by Landlord or otherwise unavailable for leasing. Landlord's Affiliates shall countersign this Lease to acknowledge the granting of the Expansion Right. With respect to those Expansion Projects which are not part of the Project, Tenant's Expansion Right shall apply only to the extent Landlord and/or Landlord's Affiliates own the subject building within the Expansion Projects at the time Tenant exercises the Expansion Right. With respect to any buildings which are part of the Project, it is the parties' intention that the Expansion Right shall be enforceable against any successor to Landlord or Landlord's Affiliates, and Landlord hereby covenants that if Landlord or Landlord's Affiliates sell the Project or any portion thereof during the term of this Lease, Landlord or Landlord's Affiliates shall require any successor to recognize Tenant's right to exercise the Expansion Right. The Expansion Right is subject to the superior rights of those tenants at the Project with prior rights to lease the Available Space (which tenants names are set forth on **Exhibit K** attached hereto), or any other tenant in possession of space in the Expansion Projects. If there is any Available Space in the Expansion Projects (subject to the limitations set forth above in this Section 39(a)), Landlord shall, at such time as Landlord shall elect so long as Tenant's rights hereunder are preserved, deliver to Tenant written notice (the "**Expansion Notice**") of such Available Space, together with the terms and conditions on which Landlord and/or Landlord's Affiliate is prepared to lease Tenant such Available Space.

(b) Tenant shall have thirty (30) days following delivery of the Expansion Notice to deliver to Landlord written notification of Tenant's exercise of the Expansion Right. Provided that no right to expand is exercised by any tenant with superior rights, Tenant shall be entitled to lease such Available Space upon the terms and conditions set forth in the Expansion Notice. Notwithstanding the foregoing, Tenant's Expansion Right shall be subject to reduction on a foot for foot basis, to the extent Tenant or any of its affiliates leases from Landlord, Landlord's Affiliates, or their respective parents or affiliates, or subleases from an existing Tenant of the Expansion Projects, any other space within the Expansion Project. If Tenant does not timely exercise the Expansion Right, Landlord may lease the Available Space to any person on terms acceptable to Landlord in Landlord's discretion, subject to the limitations set forth immediately below in this Section 39(b). Notwithstanding Tenant's failure to timely exercise the Expansion Right, if the Available Space has not been leased by Landlord within twelve (12) months of the date of the Expansion Notice, Landlord shall not lease the Available Space to any person unless and until Landlord has delivered to Tenant another Expansion Notice, after which Tenant shall have thirty (30) days to deliver to Landlord written notification of Tenant's exercise of the Expansion Right. In addition, if Tenant has failed to timely exercise the Expansion Right, and Landlord proposes to lease the Available Space to another person on terms under which the

Net Effective Rent is less than 90% of the Net Effective Rent of the terms set forth in the most recent Expansion Notice, then Landlord shall not lease the Available Space to any person unless and until Landlord has delivered to Tenant another Expansion Notice (the "**Reduced Rent Offer**") setting forth the same terms as those upon which Landlord proposes to lease the Available Space, after which Tenant shall have ten (10) days to deliver to Landlord written notification of Tenant's exercise of the Expansion Right on the terms set forth in the Reduced Rent Offer. If Tenant does not timely exercise the Expansion Right after any such notice, Landlord may lease the Available Space to any person on terms acceptable to Landlord in Landlord's discretion, subject to the limitations set forth in this Section 39(b). As used herein, "**Net Effective Rent**" means the rent payable by a tenant under terms of a lease taking into account the size of the premises to be leased, free rent periods, tenant improvement allowances paid by Landlord, brokerage commissions, any other economic concessions granted by Landlord.

(c) **Exceptions**. Notwithstanding the above, the Expansion Right shall not be in effect and may not be exercised by Tenant during any period of time that Tenant is in Default (beyond all applicable notice and cure periods) under any provision of the Lease, or if Tenant has been in Default under any provision of this Lease 3 or more times, whether or not Defaults are cured, during the last 12 months prior to the date on which Tenant seeks to exercise the Expansion Right.

(d) **Termination.** The Expansion Right shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Expansion Right, if, after such exercise, but prior to the commencement date of the lease of such Available Space, (i) Tenant fails to timely cure any default by Tenant under the Lease beyond any applicable notice and cure period; or (ii) Tenant has Defaulted (beyond any applicable notice and cure periods) 3 or more times during the period from the date of the exercise of the Expansion Right to the date of the commencement of the lease of the Available Space, whether or not such Defaults are cured.

(e) **Rights Personal**. Except with respect to a Permitted Assignment, the Expansion Right is personal to Tenant and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease.

(f) **No Extensions**. The period of time within which any Expansion Right may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Expansion Right.

(g) **Landlord's Affiliate**. Landlord's affiliates, ARE-25/35/45 West Watkins Corp., a Maryland corporation, ARE-2 West Watkins, LLC, a Delaware limited liability company, and ARE-Metropolitan Grove, LLC, a Delaware limited liability company (collectively, "**Landlord's Affiliates**") are the owners of various portions of the Expansion Projects which do not comprise the Building and the Land. Each of Landlord's Affiliates joins this Lease for the sole and limited purpose of granting the Expansion Right to Tenant in those portions of the Expansion Projects owned by that entity, and granting the right to file a memorandum of such rights in the Official Records of Montgomery County, Maryland with respect to those portions of the Expansion Projects which do not comprise the Building and the Land.

(h) **Successors to Landlord**. It is the intent of the parties that the Expansion Right shall survive a transfer of Landlord's interest in the Project, or any portion thereof. If Landlord's interest in any portion of the Project is transferred to any successor, Landlord will require that the Expansion Right will be binding upon such successor. If Landlord's interest in those portions of the Expansion Projects which are not part of the Project is transferred to any person not affiliated with or under common control with Landlord, then the Expansion Right shall terminate with respect to such portion of the Expansion Projects so transferred.

40. **Right to Extend Term**. Tenant shall have the right to extend the Term of the Lease upon the following terms and conditions:

(a) **Extension Rights**. Tenant shall have the right (the "**Extension Right**") to extend the term of this Lease for five (5) years (the "**Extension Term**") on the same terms and conditions as this Lease (other than Base Rent and the provisions of the Work Letter) by giving Landlord written notice of its election to exercise each Extension Right at least nine (9) months prior, and no earlier than fifteen (15) months prior, to the expiration of the Base Term of the Lease. Upon the commencement of the Extension Term, Base Rent shall be payable at the rate of ninety-five percent (95%) of the Market Rate (as defined below). Base Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by the amount of annual escalation determined when calculating Market Rate. As used herein, "**Market Rate**" shall mean the then market rental rate (and annual escalations) of the Premises as a fully improved laboratory/office building within a 5 mile radius of the Building, as determined by Landlord and agreed to by Tenant. If, on or before the date which is one hundred twenty (120) days prior to the expiration of the Base Term of this Lease, Tenant has not agreed with Landlord's determination of the Market Rate after negotiating in good faith, Tenant may by written notice to Landlord not later than one hundred twenty (120) days prior to the expiration of the Base Term of this Lease, elect arbitration as described in Section 40(b) below. If Tenant does not elect such arbitration, Tenant shall be deemed to have accepted Landlord's determination of Market Rate.

(b) **Arbitration**.

(i) Within twenty (20) days of Tenant's notice to Landlord of its election to arbitrate Market Rate, each party shall deliver to the other a proposal containing the Market Rate that the submitting party believes to be correct ("**Extension Proposal**"). If either party fails to timely submit an Extension Proposal, the other party's submitted proposal shall determine the Base Rent for the Extension Term. If both parties submit Extension Proposals, then Landlord and Tenant shall meet within seven (7) days after delivery of the last Extension Proposal and make a good faith attempt to mutually appoint a single Arbitrator (and defined below) to determine the Market Rate. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within ten (10) days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's submitted proposal shall determine the Base Rent for the Extension Term. The 2 Arbitrators so appointed shall, within five (5) business days after their appointment, appoint a third Arbitrator. If the 2 Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general

jurisdiction in the jurisdiction in which the Premises are located, upon ten (10) days prior written notice to the other party of such intent.

(ii) The decision of the Arbitrator(s) shall be made within thirty (30) days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The average of the three (3) determinations shall be binding; provided, however, that if two of the appraisers are within five percent (5%) of each other and the third appraiser is not within five percent (5%) of either of the other two appraisals, then the average of the two appraisals which are within five percent (5%) of each other shall be used. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate is not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Extension Term and increased by the Rent Adjustment Percentage until such determination is made. After the determination of the Market Rate, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate for the Extension Term.

(iii) An "**Arbitrator**" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) an appraiser with the designation MAI, and not less than ten (10) years of experience in the appraisal of comparable improved laboratory/office real estate in the greater Washington, D.C. metropolitan area, or (B) a licensed commercial real estate broker with not less than fifteen (15) years experience representing landlords and/or tenants in the leasing of comparable improved laboratory/office real estate in the greater Washington metropolitan area, (ii) is devoting substantially all of his or her time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) shall be in all respects impartial and disinterested.

(c) **Right to Withdraw Notice**. For a period of ten (10) days after the determination of Market Rate by the Arbitrator, Tenant shall have the right to withdraw Tenant's notice of its election to exercise the Extension Right, by delivering written notice of Tenant's clear and unambiguous intent to do so to Landlord. If Tenant timely withdraws its notice, then Tenant shall be deemed to have waived the Extension Right, and Tenant shall have no further obligation to lease the Premises after the end of the Base Term of the Lease (as defined in the Lease provisions set forth on the first page of this Lease).

(d) **Rights Personal**. The Extension Right is personal to Tenant (including any Tenant Affiliate or other party pursuant to a Permitted Assignment) and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease.

(e) **Exceptions**. Notwithstanding anything set forth above to the contrary, the Extension Right shall not be in effect and Tenant may not exercise the Extension Right during any period of time that Tenant is in Default under any provision of this Lease, or if Tenant has been in Default under any provision of this Lease 3 or more times, whether or not Defaults are

cured, during the last 12 months prior to the date on which Tenant seeks to exercise the Extension Right.

(f) **No Extensions**. The period of time within which the Extension Right may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Extension Right.

(g) **Termination**. The Extension Right shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Extension Right, if, after such exercise, but prior to the commencement date of the Extension Term, Tenant fails to timely cure any default by Tenant under this Lease.

41. **Right to Purchase Building**. During the Term of the Lease, Tenant will have the right to purchase the Building and the Land (not including any other portion of the Project, and not including the Building or the Land if offered for sale as a part of the Project or a portfolio of properties) as set forth below. If Landlord determines to sell the Building and the Land alone (which shall not include any sale of the Project including the Building or any sale of multiple properties) to an unaffiliated buyer, Landlord shall notify Tenant of Landlord's intent, setting forth the essential terms of the sale (price, payment terms, "AS IS" or other condition of property, due diligence conditions, title and other contingencies, allocation of prorations and closing costs, and closing date). Within thirty (30) days of receipt of Landlord's notice, Tenant may deliver to Landlord a notice of Tenant's election to purchase the Building and the Land, on the terms set forth in Landlord's notice.

If Landlord shall receive a written offer from a third party to purchase the Building and the Land, which offer Landlord intends to accept, or before Landlord shall extend a written offer or letter of intent to a third party to purchase the Building (apart from the Project or any portfolio of Landlord's properties), Landlord shall so notify Tenant, and Tenant shall have ten (10) business days from the date of receipt of Landlord's notice to deliver to Landlord a notice of Tenant's election to purchase the Building and the Land, on the terms set forth in Landlord's notice. Tenant's failure to timely exercise such right shall be deemed Tenant's waiver and the termination of Tenant's right .

If Tenant timely exercises any such right to purchase, the parties shall within thirty (30) days execute and deliver to one another an agreement of purchase and sale (the "**Purchase Agreement**"). The Purchase Agreement shall provide that Landlord agrees to sell and Tenant agrees to purchase the Building and the Land "as-is, where-is", without representation or warranty, express or implied, of any kind by Landlord.

If (i) Tenant does not timely exercise such right, (ii) Tenant timely exercises such right but the parties do not execute the Purchase Agreement within such 30-day period, or (iii) the parties timely execute the Purchase Agreement but the Purchase Agreement is thereafter terminated for any reason other than Landlord's default, then Landlord shall thereafter be free to sell the Building and the Land to any party, except that Landlord shall not sell the Building for a price less than ninety-five percent (95%) of the price last offered to Tenant without first offering Tenant again the right to purchase the Building and the Land at any lower price.

Tenant's rights under this Section 41 shall not apply to any transfer of the Building and the Land to any lender of Landlord's with a security interest in the Building and the Land, either by foreclosure, trustee's sale, deed in lieu of foreclosure, or any other transfer to any lender in the exercise of its rights.

Landlord shall make a commercially reasonable effort to cause any lender to agree that Tenant's right to purchase the Building and the Land, as set forth in this Section 41, shall survive any transfer of the Building and the Land to such lender. Landlord shall not be liable to Tenant if, despite Landlord's commercially reasonable effort, Landlord's lender does not agree to permit Tenant's right to purchase the Building and the Land to survive any transfer of the Building and the Land to the lender in the exercise of the lender's rights.

42. **Roof Rights**. Tenant shall be permitted (on an exclusive basis, except for Landlord's equipment for the Project) to place satellite dish(es), communication antennae or other equipment integral to Tenant's operations (collectively such equipment is referred to herein as "**Roof Equipment**") on the roof area of the Building, subject to the following:

(a) The size, number and location of any Roof Equipment shall be subject to Landlord's prior written consent, which shall not be unreasonably withheld;

(b) Tenant shall not make any roof cuts or perform any other roofing work, except with Landlord's prior written consent, which shall not be unreasonably withheld, and in the manner designated in writing by Landlord;

(c) Any installation work (including any roof cuts or other roofing work) shall be performed by Tenant, at Tenant's sole cost and expense by a roofing contractor designated by Landlord and in accordance with all applicable warranties relating to the roof;

(d) The installation or use of any Roof Equipment shall in no way interfere with any other tenant of the Project, and if Landlord delivers notice to Tenant that Tenant's use of the rooftop is interfering with the rights of another tenant of the Project, Tenant shall cause such interference to cease promptly;

(e) Tenant shall promptly pay all taxes and license fees imposed by any federal, state or local government agency or authority in connection with the installation, operation and maintenance of any Roof Equipment;

(f) Tenant shall secure any necessary permits, and the installation and use of Roof Equipment shall comply with all Legal Requirements (including any zoning restrictions) and Tenant shall be solely liable for the cost of such compliance; and

(g) Upon the expiration of the Term or earlier termination of Tenant's right of possession, or if Tenant otherwise discontinues the operation of Roof Equipment, Tenant shall remove such Roof Equipment, repair the roof and any other portion of the Premises affected by such Roof Equipment, and return the roof to the condition which existed prior to the installation of the Roof Equipment.

43. **Arbitration of Certain Matters**. Reference is made to Section 2(b), Section 5, Section 13, Section 31 and Section 32 of this Lease. Landlord and Tenant have agreed, with respect to Section 2(b), Section 5, and Section 13 that the question of whether specific matters set forth in those sections are reasonable and necessary, and with respect to Section 31, whether certain obligations are the obligations of Landlord, and with respect to Section 32, whether the subject of a Restriction Notice will materially, adversely affect Tenant's use, parking rights or occupancy of the Premises (each, an "Arbitration Matter") may be submitted to arbitration. Whether such matters are reasonable and necessary, are the obligation of Landlord, or will materially, adversely affect Tenant, as the case may be, will be determined by binding arbitration in accordance with the provisions of this Section 43. If either party delivers to the other a proper demand for arbitration of an Arbitration Matter, then Landlord and Tenant shall meet (which meeting may take place by telephone conference) within 7 days after delivery of the demand for arbitration and make a good faith attempt to mutually appoint a single Arbitrator (as defined below) to determine the Arbitration Matter. If Landlord and Tenant are unable to agree upon a single Arbitrator, then each shall, by written notice delivered to the other within 7 days after the meeting, select an Arbitrator. If either party fails to timely give notice of its selection for an Arbitrator, the other party's Arbitrator shall be the sole Arbitrator. If each party selects an Arbitrator, then the two Arbitrators so appointed shall, within 5 business days after their appointment, appoint a third Arbitrator, who shall be the sole Arbitrator. If the two Arbitrators so selected cannot agree on the selection of the third Arbitrator within the time above specified, then either party, on behalf of both parties, may request such appointment of such third Arbitrator by application to any state court of general jurisdiction in the jurisdiction in which the Premises are located, upon 10 days prior written notice to the other party of such intent. In addition, each party shall have the right to take discovery of the other party by any and all methods provided in the U.S. Federal Rules of Civil Procedure, provided that any discovery efforts shall not work to extend any of the time frames for resolving an Arbitration Matter set forth herein. The Arbitrator may, in its discretion, upon request refuse to allow any evidence not made available to the other party pursuant to a proper and reasonable discovery request to be used in the Arbitration Matter. The Arbitrator shall hold an arbitration proceeding, to be attended by Landlord and Tenant, within 10 days of the Arbitrator's appointment, so that the Arbitrator may consider and rule on the question of whether the Arbitration Matter is reasonable and necessary, whether certain obligations are the obligations of Landlord, or whether the subject of a Restriction Notice will materially, adversely affect Tenant, as the case may be. The decision of the Arbitrator shall be made within two days after the arbitration proceeding. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of any single Arbitrator or the third Arbitrator shall be borne equally by both parties. The parties hereby waive any right to appeal the decision of the Arbitrator. An "Arbitrator" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and shall be a retired judge of any court of general jurisdiction in the State of Maryland, or a lawyer in the greater Montgomery County, Maryland area who has practiced real estate law for not less than 15 years, and, at the time of appointment and shall be in all respects impartial and disinterested. If the Arbitrator finds that the Arbitration Matter was reasonable and necessary, or that an obligation was the obligation of Landlord, so that Tenant is entitled to reimbursement of the cost of any item described in the aforementioned sections of this Lease, and Landlord fails to reimburse Tenant for the cost of such item, then beginning on the first day of the month which commences not less than 30 days after the date of the Arbitrator's decision, the amount of Tenant's cost may be set off against future payments of Base Rent,

provided that in any one month, the amount offset by Tenant against Base Rent shall not exceed 10% of the full amount of Base Rent for that month.

44. **Miscellaneous**.

(a) **Notices**. All notices or other communications between the parties shall be in writing and shall be deemed duly given upon delivery or refusal to accept delivery by the addressee thereof if delivered in person, or upon actual receipt if delivered by reputable overnight guaranty courier, addressed and sent to the parties at their addresses set forth above. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

(b) **Joint and Several Liability**. If and when included within the term "**Tenant**," as used in this instrument, there is more than one person or entity, each shall be jointly and severally liable for the obligations of Tenant.

(c) **Recordation**. At the request of either party, a memorandum of lease or "short form" of this Lease shall be filed in the Official Records of Montgomery County, Maryland (the "**Official Records**") for the Property, and for any other portion of the Project in which Tenant has the Expansion Right. In addition, Landlord's Affiliates owning those Expansion Projects which do not comprise the Project shall join in and permit the filing of a memorandum of the Expansion Right in the Official Records for those properties. Prior to recording any memorandum or short form, Tenant shall execute and deliver to Landlord an undated instrument in recordable form acknowledging the termination of this Lease or the termination of the Expansion Right, as applicable, which Landlord shall hold in trust and shall not cause to be dated or recorded until this Lease has been terminated or the Expansion Right have been terminated.

(d) **Financial Information**. In the event Tenant is no longer subject to the oversight of the Securities and Exchange Commission as a publicly traded entity, Tenant shall furnish Landlord with true and complete copies of (i) Tenant's most recent audited annual financial statements within one hundred twenty (120) days of the end of each of Tenant's fiscal years during the Term, (ii) Tenant's most recent unaudited quarterly financial statements within forty-five (45) days of the end of each of Tenant's first three fiscal quarters of each of Tenant's fiscal years during the Term, (iii) at Landlord's request from time to time, updated business plans, including cash flow projections and/or pro forma balance sheets and income statements, all of which shall be treated by Landlord as confidential information belonging to Tenant, (iv) corporate brochures and/or profiles prepared by Tenant for prospective investors, and (v) any other financial information or summaries that Tenant typically provides to its lenders or shareholders.

(e) **Interpretation**. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe

the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(f) **Not Binding Until Executed**. The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) **Limitations on Interest**. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(h) **Choice of Law**. Construction and interpretation of this Lease shall be governed by the internal laws of the state in which the Premises are located, excluding any principles of conflicts of laws.

(i) **Time**. Time is of the essence as to the performance of Tenant's and Landlord's obligations under this Lease.

(j) **Incorporation by Reference**. All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(k) **Hazardous Activities**. Notwithstanding any other provision of this Lease, Landlord, for itself and its employees, agents and contractors, acting in good faith, reserves the right to refuse to perform any repairs or services in any portion of the Premises which, pursuant to Tenant's routine safety guidelines, practices or custom or prudent industry practices, require any form of protective clothing or equipment other than safety glasses. In any such case, Tenant shall contract with parties who are acceptable to Landlord, in Landlord's reasonable discretion, for all such repairs and services at Tenant's sole cost and expense.

SIGNATURES APPEAR ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

NABI BIOPHARMACEUTICALS,
a Delaware corporation

By: /s/ MARK SMITH
Its: **Chief Financial Officer**

LANDLORD:

ARE-30 WEST WATKINS, LLC
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ JENNIFER PAPPAS
Its: **V.P. and Assistant Secretary**

LANDLORD'S AFFILIATES (joining here for the limited purpose of confirming the Expansion Right in those portions of the Expansion Projects not owned by Landlord, as set forth in Section 39 and Section 44(d)):

ARE-25/35/45 W. WATKINS CORP.,
a Maryland corporation

By: /s/ JENNIFER PAPPAS
Its: **V.P. and Assistant Secretary**

ARE-METROPOLITAN GROVE I, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P., a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ JENNIFER PAPPAS
Its: **V.P. and Assistant Secretary**

ARE-2 WEST WATKINS, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership, managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ JENNIFER PAPPAS
Its: **V.P. and Assistant Secretary**

EXHIBIT A TO LEASE

DESCRIPTION OF PREMISES

EXHIBIT B-1 TO LEASE

DESCRIPTION OF PROJECT

EXHIBIT B-2 TO LEASE

LEGAL DESCRIPTION OF LAND

BEING KNOWN AND DESIGNATED as Lot 19 as shown on the Plat entitled “Plat of Resubdivision Lots 17-19 Metropolitan Grove Park” which Plat is recorded among the Land Records of Montgomery County in Plat Book 196, Page 21289.

The improvements being known as 30 W. Watkins Mill Road.
tax Account No. 09-03279937.

EXHIBIT C TO LEASE

WORK LETTER

THIS WORK LETTER dated June 29, 2005 (this "**Work Letter**") is made and entered into by and between ARE-30 WEST WATKINS, LLC, a Delaware limited liability company ("**Landlord**"), and NABI BIOPHARMACEUTICALS, a Delaware corporation ("**Tenant**"), and is attached to and made a part of the Lease dated June 29, 2005 (the "**Lease**"), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

1. **General Requirements**.

(a) **Tenant's Authorized Representative.** Tenant designates Peter Marissael and Raafat Fahim (either such individual acting alone, "**Tenant's Representative**") as the only persons authorized to act for Tenant pursuant to this Work Letter. Landlord shall not be obligated to respond to or act upon any request, approval, inquiry or other communication ("**Communication**") from or on behalf of Tenant in connection with this Work Letter unless such Communication is in writing from Tenant's Representative. Tenant may change Tenant's Representative at any time upon not less than five (5) business days advance written notice to Landlord. No period set forth herein for any approval of any matter by Tenant's Representative shall be extended by reason of any change in Tenant's Representative.

(b) **Landlord's Authorized Representative.** Landlord designates Lawrence J. Diamond and Vincent Ciruzzi (either such individual acting alone, "**Landlord's Representative**") as the only persons authorized to act for Landlord pursuant to this Work Letter. Tenant shall not be obligated to respond to or act upon any request, approval, inquiry or other Communication from or on behalf of Landlord in connection with this Work Letter unless such Communication is in writing from Landlord's Representative. Landlord may change either Landlord's Representative at any time upon not less than five (5) business days advance written notice to Tenant. No period set forth herein for any approval of any matter by Landlord's Representative shall be extended by reason of any change in Landlord's Representative.

(c) **Architects, Consultants and Contractors.** Landlord and Tenant hereby acknowledge and agree that the architect (the "**TI Architect**") for the Tenant Improvements, the general contractor (the "**TI Contractor**") and any subcontractors for the Tenant Improvements shall be selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

2. **Tenant Improvements**.

(a) **Tenant Improvements Defined.** As used herein, "**Tenant Improvements**" shall mean all improvements to the Premises desired by Tenant of a fixed and permanent nature. Other than funding the TI Allowance (as defined below) as provided herein, except as set forth in the Lease or in this Work Letter, Landlord shall not have any obligation whatsoever with respect to the Tenant Improvements or otherwise the finishing of the Premises for Tenant's use and occupancy.

(b) **Tenant's Space Plans.** Within ten (10) business days after Tenant submits to Landlord schematic drawings and outline specifications (the "**TI Design Drawings**") detailing Tenant's requirements for the Tenant Improvements, Landlord shall deliver to Tenant the written objections, questions or comments of Landlord with regard to the TI Design Drawings. Tenant shall cause the TI Design Drawings to be revised to address such written comments and shall resubmit said drawings to Landlord for approval within ten (10) business days thereafter. Such process shall continue until Landlord has approved the TI Design Drawings. If Landlord does not timely respond to any request made by Tenant for approval of drawings, Landlord's consent shall be deemed refused.

(c) **Working Drawings.** Not later than forty-five (45) days following the approval of the TI Design Drawings by Landlord, Tenant shall cause the TI Architect to prepare and deliver to Landlord for review and comment construction plans, specifications and drawings for the Tenant Improvements ("**TI Construction Drawings**"), which TI Construction Drawings shall be prepared substantially in accordance with the TI Design Drawings. Subject to the limitations set forth in this subsection, Tenant shall be solely responsible for ensuring that the TI Construction Drawings reflect Tenant's requirements for the Tenant Improvements. Landlord shall deliver its written comments on the TI Construction Drawings to Tenant not later than ten (10) business days after Landlord's receipt of the same; provided, however, that Landlord may not disapprove any matter that is consistent with the TI Design Drawings, unless such matter would result in an unacceptable modification or alteration of the exterior shell of the Building, the structural components of the Building, or the Building Systems, as determined by Landlord in Landlord's sole and absolute discretion. Tenant and the TI Architect shall consider all such comments in good faith and shall, within ten (10) business days after receipt, notify Landlord how Tenant proposes to respond to such comments. Any disputes in connection with such comments shall be resolved in accordance with Section 2(d) hereof. Provided that the design reflected in the TI Construction Drawings is consistent with the TI Design Drawings and does not result in an unacceptable modification or alteration of the exterior shell of the Building, the structural components of the Building, or the Building Systems, Landlord shall approve the TI Construction Drawings submitted by Tenant. Once approved by Landlord, subject to the provisions of Section 2(d) below, Tenant shall not materially modify the TI Construction Drawings except as may be reasonably required in connection with the issuance of the TI Permit (as defined in Section 3(b) below).

(d) **Approval and Completion.** Upon any dispute regarding the design of the Tenant Improvements, which is not settled within ten (10) business days after notice of such dispute is delivered by one party to the other, Tenant shall make the final decision regarding the design of the Tenant Improvements, provided (i) Tenant acts reasonably and such final decision is either consistent with or a compromise between Landlord's and Tenant's positions with respect to such dispute, (ii) that all costs and expenses resulting from any such decision by Tenant shall be payable out of the TI Allowance (as defined in Section 5(d) below) and (iii) such dispute does not involve a proposed modification or alteration of the exterior shell of the Building, the structural components of the Building, or the Building Systems, as determined by Landlord in Landlord's sole and absolute discretion. Any dispute involving the items in clause (iii) of the preceding sentence shall be resolved by Landlord in Landlord's sole and absolute discretion. Any changes to the TI Construction Drawings following Landlord's and Tenant's approval of same requested by Tenant shall be processed as provided in Section 4 hereof.

3. **Performance of Tenant's Work**.

(a) **Definition of Tenant's Work.** As used herein, "**Tenant's Work**" shall mean the designing, permitting and constructing of the Tenant Improvements. All Tenant's Work shall comply with, and be performed in a manner consistent with, any and all existing warranties relating to the Building (the "**Building Warranties**"). Tenant shall, and shall cause, Tenant's Architect, TI Contractor, and any subcontractor to, (i) honor all Building Warranties, and (ii) prohibit any action with respect to Tenant's Work which would compromise, diminish or void any of the Building Warranties. In the event any of the Building Warranties are compromised, diminished or voided as a result of any Tenant's Work, Tenant shall be fully liable for any and all costs and expenses associated with and/or resulting from such compromise, diminution or voidance. Tenant's Work shall include all related design and engineering services and the fees of third party consultants for construction management services. Landlord will cooperate with Tenant as reasonably necessary in the enforcement of any Building Warranties, including the assignment of rights under the Building Warranties as necessary. Upon the termination of the Lease, Tenant will cooperate with Landlord in re-assigning any Warranties as necessary.

(b) **Commencement and Permitting of Tenant's Work.** Prior to Tenant's commencement of construction of the Tenant Improvements, Tenant shall first (i) obtain and deliver to Landlord a copy of the building permit (the "**TI Permit**") authorizing the construction of the Tenant Improvements consistent with the TI Construction Drawings approved by Landlord and (ii) provide to Landlord copies of the fully executed contract between Tenant and the TI Architect, and between Tenant and the TI Contractor. The cost of obtaining the TI Permit shall be payable from the TI Fund. Landlord shall assist Tenant in obtaining the TI Permit. Prior to the commencement of any Tenant's Work, Tenant shall deliver to Landlord, evidence of insurance in form and content acceptable to Landlord for Tenant, the TI Architect and the TI Contractor, which shall include an endorsement to such insurance policies naming Landlord as an additional insured or loss payee, as applicable. Landlord shall be a third party beneficiary under any contract between Tenant and the TI Architect, and between Tenant and TI Contractor, for Tenant's Work, and a third party beneficiary of any and all warranties extended to Tenant as a result of the Tenant's Work.

(c) **Selection of Materials, Etc.** Where more than one type of material or structure is indicated on the TI Construction Drawings approved by Tenant and Landlord, the option will be within Landlord's reasonable discretion.

(d) **Substantial Completion**. "**Substantially Completed**" or "**Substantial Completion**" means the date that, in the reasonable opinion of Landlord's construction manager, the Tenant Improvements are complete except for minor punch list items.

4. **Changes.** Any changes requested by Tenant to the Tenant Improvements after the delivery and approval by Landlord of the TI Design Drawings, shall be requested and instituted in accordance with the provisions of this Section 4 and shall be subject to the written approval of Landlord, such approval not to be unreasonably withheld, conditioned or delayed.

(a) **Tenant's Right to Request Changes.** If Tenant shall request changes ("**Changes**"), Tenant shall request such Changes by notifying Landlord in writing in substantially the same form as the AIA standard change order form, Form G-701 (a "**Change Request**"), which Change Request shall detail the nature and extent of any such Change. Such Change Request must be signed by Tenant's Representative. Landlord shall review and approve or disapprove such Change Request within ten (10) business days thereafter, provided that Landlord's approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Implementation of Changes.** If Landlord approves such Change, Tenant may cause the approved Change to be instituted.

5. **Costs**.

(a) **Budget For Tenant Improvements.** Before the commencement of construction of the Tenant Improvements, Tenant shall obtain and provide Landlord with a detailed breakdown, by trade, of the costs incurred or which will be incurred, in connection with the design and construction of Tenant's Work (the "**Budget**"). The Budget shall be based upon the TI Construction Drawings approved by Landlord, and shall include a payment to Landlord of a construction supervisory fee in the amount of $50,000.00 (the "**Construction Administration Fee**") for monitoring and inspecting the construction of Tenant's Work, which sum shall be payable from the TI Fund.

(b) **TI Allowance**. Landlord shall provide to Tenant a tenant improvement allowance (collectively, the "**TI Allowance**") as follows:

1. a "**Tenant Improvement Allowance**" in the maximum amount of $50.00 per rentable square foot in the Premises, or $5,140,750.00 in the aggregate (based on the Premises being 102,815 rentable square feet in size, but subject to revision if the actual size of the Premises is determined to be other than such size), which is included in the Base Rent set forth in the Lease; and

2. an "**Additional Tenant Improvement Allowance**" in the maximum amount of $80.00 per rentable square foot in the Premises, or $8,225,200.00 in the aggregate, which shall, to the extent used, result in the requirement to pay TI Allowance Rent as set forth in Section 3 of the Lease. The TI Allowance shall be disbursed in accordance with this Work Letter.

(c) **Excess TI Costs.** It is understood and agreed that Landlord is under no obligation to bear any portion of the cost of any of the Tenant Improvements except to the extent of the TI Allowance. Tenant shall be obligated to pay the difference between the TI Costs under the Budget and the TI Allowance ("**Tenant's Contribution**") so that the cost of completion of the Tenant Improvements exceeds the TI Allowance, Tenant shall pay the excess. The sum of the TI Allowance and Tenant's Contribution shall be called the "**TI Fund**".

(d) **Payment for TI Costs.** Landlord shall disburse the TI Allowance once a month against a draw request in Landlord's standard form, containing such certifications, lien waivers, inspection reports and other matters as Landlord customarily obtains, to the extent of Landlord's approval thereof for payment, no later than thirty (30) days following receipt of such

draw request. Notwithstanding anything herein to the contrary, at no time shall any portion of property paid for with the TI Allowance be deemed Tenant's Property, provided that if Tenant pays off the Additional Tenant Improvement Allowance, those items so indicated in Section 12 of the Lease shall become Tenant's Property.

(e) **Costs Includable in TI Fund.** The TI Fund will be used for the payment of the hard and soft costs of design and construction costs of the Tenant Improvements, including, without limitation, the cost of preparing the TI Design Drawings and the TI Construction Drawings, costs of obtaining all necessary permits and approvals, all costs set forth in the Budget, including the Construction Administrative Fee, all hard costs of construction, costs for security installations (excluding any "head end unit" and any processing unit necessary to operate the security system), built-in cold rooms, built-in casework, built-in machinery and equipment, glass washing equipment, deionized water systems, autoclaves, chillers, fume hoods, and related equipment installed within the Premises, and the cost of Changes (collectively, "**TI Costs**").

6. **Miscellaneous**.

(a) **Consents.** Whenever consent or approval of either party is required under this Work Letter, that party shall not unreasonably withhold, condition or delay such consent or approval, except as may be expressly set forth herein to the contrary.

(b) **Modification.** No modification, waiver or amendment of this Work Letter or of any of its conditions or provisions shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

(c) **Counterparts.** This Work Letter may be executed in any number of counterparts but all counterparts taken together shall constitute a single document.

(d) **Governing Law.** This Work Letter shall be governed by, construed and enforced in accordance with the internal laws of the state in which the Premises are located, without regard to choice of law principles of such State.

(e) **Time of the Essence.** Time is of the essence of this Work Letter and of each and all provisions thereof.

(f) **Default.** Notwithstanding anything set forth herein or in the Lease to the contrary, Landlord shall not have any obligation to perform any work hereunder or to fund any portion of the TI Allowance during any period Tenant is in Default under the Lease.

(g) **Severability.** If any term or provision of this Work Letter is declared invalid or unenforceable, the remainder of this Work Letter shall not be affected by such determination and shall continue to be valid and enforceable.

(h) **Merger.** All understandings and agreements, oral or written, heretofore made between the parties hereto and relating to Tenant's Work are merged in this Work Letter, which alone (but inclusive of provisions of the Lease incorporated herein and the final approved constructions drawings and specifications prepared pursuant hereto) fully and completely

expresses the agreement between Landlord and Tenant with regard to the matters set forth in this Work Letter.

(i) **Entire Agreement.** This Work Letter is made as a part of and pursuant to the Lease and, together with the Lease, constitutes the entire agreement of the parties with respect to the subject matter hereof. This Work Letter is subject to all of the terms and limitation set forth in the Lease, and neither party shall have any rights or remedies under this Work Letter separate and apart from their respective remedies pursuant to the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Work Letter to be effective on the date first above written.

TENANT:

NABI BIOPHARMACEUTICALS,
a Delaware corporation

By: /s/ RAAFAT FAHIM
Its: **Sr. V.P. Manufacturing, Technical and Production Operations**

LANDLORD:

ARE-30 WEST WATKINS, LLC
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: /s/ JENNIFER PAPPAS
V.P. and Assistant Secretary

EXHIBIT D TO LEASE

ACKNOWLEDGMENT OF COMMENCEMENT DATE

This **ACKNOWLEDGMENT OF COMMENCEMENT DATE** is made this _____ day of _____, _____, between ARE-30 WEST WATKINS, LLC, a Delaware limited liability company ("**Landlord**"), and NABI BIOPHARMACEUTICALS, a Delaware corporation ("**Tenant**"), and is attached to and made a part of the Lease dated June __, 2005 (the "**Lease**"), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

Landlord and Tenant hereby acknowledge and agree, for all purposes of the Lease, that the Commencement Date of the Base Term of the Lease is _____, _____, the "Rent Commencement Date is January 1, 2006, and the termination date of the Base Term of the Lease shall be midnight on December 31, 2017.

IN WITNESS WHEREOF, Landlord and Tenant have executed this ACKNOWLEDGMENT OF COMMENCEMENT DATE to be effective on the date first above written.

TENANT:

NABI BIOPHARMACEUTICALS,
a Delaware corporation

By: _____
Its: _____

LANDLORD:

ARE-30 WEST WATKINS, LLC
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS CORP.,
a Maryland corporation,
general partner

By: _____

EXHIBIT E TO LEASE

RULES AND REGULATIONS

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or any Tenant Party, or used by them for any purpose other than ingress and egress to and from the Premises.

2. Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.

3. Except for animals assisting the disabled, no animals shall be allowed in the offices, halls, or corridors in the Project.

4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.

5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will reasonably direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.

6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease or by Landlord. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.

7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Except for the overnight parking of operative vehicles, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.

8. Tenant shall maintain the Premises free from rodents, insects and other pests.

9. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.

10. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be

responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.

11. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.

12. Tenant shall not permit storage outside the Premises, including without limitation, outside storage of trucks and other vehicles, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.

13. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.

14. No auction, public or private, will be permitted on the Premises or the Project.

15. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

16. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.

17. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord’s consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.

18. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.

19. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant’s ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

EXHIBIT F TO LEASE

TENANT'S PERSONAL PROPERTY

None except as set forth below:

Various Fermentation skids

- 5 L (several)
- 80 L(2)
- 100 L
- 300 L
- 500 L

CIP Skid
Continuous Flow Centrifuges (several)
Decontamination Skid
Chromatography Skids
Various Process Vessels

- APC Cans
- 100L
- 250 L
- 400 L (2)
- Others

Microfiltration Skid
Ultrafiltration Skid
Autoclaves (3) (unless paid for by Landlord)
Glasswashers (3) (unless paid for by Landlord)
Depyrogenation Ovens (3)
Media Preparator
Homogenizer
Conveyor/Storage System
Dust Collection System
BioProfile 300 A/B
Vitek ID System
Floor Scale
Various Refrigerators
Various Freezers
LN_2 Freezers
Cold Rooms (not built-ins)
Warm Rooms (not built-ins)
Filing Devices

Note: The parties have agreed that any of the foregoing paid for by the TI Allowance shall be and remain the property of Landlord unless and until the Additional Tenant Improvement Allowance is paid off by Tenant.

EXHIBIT G TO LEASE

EXPANSION PROJECTS

1. Project: "Alexandria Technology Center – Gaithersburg"
2. 25, 35, 45 West Watkins Mill Road, Gaithersburg, Maryland

EXHIBIT H TO LEASE

PARKING MAP

[See attached]

EXHIBIT I TO LEASE

DESCRIPTION OF BASE BUILDING

EXHIBIT J TO LEASE

DRAWING OF LOT LINE ADJUSTMENT

EXHIBIT K TO LEASE

TENANTS WITH SUPERIOR EXPANSION RIGHT

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TABLE OF CONTENTS

Exhibit 31.1

Nabi Biopharmaceuticals

CERTIFICATIONS

Rule 13a-14(a)/15d-14(a) CERTIFICATION

I, Thomas H. McLain, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (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: October 21, 2005

By: /s/ Thomas H. McLain

Thomas H. McLain
Chief Executive Officer and President

Exhibit 31.2

Rule 13a-14(a)/15d-14(a) CERTIFICATION

I, Mark L. Smith, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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; and
    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (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: October 21, 2005

By: /s/ Mark L. Smith

Mark L. Smith
Senior Vice President, Finance,
Chief Financial Officer, Chief
Accounting Officer and Treasurer

EXHIBIT 32.1

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 quarterly report on Form 10-Q for the quarter ended September 24, 2005 (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, the information contained in the Report fairly presents, in all material respects, the financial condition of the Company as of September 24, 2005 and the results of operations of the Company for the three and nine months ended September 24, 2005.

The purpose of this certification 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: October 21, 2005

By: /s/ Thomas H. McLain

Name: Thomas H. McLain
Title: Chief Executive Officer

Date: October 21, 2005

By: /s/ Mark L. Smith

Name: Mark L. Smith
Title: Chief Financial Officer