U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-KSB

|X| Annual Report under Section 13 or 15(d) of the Securities Exchange Act of 1934 (Fee required)
For the fiscal year ended December 31, 1997

|_| Transition report under Section 13 or 15(d) of the Securities Exchange Act of 1934 (No fee required)

For the transition period from to

Commission file number 0-26422

DISCOVERY LABORATORIES, INC.
(Name of Small Business Issuer in Its Charter)

DELAWARE	94-3171943
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

509 MADISON AVENUE, 14TH FLOOR, NEW YORK, NEW YORK 10022

(Address of Principal Executive Offices Including Zip Code)

(212) 223-9504

(Issuer's Telephone Number, Including Area Code)

Securities registered under Section 12(b) of the Exchange Act:

Title of Each Class	Name of Each Exchange on Which Registered
None	None

Securities registered under Section 12(g) of the Exchange Act:

Common Stock, $.001 par value	Class A Warrants	Class B Warrants
(Title of Class)	(Title of Class)	(Title of Class)

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES |X| NO |_|

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B contained in this form, and no disclosure will be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. |_|

State issuer's revenues for its most recent fiscal year. $ 0.00

State the aggregate market value of the voting stock held by non-affiliates computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of March 24, 1998: $30,941,882(1)

State the number of shares outstanding of each class of the issuer's common equity as of March 24, 1998: 3,175,955 shares of Common Stock, par value.

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(1) Outstanding shares of the issuer's Series B Convertible Preferred Stock, par value $0.001 per share, are valued on the basis of the number of shares of the issuer's Common Stock, par value $0.001 per share, into which such preferred shares are convertible.

Unless the context otherwise requires, (i) all references to the "Company" include Discovery Laboratories, Inc. ("Discovery") and its majority-owned subsidiary, Acute Therapeutics, Inc. ("ATI"), (ii) all references to the Company's activities, results of operations and financial condition prior to November 25, 1997 relate to Discovery Laboratories, Inc., a former Delaware corporation ("Old Discovery"), a predecessor to the Company, insofar as business activities relating to the SuperVent(TM), Surfaxin(TM) and ST-630 products described herein are concerned and (iii) all references to the Company's common stock, par value $.001 per share (the "Common Stock") are to the Company's Common Stock after giving effect to the 1-for-3 reverse split of the Common Stock effected on November 25, 1997. See Item 1 and Item 4 in this Annual Report on Form 10-KSB (this "Report").

When used in this Report, the words "estimate", "project", "intend", "forecast", "anticipate" and similar expressions are intended to identify forward-looking statements. In addition, certain other statements set forth in this Report, including, without limitation, statements concerning the Company's research and development programs, the possibility of submitting regulatory filings for the Company's products under development, the seeking of joint development or licensing arrangements with pharmaceutical companies or others, the research and development of particular compounds and technologies for particular indications and the period of time for which the Company's existing resources will enable the Company to fund its operations and to meet the continuing listing requirements for the quotation of its securities on the Nasdaq SmallCap Market and the possibility of contracting with other parties additional licenses to develop, manufacture and market commercially viable products, are forward-looking and based upon the Company's current belief as to the outcome, occurrence and timing of future events or current expectations and plans. All such statements involve significant risks and uncertainties. Many important factors affect the Company's ability to achieve the stated outcomes and to successfully develop and commercialize its product candidates, including, among other things, the ability to obtain substantial additional funds, obtain and maintain all necessary patents or licenses, to demonstrate the safety and efficacy of product candidates at each state of development, to meet applicable regulatory standards and receive required regulatory approvals, to meet obligations and required milestones under its license agreements, to be capable of producing drug candidates in commercial quantities at reasonable costs, to compete successfully against other products and to market products in a profitable manner. Although the Company believes that its assumptions underlying the forward-looking statements are reasonable, any of the assumptions could prove inaccurate and, therefore, there also can be no assurance that these statements included in the Report will prove to be accurate. In light of the significant uncertainties inherent in these statements included herein, the inclusion of such information should not be regarded as a representation by the Company or any other person that the objectives and plans of the Company will be achieved; in fact, actual results could differ materially from those contemplated by such forward-looking statements. The Company does not undertake any obligation to publicly release any revisions to these forward-looking statements or to reflect the occurrence of unanticipated events.

PART I

ITEM 1. DESCRIPTION OF BUSINESS.

The Company is a development stage pharmaceutical company that is focused on acquiring, developing and commercializing proprietary, investigational drugs that have previously been tested in humans or animals. The Company's strategy is to conduct preclinical and clinical studies on investigational drugs licensed from third parties, either alone or in collaboration with corporate partners. The Company may also seek to enter into collaborations with corporate partners for manufacturing and marketing of such drugs.

PRODUCTS AND TECHNOLOGIES UNDER DEVELOPMENT

SuperVent(TM)

The Company is developing SuperVent(TM) as a stable, aerosolized, multidimensional therapy for airway diseases such as cystic fibrosis ("CF") and chronic bronchitis, which are characterized by inflammation, injurious oxidation and excessive sputum. CF is a progressive, lethal respiratory disease that afflicts approximately 23,000 patients in the United States and a comparable number in Europe. It is the most common lethal genetic disease among Caucasians. CF results from a genetic defect in the CFTR gene. The CFTR gene codes for a membrane protein responsible for the transport of chloride ions. Because of this genetic defect, CF mucus is excessively viscous and adherent to airway walls. Destruction of the lungs of CF patients occurs gradually as the inability to clear mucus from the lungs leads to blockage of the airways usually beginning in the smaller airways and alveoli. A new therapy which minimizes the pulmonary complications of CF would have a major impact on the length and quality of life of its patients.

SuperVent's(TM) active component is tyloxapol, a compound which has been safely used as an emulsifying agent in drug formulations by the United States pharmaceutical industry for over 40 years. Experimental research conducted by consultants to the Company indicates that tyloxapol may possess biological activities beyond its well-recognized emulsification properties. Tyloxapol is thought to have three mechanisms of action: anti-inflammatory activity, anti-oxidant activity and mucolytic activity. This combination of pharmacological activities is not presently found in any single, safe, effective therapy for CF or chronic bronchitis in the United States.

The Company's clinical development plan for SuperVent(TM) is to focus first on CF. In September 1995, the United States Food and Drug Administration (the "FDA") approved, subject to certain modifications, a physician-sponsored investigational new drug application ("IND") to begin a clinical trial of SuperVent(TM) for use in treating CF. The trial, which commenced on March 17, 1997 at the University of Utah Health Sciences Center, is designed to determine whether aerosolized SuperVent(TM) holds promise as a low toxicity, anti-inflammatory, anti-oxidant and mucolytic agent for the treatment of CF. The preliminary results from this clinical trial in normal healthy volunteers have indicated that the compound had no significant effects on any objective measure of safety (although coughing was noted by several subjects at the highest doses tested). Assuming the successful completion of the Phase 1/2 trial, Discovery intends to commence a multi-center, randomized, double-blinded, placebo-controlled, Phase 3 clinical trial in CF and to file an additional IND to commence a Phase 2 clinical trial for the treatment of chronic bronchitis.

Surfaxin(TM)

ATI is developing sinapultide, a proprietary, synthetic lung surfactant that was invented at The Scripps Research Institute ("Scripps"), under the brand name "Surfaxin"(TM) for the treatment of several conditions characterized by insufficient surfactant. Lung surfactants are protein-phospholipid complexes which coat the alveoli (air sacs) of the lungs. Lung surfactants lower surface tension in expiration and raise it during inspiration to prevent the collapse of alveoli. Replacement surfactants are currently used mainly to treat idiopathic respiratory distress syndrome ("IRDS"). Infants with this condition, as well as infants born with meconium (a component of the fetal bowel) in their lungs, which can lead to meconium aspiration syndrome ("MAS"), typically suffer from insufficient surfactant that can lead to a life-threatening loss of pulmonary function. Similarly, patients with acute respiratory distress syndrome ("ARDS"), which can result from trauma, smoke inhalation, head injury and a variety of other events, typically suffer from surfactant deficiency.

The potential market for synthetic lung surfactants is substantial. The incidence of ARDS is approximately 150,000 patients per year in the United States. IRDS affects 40,000 to 50,000 infants per year in the United States. Twenty to forty percent of infants with IRDS develop debilitating bronchopulmonary dysplasia requiring extended ventilatory support and hospitalization. MAS affects approximately 26,000 newborn infants per year in the United States.

Surfaxin(TM) is an aqueous suspension of lipid vesicles containing the novel synthetic peptide sinapultide. Surfaxin(TM) is patterned after human Surfactant Protein B, shown to have the greatest surfactant activity in humans. The product was exclusively licensed by Scripps to Johnson & Johnson, Inc. ("J&J"), which, together with its wholly owned subsidiary, Ortho Pharmaceutical Corporation ("Ortho"), engaged in development activities with respect to sinapultide. ATI acquired the exclusive worldwide sublicense to the sinapultide technology from J&J and Ortho in October 1996.

In July 1992, an IND submitted by Scripps relating to the use of Surfaxin(TM) to treat IRDS was approved by the FDA. J&J subsequently completed a multi-center, Phase 2 clinical trial of Surfaxin(TM) in 47 infants with IRDS. This trial demonstrated safety and efficacy comparable to that of the bovine-derived surfactant, Survanta(TM), marketed by Ross Laboratories. In September 1994, an IND was submitted by J&J relating to the use of Surfaxin(TM) to treat ARDS and was subsequently approved by the FDA. Both the IRDS IND and the ARDS IND have been transferred to ATI. ATI subsequently received FDA approval to amend the approved ARDS IND and re-initiate Phase 1 clinical trials of Surfaxin(TM) for the treatment of ARDS. The ARDS trial commenced on August 15, 1997 at Sharp Memorial Hospital in San Diego, California. ATI amended the existing IRDS IND to permit the initiation of a Phase 2 clinical trial of Surfaxin(TM) to treat MAS on May 27, 1997 at Thomas Jefferson University Hospital in Philadelphia.

ATI and Scripps are parties to a sponsored research agreement (the "Sponsored Research Agreement") pursuant to which ATI will contribute $460,000 to Scripps' Surfaxin(TM) research efforts through October 1998. ATI has an option to acquire an exclusive worldwide license to technology developed under the agreement, which it is required to exercise within 180 days from receipt of notice from Scripps of the development of such technology. Scripps will own all technology that it develops pursuant to work performed under the proposed Sponsored Research Agreement. ATI has the right to receive 50% of the net royalty income received by Scripps for inventions jointly developed by ATI and Scripps to the extent ATI does not exercise its option with respect to such inventions. ATI has entered into consulting agreements with certain key research personnel at Scripps.

ST-630

ST-630 is being developed by the Company for use in treating postmenopausal osteoporosis. Postmenopausal osteoporosis is a disease of postmenopausal women characterized by decreased bone mass which leads to reduced bone strength and an increased risk of fractures. ST-630 is an analog of the active circulating vitamin D hormone, calcitriol, modified to increase its potency and lengthen its circulating half-life. As a class, vitamin D analogs are commonly used therapies in Europe and Japan for osteoporosis. In aggregate, this class of compounds is believed to generate several hundred million dollars in worldwide sales for osteoporosis.

Published studies have confirmed the efficacy of vitamin D analogs in increasing bone mass and decreasing fractures. Vitamin D analogs, however, have not been well accepted in the United States due to certain side effects in the compounds currently marketed. Specifically, prior studies of vitamin D analogs have been associated with hypercalcemia in a percentage of patients.

Hypercalcemia is elevated calcium levels in the blood above a generally accepted range. No vitamin D analogs are currently marketed for osteoporosis in the United States.

In November 1997, the Company filed an IND with the FDA to initiate Phase 1 clinical studies of ST-630 as a once-daily, orally administered drug for the treatment of postmenopausal osteoporosis in the United States. On December 5, 1997, the Company initiated an initial safety and dose-ranging study of ST-630 in healthy normal volunteers and postmenopausal women either with or without osteoporosis at Covance Clinical Research Unit Inc. in Madison, Wisconsin. The Company has recently completed a Phase 1 clinical study of ST-630 in healthy normal volunteers and determined that ST-630 does represent a risk of hypercalcemia at any dosage levels that may prove efficacious for treating postmenopausal osteoporosis. Based upon the complete results of the dose-ranging study, the Company may then either seek to further optimize the delivery of ST-630 by testing one or more alternative means of delivery or, assuming acceptable results, seek to initiate a large-scale, multi-center clinical trial in the United States. The Company has access to preclinical data generated by Sumitomo Pharmaceuticals ("Sumitomo") and Taisho Pharmaceuticals ("Taisho") with respect to ST-630 pursuant to the terms of the licensing arrangements described herein.

OTHER TECHNOLOGIES IN PRODUCT PORTFOLIO

In addition to the products under development described above, the Company has rights to certain drug compounds that are not currently under active development by the Company.

Apafant Injection

Apafant was originally developed by Boehringer Ingelheim GmbH ("Boehringer Ingelheim") as an oral treatment for asthma. Boehringer Ingelheim had previously conducted extensive clinical trials in the United States and in other countries using the oral form of the drug. In May 1996, the Company entered into a license agreement with Boehringer Ingelheim pursuant to which the Company has pursued a development program for an injectable formulation of Apafant ("Apafant Injection") for the treatment of acute pancreatitis.

Acute pancreatitis is a sudden inflammation of the pancreas caused by, among other things, gallstones, alcohol abuse and infection. Patients with moderate to severe pancreatitis receive only supportive care in an intensive care unit. During an episode of acute pancreatitis, patients are at risk of organ failure including loss of lung, kidney and liver function. In a significant number of cases, acute pancreatitis is fatal. There is currently no FDA approved therapy for the treatment of acute pancreatitis.

Apafant is a platelet activating factor ("PAF") antagonist. PAF is an inflammatory substance produced in the body that is thought to play a role in acute pancreatitis. In certain experiments, acute pancreatitis and the resulting end organ damage and failure can be induced in laboratory animals by the injection of PAF. Treatment with Apafant has been demonstrated to protect laboratory animals in certain models of PAF-induced organ damage, as well as other models of multiple organ system failure. The Company believes that a drug that can prevent organ damage and failure could be beneficial in treating patients with acute pancreatitis.

The Company met with the FDA on November 7, 1996 for a pre-IND meeting to discuss its plans to study Apafant Injection for the treatment of patients with acute pancreatitis. Discovery filed an IND on September 9, 1997 to initiate a Phase 1b/2 clinical trial in patients with acute pancreatitis. To support its IND, Discovery is relying on preclinical and clinical safety data provided by Boehringer Ingelheim that were obtained with the oral and nasal forms of Apafant for other indications. There is no assurance that upon review of the IND, the FDA will approve the Company's proposed

clinical trial of Apafant. The Company's development activities with respect to Apafant took place prior to the Company's merger with Old Discovery (see "History; Completion of Merger"), and the Company's present management team is evaluating the Apafant program.

AN10

AN10 is a novel analog of butyric acid licensed by Discovery from Bar-Ilan Research & Development Co., Ltd. ("Bar-Ilan"). Recent animal studies suggest that the topical form of AN10 ("AN10 Topical") may prove to have potential utility in reducing chemotherapy-induced alopecia, or hair loss, in patients with cancer. In addition, an intravenous formulation of AN10, Novaheme Injection, may have potential for the treatment of beta-hemoglobinopathies as suggested by limited clinical studies that have demonstrated that agents which increase cellular levels of fetal hemoglobin may reduce disease symptoms in patients with sickle-cell anemia, a beta hemoglobinopathy.

Discovery is investigating the possibility of outlicensing the topical form of AN10 Topical and Novaheme Injection to other companies willing to pursue development of these products. There can be no assurance that Discovery will proceed with such plans or will be successful in identifying a suitable sublicensee. The regulatory status of AN10 and Novaheme Injection, among other factors, will impact Discovery's ability to enter into such outlicensing agreements.

LICENSING ARRANGEMENTS; PATENTS AND PROPRIETARY RIGHTS

CMHA License Agreement: SuperVent(TM)/Tyloxapol

The Company has obtained the core technology relating to SuperVent(TM) pursuant to a license agreement with the Charlotte-Mecklenberg Hospital Authority (the "CMHA License Agreement"). The CMHA License Agreement grants the Company an exclusive worldwide license under two issued United States patents (United States Patent No. 5,474,760 and United States Patent No. 5,512,270) and two pending United States patent applications held by CMHA, and any later-issued United States and any foreign patents based on or issuing from the issued patents and the pending patent applications. The issued United States patents expire in 2013. The United States patents cover methods of using tyloxapol, the active compound in SuperVent(TM), to treat cystic fibrosis and methods of treating diseases caused by oxidant species, such as myocardial infarction, stroke and ARDS. The two pending United States patent applications relate to the use of tyloxapol as an anti-inflammatory and anti-oxidant agent.

Tyloxapol, the active compound in SuperVent(TM) was the subject of an issued United States composition of matter patent which expired in 1965. The patents and patent applications licensed to the Company differ from the expired patent, inter alia, in that one patent application covers proprietary pharmaceutical formulations containing high concentrations of tyloxapol and the other patents and patent applications cover uses of tyloxapol to treat certain diseases. Although the Company believes that high concentration formulations of tyloxapol will represent the most practical means to deliver the active compound, there can be no assurance that any patent application covering this formulation will issue or that the compound will not prove similarly effective in lower concentrations which are not covered by any of the Company patent applications.

J&J License Agreement: Surfaxin(TM)

ATI has received an exclusive, worldwide sublicense from J&J (the "J&J License Agreement") to commercialize Surfaxin(TM) for the diagnosis, prevention or treatment of disease. The J&J License Agreement is a sublicense under certain patent rights previously licensed to J&J by Scripps (the

"Scripps Patent Rights") and a license under certain other patent rights held by Ortho (the "Ortho Patent Rights"). The Scripps Patent Rights consist of three issued United States patents and two pending United States applications. The three issued patents are United States Patent No. 5,407,914, U.S. Patent No. 5,260,273 and U.S. Patent No. 5,164,369. These patents relate to synthetic pulmonary surfactants (including Surfaxin(TM)), certain related polypeptides and a method of treating respiratory distress syndrome with these surfactants. The first of these patents will expire in 2009. The two pending United States applications relate to pulmonary surfactants, related polypeptides, liposomal surfactant compositions and methods of treating respiratory distress syndromes with these surfactants and compositions. The Ortho Patent Rights consist of certain pending United States patent applications which relate to methods of manufacturing certain peptides which may be used in the manufacture of Surfaxin(TM). J&J is responsible for filing, prosecuting and maintaining the Ortho Patent Rights.

WARF License Agreement: ST-630

Pursuant to an agreement (the "WARF License Agreement") with the Wisconsin Alumni Research Foundation ("WARF"), the Company has an exclusive license within all countries in the Western hemisphere in the field of prevention, treatment, amelioration or cure of bone disease, under U.S. Patent No. 4,358,406 (the "ST-630 Patent") covering the compound ST-630 and U.S. Patent No. 5,571,802 (the "ST-630 Use Patent") covering a method for treating postmenopausal osteoporosis. In addition, the Company has options to extend the exclusive license to the remaining countries of the world with the exception of Japan. The Company options expire on January 1, 2002.

The ST-630 Patent will expire in July 2001, which the Company anticipates will be prior to receipt of any marketing approval for ST-630 in the United States. The ST-630 Use Patent, which expires in 2014, is limited to claims relating to a method of treating postmenopausal osteoporosis in humans having such disease with an effective dosage of ST-630. These claims do not include claims relating to the use of ST-630 to treat other metabolic bone disorders, such as age-related osteoporosis (which occurs in men and women) and renal osteodystrophy. At the Company's request, WARF filed an application to pursue additional claims relating to the use of ST-630 to treat other metabolic bone diseases. However, there can be no assurance that any patent containing such additional claims will issue in the United States or elsewhere. United States and foreign patents covering certain processes relating to the manufacture of vitamin D analogs, which have been nonexclusively licensed to the Company under the WARF License Agreement, will expire on various dates up to 2005.

Boehringer Ingelheim License: Apafant

In 1996, the Company signed an agreement (the "Boehringer Ingelheim License Agreement") with Boehringer Ingelheim to acquire the rights in the United States and the European Union to develop a new intravenous formulation of Apafant for all clinical indications other than asthma. Pursuant to the agreement, the Company may be obligated to make future milestone and royalty payments to Boehringer Ingelheim. However, such license may be required to be reconveyed to Boehringer Ingelheim in the event that Boehringer Ingelheim exercises an option granted in the Boehringer Ingelheim License Agreement, following which Boehringer Ingelheim would have the right to develop and commercialize Apafant and would be obligated to make milestone and royalty payments to the Company. Should Boehringer Ingelheim exercise this option and then fail to pursue development of Apafant on a good faith efforts basis consistent with good business judgment in any of certain countries, then the rights to Apafant in the country with respect to which the failure occurs shall again revert to the Company.

Bar-Ilan License: AN1O

The Company's rights with respect to the development of AN10 were obtained pursuant to an exclusive worldwide license with Bar-Ilan (the "Bar-Ilan License Agreement") to a United States patent and corresponding foreign patents and patent applications directed to the use of AN10 and other butyric acid analogs in the fields, among others, of beta-hemoglobinopathies and alopecia.

The Company is aware of the existence of prior art references which may affect the validity of certain claims in the issued butyrate patent, which claims broadly cover AN10, among other compounds. Reexamination or reissue of such patent by the United States Patent & Trademark Office (the "PTO"), in light of these references, may be necessary in order to obtain valid claims which are both free of the prior art and which specifically cover AN10. In any event, given that the already-uncovered prior art references relates to compounds but not to methods of treatment, the existence of such references would not, as a matter of United States patent law, be expected to affect any claims directed to the use of AN10 to treat beta-hemoglobinopathies as covered in United States Patent No. 5,569,675.

The Company is also aware of other patents (the "Perrine patents") which appear to cover the administration of butyric acid, during gestation or infancy, to ameliorate beta-hemoglobinopathies disorders, including sickle cell anemia and beta-thalassemia, by increasing the level of fetal hemoglobin. To the extent that AN10 converts to butyric acid and in the event the Company's or its licensees' commercial activities include administration of AN10 during gestation and/or infancy, such activities could give rise to issues of infringement of the Perrine patents.

The existence of prior art references, and the possibility that administration of AN10 during gestation and/or infancy could suggest issues of patent infringement, may affect the Company's ability to outlicense AN10 Topical and Novaheme to other companies for further development of these products.

Risk of Loss of Technology/Technological Uncertainty and Obsolescence

The Company must satisfy the terms and conditions set forth in the license agreements described above in order to retain its license rights thereunder, including but not limited to diligent pursuit of product development and the timely payment of royalty fees (including, with respect to certain such agreements, minimum royalty payments), milestone payments and other amounts. If the Company fails to comply with such terms and conditions as set forth in such license agreements, its rights thereunder for individual product opportunities could be terminated.

The patent position of firms relying upon biotechnology is highly uncertain and involves complex legal and factual questions. To date, there has emerged no consistent policy regarding the breadth of claims allowed in biotechnology patents or the degree of protection afforded under such patents. The Company's success will depend, in part, on its ability, and the ability of its licensor(s), to obtain protection for its products and technologies under United States and foreign patent laws, to preserve its trade secrets, and to operate without infringing the proprietary rights of third parties. The Company has obtained rights to certain patents and patent applications and may, in the future, seek rights from third parties to additional patents and patent applications. There can be no assurance that patent applications relating to the Company's potential products which have been licensed to date, or that it may license from others in the future, will result in patents being issued, that any issued patents will afford adequate protection to the Company or not be challenged, invalidated, infringed or circumvented, or that any rights granted thereunder will afford additional competitive advantages to the Company. Furthermore, there can be no assurance that others have not independently developed, or will not independently develop, similar products and/or technologies, duplicate any of

the Company's products or technologies, or, if patents are issued to, or licensed by, the Company, design around such patents. There also can be no assurance that the validity of any of the patents licensed to the Company, would be upheld if challenged by others in litigation or that the Company's activities would not infringe patents owned by others. The Company could incur substantial costs in defending itself in suits brought against it or any of its licensors, or in suits in which the Company may assert, against others, patents in which the Company has rights. Should the Company's products or technologies be found to infringe patents issued to third parties, the manufacture, use, and sale of the Company's products could be enjoined and the Company could be required to pay substantial damages. In addition, the Company may be required to obtain licenses to patents or other proprietary rights of third parties, in connection with the development and use of its products and technologies. No assurance can be given that any licenses required under any such patents or proprietary rights would be made available on terms acceptable to the Company, if at all.

The Company also relies on trade secrets and proprietary know-how. The Company requires all employees to enter into confidentiality agreements that prohibit the disclosure of confidential information to third parties and require disclosure and assignment to the Company of rights to their ideas, developments, discoveries and inventions. In addition, the Company seeks to obtain such agreements from its consultants, advisors and research collaborators; however, such agreements may not be possible where such persons are employed by universities or other academic institutions that require assignment of employee inventions to them.

THIRD PARTY SUPPLIERS; MANUFACTURING AND MARKETING

To be successful, the Company's products must be manufactured in commercial quantities under good manufacturing practice ("GMP") requirements set by the FDA at acceptable costs. The FDA periodically inspects manufacturing facilities in the United States in order to assure compliance with applicable GMP requirements. Foreign manufacturers also are inspected by the FDA if their drugs are marketed in the United States. Failure of the foreign or domestic suppliers of Discovery's products or failure of the manufacturers of the Company's products to comply with GMP regulations or other FDA regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations. The Company does not have any manufacturing capacity of its own but instead intends to rely on outside manufacturers to produce appropriate clinical grade material for its use in clinical studies for certain of its products.

The active compound in SuperVent(TM) is presently manufactured for several third parties pursuant to GMP standards by an affiliate of Sanofi-Winthrop, Inc. (Sanofi"), a multinational pharmaceutical company. Sanofi is the sole supplier of tyloxapol with GMP standard manufacturing capabilities and there are few alternative non-GMP approved sources of supply. Currently, the Company purchases bulk tyloxapol from Sanofi on an as-needed basis. Although Sanofi has sold a quantity of tyloxapol sufficient for the Company's proposed Phase 1/2 clinical trial of SuperVent(TM), the Company does not have an agreement with Sanofi to supply any additional material, either in connection with a Phase 3 clinical trial or, following regulatory approval, for marketing purposes. In addition, the Company does not intend to enter into an agreement for supply of the formulated drug containing tyloxapol unless it plans to initiate a Phase 3 clinical trial of tyloxapol for the treatment of CF. There can be no assurance that the Company will be able to enter into a supply agreement with Sanofi or a supplier of the formulated drug on terms acceptable to the Company, if at all. In such case, the Company would be required to seek alternate manufacturing sources capable of producing tyloxapol and the formulated drug. There can be no assurance that the Company will be able to identify and contract with alternative manufacturers on terms acceptable to it, if at all. Any interruption in the supply of tyloxapol would have a material adverse effect on the Company's business, financial condition and results of operations.

ATI has acquired from J&J experimental compounds, the sinapultide and manufacturing equipment needed to produce and meet its requirements for clinical supplies of Surfaxin(TM). In March 1997, ATI entered into an agreement with Cook Imaging Corporation ("Cook") for the manufacture of Surfaxin(TM) to be used in clinical trials. In February 1998, ATI and Cook entered into an agreement to provide additional batches of Surfaxin(TM) for further clinical trials. ATI does not intend to seek a long-term agreement with Cook and is exploring alternatives for the commercial manufacture of Surfaxin(TM). Failure to identify and reach an agreement with a third party manufacturer would substantially delay ATI's development of Surfaxin(TM) and could have a material adverse effect on Discovery's business, financial condition and results of operations.

Tetrionics, Inc. ("Tetrionics") manufactures, formulates and supplies the Company with GMP-grade ST-630 for the Company's investigational and commercial purposes on an as-needed basis. Tetrionics presently manufactures and supplies ST-630 to Penederm, Inc., in the United States for investigational topical use for the treatment of psoriasis. The Company does not have a long-term supply agreement with Tetronics or any other suppliers for ST-630. Any interruption of the Company's supply of ST-630 could substantially delay the Company's development efforts with respect to ST-630 and could have a material adverse effect on the Company's business, financial condition and results of operations.

Pursuant to the Boehringer Ingelheim License Agreement, Boehringer Ingelheim has in the past provided the Company with quantities of Apafant sufficient to meet the Company's requirements. However, Boehringer Ingelheim has advised the Company that it will not be in a position to meet the Company's Apafant requirements in the future. There can be no assurance that the Company will not experience delays or other supply problems that may materially adversely affect the Company's research and development efforts with respect to Apafant or that The Company will be able to obtain an alternate source of supply on a timely basis. Apafant Injection is currently manufactured by Pharmaceutical Development Center ("PDC"). There can be no assurance that PDC will agree to manufacture these products to meet the Company's future needs to supply its clinical trials. It is anticipated that prior to marketing, if any, a new commercial manufacturer of Apafant Injection will need to be identified, qualified under GMP standards, and its manufacturing process validated in a manner acceptable to regulatory authorities. There can be no assurance that a new manufacturer can be identified, qualified and validated on a timely basis.

The active compound (AN10) in The Company's AN10 Topical product has previously been manufactured by Chemsyn. The Company has no long-term agreement with Chemsyn for the production of AN10. AN10 Topical is currently manufactured by PDC. The Company has no long-term agreement with PDC for the production of AN10 Topical or Novaheme.

It is the Company's long-term goal to market SuperVent(TM) for CF and possibly certain of its other products through a direct sales force (or, in the case of SuperVent(TM), possibly through the distribution capabilities of the Cystic Fibrosis Foundation), if and when any necessary regulatory approvals are obtained. The Company currently has no marketing and sales experience and no marketing or sales personnel. Unless a sales force is established, the Company will be dependent on corporate partners or other entities for the marketing and selling of its products. There can be no assurance that the Company will be able to enter into any satisfactory arrangements for the marketing and selling of its products. The inability of the Company to enter into such third party distribution, marketing and selling arrangements for its anticipated products could have a material adverse effect on the Company's business, financial condition and results of operations.

COMPETITION

The Company is engaged in highly competitive fields of pharmaceutical research. Competition from numerous existing companies and others entering the fields in which the Company operates is intense and expected to increase. The Company expects to compete with, among others, conventional pharmaceutical companies. Most of these companies have substantially greater research and development, manufacturing, marketing, financial, technological, personnel and managerial resources than the Company. Acquisitions of competing companies by large pharmaceutical or health care companies could further enhance such competitors' financial, marketing and other resources. Moreover, competitors that are able to complete clinical trials, obtain required regulatory approvals and commence commercial sales of their products before The Company could enjoy a significant competitive advantage. There are also existing therapies that may be expected to compete with the Company's products under development.

Genentech has marketed Pulmozyme(TM) in the United States and Canada as a CF therapy since early 1994. Pulmozyme(TM) reduces the viscosity of CF mucus by cleaving the DNA released from destroyed inflammatory, epithelial and bacterial cells which collect in mucus and contribute to its abnormal viscosity and adherence. The approximate yearly cost of Pulmozyme(TM) treatment for an average patient is $11,000. The Company believe that the high cost of this treatment may reduce its competitive profile as compared with SuperVent(TM).

Presently, there are no approved drugs that are specifically indicated for MAS or ARDS. Current therapy consists of general supportive care and mechanical ventilation. Three products are specifically approved for the treatment of IRDS. Exosurf(TM), marketed by Glaxo Wellcome, contains only phospholipids and synthetic organic detergents and no stabilizing protein or peptides. Survanta(TM), which has been shown to be more effective than Exosurf(TM) in clinical trials, is an extract of bovine lung that contains the cow version of Surfactant Protein B. Recently, Forest Laboratories has obtained an approvable letter from the FDA for its calf lung surfactant, Infasurf(TM), for use in IRDS. Although none of the three approved surfactants for IRDS is approved for ARDS, which is a significantly larger market, there are a significant number of other potential therapies in development for the treatment of ARDS that are not surfactant related. Any of these various drugs or devices could significantly impact the commercial opportunity for Surfaxin(TM). The Company believes that synthetic surfactants such as Surfaxin(TM) will be far less expensive to produce than the animal-derived products approved for the treatment of IRDS.

There are numerous approved therapies for osteoporosis which will compete with ST-630. Such therapies include estrogen, which is of proven benefit in treating osteoporosis in postmenopausal women, but is associated with significant adverse effects (including increased breast and uterine cancer risk); Fosamax(TM) (alendronate), a drug of the bisphosphonate class marketed by Merck; Evista(TM) a selective estrogen receptor modulator marketed by Eli Lilly; and Miacalcin(TM), a nasally administered calcitonin marketed by Sandoz Pharmaceuticals. In addition, there are a number of therapies in development for osteoporosis that potentially will compete with ST-630.

The Company is aware that British Biotech plc ("BBP") is currently developing lexipafant, another platelet activating factor antagonist, for the treatment of patients with pancreatitis. BBP is currently engaged in Phase 3 clinical trials in the United States and had filed for marketing approval in the European Union although that approval will not be forthcoming pending review of the current Phase 3 study once completed. If lexipafant is approved prior to Apafant, it may increase the cost and time required to obtain approval of Apafant, or limit the indications for which Apafant may be marketed if it is approved. There can be no assurance that Apafant will prove more efficacious than lexipafant in treating patients with pancreatitis or, if approved, that Apafant will gain market acceptance.

The Company is aware that there are several additional butyrate-related treatments for blood disorders that would directly compete with the Company's Novaheme(TM) product under development and, therefore, potentially affect the Company's ability to outlicense such product.

GOVERNMENT REGULATION

The testing, manufacture, distribution, advertising and marketing of drug products are subject to extensive regulation by governmental authorities in the United States and other countries. Prior to marketing, any pharmaceutical products developed or licensed by the Company must undergo an extensive regulatory approval process required by the FDA and by comparable agencies in other countries. This process, which includes preclinical studies and clinical trials of each pharmaceutical compound to establish its safety and efficacy and confirmation by the FDA that good laboratory, clinical and manufacturing practices were maintained during testing and manufacturing, can take many years, requires the expenditure of substantial resources and gives larger companies with greater financial resources a competitive advantage over the Company. The FDA review process can be lengthy and unpredictable, and the Company may encounter delays or rejections of its applications when submitted. If questions arise during the FDA review process, approval may take a significantly longer period of time. Generally, in order to gain FDA approval, a company first must conduct preclinical studies in a laboratory and in animal models to obtain preliminary information on a compound's efficacy and to identify any safety problems. The results of these studies are submitted as part of an IND application that the FDA must review before human clinical trials of an investigational drug can start.

Clinical trials are normally done in three phases and generally take two to five years or longer to complete. Typically, clinical testing involves a three-phase process. Phase 1 consists of testing the drug product in a small number of humans to determine preliminary safety and tolerable dose range. Phase 2 involves larger studies to evaluate the effectiveness of the drug product in humans having the disease or medical condition for which the product is indicated and to identify possible common adverse effects in a larger group of subjects. Phase 3 consists of additional controlled testing to establish clinical safety and effectiveness in an expanded patient population of geographically dispersed test sites, to evaluate the overall benefit-risk relationship for administering the product and to provide an adequate basis for product labeling.

After completion of clinical trials of a new drug product, FDA and foreign regulatory authority marketing approval must be obtained. A New Drug Application ("NDA") submitted to the FDA generally takes one to three years to obtain approval. If questions arise during the FDA review process, approval may take a significantly longer period of time. The testing and approval processes require substantial time and effort and there can be no assurance that any approval will be granted on a timely basis, if at all. Even if regulatory clearances are obtained, a marketed product is subject to continual review, and later discovery of previously unknown problems or failure to comply with the applicable regulatory requirements may result in restrictions on the marketing of a product or withdrawal of the product from the market as well as possible civil or criminal sanctions. For marketing outside the United States, the Company also will be subject to foreign regulatory requirements governing human clinical trials and marketing approval for pharmaceutical products. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary widely from country to country. None of the Company's products under development have been approved for marketing in the United States or elsewhere. No assurance can be given that the Company will be able to obtain regulatory approval for any such products under development. Failure to obtain requisite governmental approvals or failure to obtain approvals of the scope requested will delay or preclude the Company or its licensees or marketing partners from marketing their products, or limit the commercial use of the products, and thereby could have a

material adverse effect on the Company's business, financial condition and results of operations.

EMPLOYEES

The Company utilizes a product development strategy that involves contracting out research, development and manufacturing functions to third parties in order to minimize the expense and overhead associated with full-time employees. Consistent with this strategy, the Company has only 13 employees, two of whom devote only a portion of their time to the business of Discovery. The Company's future success depends in significant part upon the continued service of its key scientific personnel and executive officers and its continuing ability to attract and retain highly qualified scientific and managerial personnel. Competition for such personnel is intense and there can be no assurance that the Company can retain its key employees or that it can attract, assimilate or retain other highly qualified technical and managerial personnel in the future.

HISTORY; COMPLETION OF MERGER

On November 25, 1997, Old Discovery was merged (the "1997 Merger") with and into the Company pursuant to an Agreement and Plan of Merger (the "1997 Merger Agreement") dated as of July 16, 1997, between the Company and Old Discovery. The terms of the 1997 Merger included (i) the change of the name of the Company (which was named Ansan Pharmaceuticals, Inc. prior to the 1997 Merger) to Discovery Laboratories, Inc., and (ii) the reconstitution of the Board of Directors of the Company to initially include seven directors who were formerly directors of Old Discovery, two existing directors of the Company and one director nominated by D.H. Blair Investment Banking Corp. (who was also an existing director of the Company). Immediately following the consummation of the 1997 Merger, the Company effected a 1-for-3 reverse split (the "Reverse Split") of the outstanding common stock, par value $0.001 per share, of the Company (the Common Stock").

Concurrently with the execution of the 1997 Merger Agreement, the Company and Old Discovery entered into a stock purchase agreement pursuant to which Old Discovery acquired 13,000 shares of the Series A Convertible Preferred Stock of the Company for a purchase price of $1.3 million (the "Interim Investment"). Such Series A Convertible Preferred Stock was cancelled at the effective time of the 1997 Merger.

At the time the 1997 Merger Agreement was executed, Titan Pharmaceuticals, Inc. ("Titan"), which held securities representing approximately 44% of the voting power of the Company prior to Old Discovery's making of the Interim Investment, entered into an agreement with the Company providing that upon effectiveness of the 1997 Merger, the Company would sublicense certain rights to certain drug compounds under the Bar-Ilan License Agreement to Titan in exchange for the cancellation of all Common Stock owned by Titan and the provision of a 2% royalty payable by Titan to the Company from net sales of the drug compounds sublicensed by the Company to Titan. (This agreement was subsequently modified to permit Titan to enter into a direct license agreement with Bar-Ilan relating to the rights that would otherwise have been sublicensed by the Company. The Company is nevertheless entitled to the 2% royalty referenced above.) Additionally, the 1997 Merger Agreement provided that debt in the amount of approximately $1,200,000 would be repaid by the Company to Titan at the effective time of the 1997 Merger.

As a consequence of the 1997 Merger and the Reverse Split, (i) each share of the common stock, par value $0.001 per share, of Old Discovery ("Old Discovery Common Stock") was exchanged for 0.389157 shares of new Common Stock of the Company ("New Common Stock"), (ii) each share of Series A Convertible Preferred Stock, stated value $10.00 per share, of Old Discovery was exchanged for one share of Series B Convertible Preferred Stock, stated value $10.00 per share, of the Company

("Series B Preferred Stock") and (iii) each share of Series B Preferred Stock, which was convertible into 4.6698 shares of Common Stock prior to giving effect to the Reverse Split, became convertible into 1.5566 shares of New Common Stock.

As a consequence of the Reverse Split, (i) each share of Common Stock outstanding immediately prior to the 1997 Merger was exchanged for 1/3 of a share of New Common Stock, (ii) each Class A Warrant of the Company outstanding immediately prior to the 1997 Merger was exchanged for 1/3 of a new Class A Warrant and (iii) each Class B Warrant of the Company outstanding at such time was exchanged for 1/3 of a new Class B Warrant. Each new Class A Warrant is exercisable for one share of New Common Stock and one new Class B Warrant at an exercise price of $19.50 per new Class A Warrant. Each new Class B Warrant is exercisable for one share of New Common Stock at an exercise price of $26.25 per Class B Warrant.

RECENT EVENTS

1998 Merger Agreement

On March 5, 1998, Discovery, ATI Acquisition Corp., a newly-formed, wholly-owned subsidiary of Discovery ("Acquisition Sub"), and ATI entered into an Agreement and Plan of Merger (the "1998 Merger Agreement") providing for the acquisition by Discovery, through a merger of Acquisition Sub with and into ATI (the "1998 Merger"), of the minority interest in ATI presently held by ATI management members and consultants, the licensor of ATI's Surfaxin product and certain other parties. The 1998 Merger is subject to a number of conditions, including approval by the stockholders of Discovery and ATI. Pursuant to the 1998 Merger, each issued and outstanding share of the Common Stock, par value $0.001 per share, of ATI (the "ATI Common Stock") as to which appraisal rights are not perfected in accordance with the Delaware General Corporation Law (the "DGCL") will be converted into 3.91 shares of Common Stock (the "Exchange Ratio") and each issued and outstanding share of the Series B Preferred Stock, par value $0.001 per share, of ATI (the "ATI Series B Preferred Stock") will be converted into one share of a new series of preferred stock of Discovery (the "Discovery Series C Preferred Stock"). In addition, Discovery will assume certain outstanding options to purchase ATI Common Stock. Each such option that is assumed by Discovery will become exercisable for a number of shares of Common Stock equal to the number of shares of ATI Common Stock for which such option was previously exercisable multiplied by the Exchange Ratio at a per share exercise price equal to the original exercise price divided by the Exchange Ratio.

It is a condition to the consummation of the 1998 Merger that the following persons be elected to the Board of Directors of Discovery at Discovery's 1998 Annual Meeting: Steve H. Kanzer (who will continue to be Chairman of the Board of Discovery), Max Link and Mark Rogers, each of whom are presently directors of both Discovery and ATI; Richard Sperber, Herbert McDade and David Naveh, each of whom is presently a director of Discovery; and Robert J. Capetola, Milton Packer, Marvin Rosenthale and Richard Power, each of whom is presently a director of ATI. All such directors will serve until their successors have been duly elected and qualified or otherwise as provided by law.

After the Merger, Dr. Capetola, who is currently the Chairman and Chief Executive Officer of ATI, will be the Chief Executive Officer of the Company. Other principal officers of the Company, who are also currently officers of ATI, will be Harry Brittain, Vice President of Pharmaceutical and Chemical Development; Laurence B. Katz, Vice President of Project Management and Clinical Administration; Chris Schaber, Vice President of Regulatory Affairs and Quality Control; Huei Tsai, Vice President of Biometrics; Thomas E. Wiswell, Vice President of Clinical Research; and Lisa Mastroianni, Director of Clinical Research. Evan Myrianthopoulos, who is currently the Chief

Financial Officer of Discovery, will be Vice President of Finance following the 1998 Merger.

Upon consummation of 1998 the Merger, Dr. Capetola will become the Chief Executive Officer of the Company and the other members of ATI's management team (together with Dr. Capetola, the "ATI Management Members") will assume executive positions with the Company comparable to their present positions with ATI. Dr. Capetola will receive a $100,000 bonus upon execution of his employment agreement with the Company (the "New Capetola Employment Agreement") and a $50,000 bonus upon the execution of each partnering or similar arrangement involving Surfaxin(TM) having a value in excess of $10 million. He will be entitled to an initial base salary of $236,250 per annum. The remaining ATI Management Members will hold positions with Discovery on terms, including compensation terms, that are substantially similar to the terms of their present employment with ATI. Upon consummation of the 1998 Merger, options to purchase 338,500 shares of Common Stock will be granted pursuant to the employment agreements with the ATI Management Members.

The ATI Management Members will be entitled to the following aggregate milestone incentive payments (in each case in either cash or equity and allocated at the discretion of the Company's compensation committee following receipt of a recommendation from Dr. Capetola): $150,000 upon the successful completion of Phase 2 studies of any portfolio compound; $500,000 upon the successful completion of Phase 3 studies of any portfolio compound; and $1,000,000 upon the receipt of marketing approval in the United States for any portfolio compound. Each of the foregoing milestone payments shall be payable no more than once. In addition, the ATI Management Members shall be entitled, in the aggregate, to receive options for the purchase of 175,000 shares of Common Stock at such time as the market capitalization of the Company (based on the average closing price and amount of Common Stock outstanding over a 30-trading-day period) exceeds $75 million and options for the purchase of 160,000 shares of Common Stock upon consummation of a corporate partnering deal involving any portfolio compound having a total value of at least $20 million.

Management Agreement

Concurrently with the execution of the 1998 Merger Agreement, Discovery and ATI entered into a management agreement (the "Management Agreement") pursuant to which the ATI Management Members are managing both Discovery and ATI pending the closing of the 1998 Merger. In the event the 1998 Merger is not consummated on or prior to July 15, 1998 due to any breach by Discovery or its stockholders of their obligations under the 1998 Merger Agreement, Discovery shall pay to ATI on such date (or any earlier date of the abandonment of the transactions contemplated hereby) (the "Date of Termination") 50% of the salary expense attributable to the ATI Management Members from the date of execution of the 1998 Merger Agreement through the Date of Termination. Pursuant to the Management Agreement, the ATI Management Members have been granted options to purchase, in the aggregate, 126,500 shares of Common Stock. Such of the foregoing options as have been allocated to Dr. Capetola shall be fully vested upon the closing of the 1998 Merger and the remaining options shall vest in three equal installments on the first, second and third anniversaries of the 1998 Merger, provided that in the event the 1998 Merger is not consummated on or prior to July 15, 1998 due to the breach by Discovery or its stockholders of any of their obligations under the 1998 Merger Agreement, all of the options granted pursuant to the Management Agreement shall be immediately vested in full.

IMPORTANT FACTORS REGARDING FORWARD-LOOKING STATEMENTS

The following important factors, among others, could cause the Company's actual results, performance, achievements, or industry results to differ materially from those expressed in the Company's forward-looking statements contained herein and presented elsewhere by management from time to time.

Development Stage of the Company; No Developed or Approved Products; Uncertainty of Future Profitability

The Company is a development stage company. The potential products upon which the Company intends to focus its development efforts are in the research and development stage and, accordingly, the Company has not begun to market or generate revenues from the commercialization of any of these products under development. The Company's products under development will require significant time-consuming and costly research, development, preclinical studies, clinical testing, regulatory approval and significant additional investment prior to their commercialization, which may never occur. Such clinical testing activities, together with resultant increases in general and administrative expenses, are expected to result in significant additional operating losses for the foreseeable future. The Company is not currently profitable and it is expected that the Company will not generate significant product revenues for the foreseeable future, if at all. It is expected that the Company will incur significant increasing operating losses over the next several years. To achieve profitable operations, the Company, alone or with others, must successfully develop and obtain regulatory approval for marketing its products.

The Company's operations will be subject to numerous risks associated with the establishment and development of products based upon innovative or novel technologies. As a result, the Company will be subject to the problems, delays, uncertainties and complications encountered in connection with newly founded development stage life science businesses. Some of these unanticipated problems may include development, regulatory, manufacturing, distribution and marketing difficulties that may be beyond the Company's financial or technical abilities to satisfactorily resolve. In particular, there can be no assurance that the Company's proposed drug products will not cause adverse effects that may prevent them from being marketed, regardless of their efficacy. Certain of the Company's initial drug candidates have not been the subject of Phase 1 clinical trials, the purpose of which include identifying adverse effects, or have not been the subject of such clinical trials at the dosage levels at which the Company anticipates they will be administered in treating the indications for which the Company is exploring their use. Moreover, those that have been the subject of previous clinical trials may be shown to have previously undetected adverse effects during the more extensive clinical trials that will be required prior to their becoming candidates for marketing approval by the FDA. There can be no assurance that the research and development activities funded by the Company will be successful, that products under development will prove to be safe and effective, that any of the preclinical or clinical development work will be completed, that the Company will ever achieve any of its NDA filing objectives with the FDA, that FDA approval will be attained for such products, that the anticipated products will be commercially viable or successfully marketed, that third parties do not hold proprietary rights that will preclude the Company from marketing its products, if any, or that, if the products under development are approved by the FDA, the Company will ever achieve significant revenues or profitable operations.

Need for Additional Financing; Issuance of Securities; Future Dilution

In the future, the Company will require substantial additional funding to conduct its research and product development activities and to manufacture and market, if approved by the FDA or corresponding foreign regulatory authorities, the products currently under development by the

Company and any other products that the Company may develop in the future. The Company may seek to raise further funds through collaborative ventures entered into with potential corporate partners and/or additional debt or equity financings. While the Company may seek to enter into collaborative ventures with corporate partners to fund some or all of its research and development activities, as well as to manufacture or market any products which may be successfully developed, the Company currently does not have any such arrangements with corporate partners. The Company has not made arrangements to obtain any additional financing and there can be no assurance that the Company will be able to obtain adequate additional financing on acceptable terms, if at all, or that any such additional financing would not result in significant dilution of stockholders' interests. Failure by the Company to enter into collaborative ventures or to receive additional funding to complete its proposed product development programs would have a material adverse effect on the Company. If additional financing is not otherwise available, the Company will be required to modify its business development plans or reduce or cease certain or all of its operations.

There are currently 2,200,256 shares of Series B Preferred Stock outstanding. Based on the current conversion price, each share of Series B Preferred Stock is convertible at the option of the holder thereof into approximately 1.56 shares of Common Stock of the Company. The conversion price in effect immediately prior to the first anniversary of the effective time of the Merger (the "Reset Date") will be adjusted effective as of the Reset Date if the average closing bid price of the Common Stock for the 30 consecutive trading days immediately preceding the Reset Date is less than 135% of such conversion price. Any such reset of the conversion price applicable to the Series B Preferred Stock could increase the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible to a maximum of 3.12 shares and would have a dilutive effect on the holders of the Company's capital stock.

Extensive Government Regulation; Uncertainty of FDA and Other Governmental Approval of Products Under Development

The testing, manufacture, distribution, advertising and marketing of drug products are subject to extensive regulation by governmental authorities in the United States and other countries. Prior to marketing, any pharmaceutical products developed or licensed by the Company must undergo an extensive regulatory approval process required by the FDA and by comparable agencies in other countries. This process, which includes preclinical studies and clinical trials of each pharmaceutical compound to establish its safety and effectiveness and confirmation by the FDA that good laboratory, clinical and manufacturing practices were maintained during testing and manufacturing, can take many years, requires the expenditure of substantial resources and will give larger companies with greater financial resources a competitive advantage over the Company. The FDA review process can be lengthy, and the Company may encounter delays or rejections of its applications when submitted. If questions arise during the FDA review process, approval may take a significantly longer period of time. Generally, in order to gain FDA approval, a company must conduct preclinical studies in a laboratory and in animal models to obtain preliminary information on a compound's efficacy and to identify any safety problems. The results of these studies are submitted as part of an IND that the FDA must review before human clinical trials of an investigational drug can start. Clinical trials are normally done in three phases and generally take two to five years or longer to complete.

Upon completion of clinical trials of a new drug product, FDA and foreign regulatory authority marketing approval must be obtained before the new drug product can be sold. NDAs submitted to the FDA generally take one to three years to be approved. If questions arise during the FDA review process, approval may take a significantly longer period of time. The testing and approval processes require substantial time and effort and there can be no assurance that any approval will be granted on a timely basis, if at all. Even if regulatory clearances are obtained, a marketed product is subject

to continual review, and later discovery of previously unknown problems or failure to comply with the applicable regulatory requirements may result in restrictions on the marketing of a product or withdrawal of the product from the market as well as possible civil or criminal sanctions. For marketing outside the United States, the Company also will be subject to foreign regulatory requirements governing human clinical trials and marketing approval for pharmaceutical products. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary widely from country to country. None of the Company's products under development have been approved for marketing in the United States or elsewhere (nor has testing been completed). No assurance can be given that the Company will be able to obtain regulatory approval for any such products under development. Failure to obtain requisite governmental approvals or failure to obtain approvals of the scope requested will delay or preclude the Company or its licensees or marketing partners from marketing the Company's products under development, or limit the commercial use of such products, and thereby could have a material adverse effect on the Company's business, financial condition and results of operations.

Dependence on Others for Clinical Development of, Regulatory Approvals for, and Manufacturing and Marketing of Pharmaceutical Products

The Company's strategy has been, and will be, to seek to enter into collaborative agreements with pharmaceutical companies for the research and development, clinical testing, manufacturing, marketing and commercialization of certain of its products. The Company will therefore be dependent upon obtaining such partners and the expertise and dedication of sufficient resources by third parties to develop and commercialize certain of its proposed products. The Company may in the future grant to its collaborative partners, if any, rights to license and commercialize any pharmaceutical products developed under these collaborative agreements and such rights would limit the Company's flexibility in considering alternatives for the commercialization of such products. Under such agreements, the Company expects to rely on its collaborative partners to conduct research and clinical trials, manufacture, market and commercialize certain of its products. Although the Company believes that its collaborative partners may have an economic motivation to commercialize the pharmaceutical products which they may license from the Company, the amount and timing of resources devoted to these activities generally will be controlled by each such individual partner. There can be no assurance that the Company will be successful in establishing any collaborative arrangements, or that, if established, such future partners will be successful in developing and commercializing products or that the Company will derive any revenues from such arrangements.

The Company has entered into clinical research agreements with University of Utah Health Sciences Center ("UHSC") for clinical trials of SuperVent(TM) in the treatment of CF; with for clinical trials of Surfaxin(TM) to treat ARDS; and with Covance Clinical Research Unit for clinical trials of ST-630 to treat postmenopausal osteoporosis. ATI and Scripps have entered into a sponsored research agreement whereby ATI is supporting continuing research regarding Surfaxin(TM) for a two-year period ending in October 1998. The Company has not entered into any collaborative arrangements with respect to its other products under development.

Technological Uncertainty and Obsolescence

The market for biotechnology is characterized by rapidly changing technology and evolving industry standards. The Company's future success will depend upon its ability to develop and commercialize its existing products and to develop new products and applications. There can be no assurance that the Company will successfully complete the development of the Company's current or future products or that such products will achieve market acceptance. Any delay or failure of such products under development or any future product which may develop in achieving market

acceptance would adversely affect the Company's business.

The Company's products under development are intended to treat diseases for which other technologies and proposed treatments are rapidly developing. There can be no assurance that any results of the Company's research and product development efforts will not be rendered obsolete by research efforts and technological activities of others, including the efforts and activities of governments, major research facilities and large multinational corporations.

Dependence on Patents, Licenses and Protection of Proprietary Rights; Risk of Loss of Technology

In order to justify the substantial investment of time and expense required to develop and commercialize its products, the Company will seek proprietary protection for its drug candidates so as to prevent others from commercializing equivalent products in substantially less time and at substantially lower expense. The pharmaceutical industry places considerable importance on obtaining patent and trade secret protection for new technologies, products and processes. The Company's success will depend in part on the ability of the Company and its licensors to obtain effective patent protection for the Company's proprietary technologies and products, defend such patents, preserve its trade secrets and operate without infringing upon the proprietary rights of others, both in the United States and in other countries. The patent position of firms relying upon biotechnology is highly uncertain and involves complex legal and factual questions. To date, there has emerged no consistent policy at the United States Patent and Trademark Office ("PTO") regarding the breadth of claims allowed in biotechnology patents or the degree of protection afforded under such patents.

There are various United States and foreign patents and patent applications (including international applications filed under the Patent Cooperation Treaty) that have been issued or filed with respect to the products and technologies under development by the Company. These patents and patent applications have been licensed to the Company. Although the licensors under such licenses have retained control of the patent prosecution process, the Company is responsible for the expenses of prosecuting the patents and patent applications (i.e., the fees of patent counsel and any domestic or foreign filing fees that are applicable). Patent applications may be expected to remain pending for several years before the issuance of a patent, if any, and the prosecution of patent applications with respect to the Company's products may entail considerable expense to the Company.

There can be no assurance that patents will issue as a result of any of the pending patent applications relating to the Company's products and technologies or that the issued patents and any patents resulting from the pending patent applications will be sufficiently broad to afford protection to the Company against competitors with similar products and technologies. In addition, there can be no assurance that such patents will not be challenged, invalidated or circumvented, or that the rights granted thereunder will provide competitive advantages to the Company. The commercial success of the Company will also depend upon its avoidance of infringement of patents issued to competitors. A United States patent application is maintained under conditions of confidentiality while the application is pending, so the Company will not be able to determine the inventions being claimed in pending patent applications filed by third parties. Litigation may be necessary to defend or enforce the Company's patent and license rights or to determine the scope and validity of the proprietary rights of others. Defense and enforcement of patent claims can be expensive and time-consuming, even in those instances in which the outcome is favorable to the Company, and can result in the diversion of substantial resources from the Company's other activities. An adverse outcome could subject the Company to significant liabilities to third parties, require the Company to obtain licenses from third parties, or require the Company to alter its products or processes or cease

altogether any related research and development activities or product sales, any of which could have a material adverse effect on the Company's business, financial condition and results of operations.

The Company requires all employees to enter into confidentiality agreements that prohibit the disclosure of confidential information to third parties and require disclosure and assignment to the Company of rights to such employees' ideas, developments, discoveries and inventions while so employed. In addition, the Company seeks to obtain such agreements from its consultants, advisors and research collaborators. To the extent that consultants, key employees or other third parties apply technological information independently developed by them or by others to any of the proposed projects of the Company, disputes may arise as to the proprietary rights to such information which may not be resolved in favor of the Company. In addition, the Company will rely on trade secrets and proprietary know-how that it will seek to protect in part by confidentiality agreements with its employees, consultants, advisors or others. There can be no assurance that these agreements will not be breached, that the Company would obtain adequate remedies for any breach, or that the Company's trade secrets or proprietary know-how and will not otherwise become known or be independently developed by competitors in such a manner that the Company has no legal recourse.

The Company is dependent on licensing arrangements for access to its products under development, and the Company will be required to make certain payments and satisfy certain performance obligations in order to maintain the effectiveness of such licensing arrangements. The Company is responsible pursuant to its licensing agreements for the cost of filing and prosecuting patent applications and maintaining issued patents. If the Company does not meet its due diligence and/or financial obligations under its license agreements in a timely manner, the Company could lose the rights to its proprietary technology, which would have a material adverse effect on the Company.

See also "License Agreements; Patents and Proprietary Rights" in this Item 1.

Dependence on Third Party Suppliers; Lack of Manufacturing Capability

The Company does not have any manufacturing capacity of its own and the Company will be required to rely on outside manufacturers to produce appropriate clinical grade material for its use in clinical studies for certain of its products. Failure of the foreign or domestic suppliers of the Company's products or failure of the manufacturers of the Company's products to comply with GMP regulations or other FDA regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations. See "Third Party Suppliers; Marketing and Manufacturing" in this Item 1.

Lack of Marketing Capability and Experience

The Company currently has no marketing and sales experience and no marketing or sales personnel. Unless a sales force is established, the Company will be dependent on corporate partners or other entities for the marketing and selling of its products. There can be no assurance that the Company will be able to enter into any satisfactory arrangements for the marketing and sale of its products. The inability of the Company to successfully establish a sales force or enter into third party distribution, marketing and selling arrangements for its anticipated products would have a material adverse effect on the Company's business, financial condition and results of operations.

Dependence Upon Key Personnel and Consultants

The Company will be highly dependent upon its officers and directors, as well as its scientific advisory board members, consultants and collaborating scientists. Since competent management personnel and personnel capable of performing the foregoing functions are in great demand, there

can be no assurance that the Company will be able to attract and retain such personnel on a timely basis and on terms acceptable to the Company. It is anticipated that the Company's success will depend in large part upon attracting and retaining highly-skilled managerial and other employees.

No Assurance of Additional Products

Although the Company intends to devote substantial resources to the development and commercialization of some or all of the products under development, the Company intends to explore the acquisition and subsequent development and commercialization of additional pharmaceutical products and technologies. There can be no assurance that the Company will be able to identify any additional products or technologies, that it will be able to license any such technologies on acceptable terms or that, even if suitable products or technologies are identified, the Company will have sufficient resources to pursue any such products or technologies to commercialization.

Competition

The Company will be engaged in a highly competitive field. Competition from numerous existing companies and potential new entrants is intense and expected to increase. Many of these companies have substantially greater research and development, manufacturing, marketing, financial, technological, personnel and managerial resources than the Company. There can be no assurance that any products developed by the Company will be more effective than those developed and marketed by its competitors. Colleges, universities, governmental agencies and other public and private research organizations are becoming more active in seeking patent protection and licensing arrangements to collect royalties for use of technology that they have developed, some of which may be directly competitive with the technologies to be developed by the Company. These institutions will also compete with the Company in recruiting highly qualified scientific personnel. It is expected that therapeutic developments in the areas in which the Company will be active may occur at a rapid rate and that competition will intensify as advances in this field are made. Accordingly, the Company will be required to continue to devote substantial resources and efforts to research and development activities. See "Competition" in this Item 1.

Risk of Product Liability; No Insurance Coverage

Should the Company successfully develop any products, the marketing of such products, through third party arrangements or otherwise, may expose the Company to product liability claims in the event that the use or misuse of pharmaceutical products manufactured by, or under license from, the Company results in adverse effects. The Company presently carries product liability insurance relating to its Phase 1/2 clinical trial of SuperVent(TM) and its Phase 2 Clinical trials of Surfaxin(TM) in treating ARDS and MAS. The Company may be required to obtain additional product liability insurance coverage prior to initiation of clinical trials of its other proposed products. It is expected that the Company will obtain product liability insurance coverage before commercialization of its proposed products. There can be no assurance that adequate insurance coverage will be available at an acceptable cost, if at all. In addition, there can be no assurance that a product liability claim, even if the Company has insurance coverage, would not materially adversely affect the Company's business, financial condition and results of operations.

Uncertainty of Product Pricing and Reimbursement; Health Care Reform and Related Measures

The levels of revenues and profitability of pharmaceutical and/or biotechnology products and companies may be affected by efforts of governmental and third party payers to contain or reduce

the costs of health care through various means. For example, in certain foreign markets, pricing or profitability of prescription pharmaceuticals is subject to government control. In the United States, there have been a number of federal and state proposals to implement similar government control. Presently, the United States Congress is considering a number of legislative and regulatory reforms that may affect companies engaged in the health care industry in the United States. Pricing constraints on the Company's products, if approved, could have a material adverse effect on the Company. While it cannot be predicted whether these proposals will be adopted or what effects such proposals may have on its business, the existence and pendency of such proposals could in general have a material adverse effect on the Company. In addition, the Company's ability to commercialize potential pharmaceutical and/or biotechnology products may be adversely affected to the extent that such proposals have a material adverse effect on other companies that are prospective collaborators with respect to any of the Company's product candidates.

In the United States and elsewhere, successful commercialization of the Company's products will depend in part on the availability of reimbursement to the consumer from third party health care payers, such as government and private insurance plans. There can be no assurance that such reimbursement will be available or will permit price levels sufficient to realize an appropriate return on the Company's investment in product development. Third party health care payers are becoming increasingly cost conscious in determining which pharmaceutical products they will and will not reimburse. If the Company succeeds in bringing one or more products to the market, there can be no assurance that these products will be considered cost effective and that reimbursement to the consumer will be available or will be sufficient to allow the Company to sell its products on a competitive basis.

Control by Current Officers, Directors and Principal Stockholders

The directors, executive officers and principal stockholders of the Company beneficially own approximately 28% of the outstanding voting securities of the Company on an as converted basis. Accordingly, the Company's executive officers, directors, principal stockholders and certain of their affiliates have the ability to exert substantial influence over the election of the Company's Board of Directors and the outcome of issues submitted to the Company's stockholders. Such a concentration of ownership may have the effect of delaying or preventing a change in control of the Company, including transactions in which stockholders might otherwise recover a premium for their shares over their current market prices.

Uncertainty of Listing on Nasdaq Small Cap Market; Possible Delisting from Nasdaq SmallCap Market; Market Illiquidity

To meet the current Nasdaq listing requirements for the Company's securities to continue to be listed on the Nasdaq SmallCap Market, the Company will have to maintain (a) (1) at least $2 million in net tangible assets, (2) $35 million in market capitalization, or (3) $500,000 in net income (over two of the last three years), (b) a public float of at least 500,000 shares valued at $1 million or more and (c) a minimum bid price of $1.003. In addition, the Company's Common Stock will have to be held by at least 300 holders and will have to have at least two active market makers. For purposes of determining compliance with the public float requirement, shares of stock held by officers, directors and 10%-or- greater stockholders are excluded.

If the Company is unable to satisfy the NASD's listing maintenance requirements, the Company's securities may be delisted from the Nasdaq SmallCap Market. In such event, trading, if any, in the Company's securities would thereafter be conducted in the over-the-counter market in the so-called "pink sheets" or on the NASD's "OTC Electronic Bulletin Board." Consequently, the liquidity of the Company's securities could be impaired, not only in the number of securities which could be bought

and sold, but also through delays in the timing of the transactions, reduction in securities analysts' and the news media's coverage of the Company, and lower prices for the Company's securities than might otherwise be attained.

Risks of Low-Priced Stock; Possible Effect of "Penny Stock" Rules on Liquidity for the Common Stock

If the Company's securities were to be delisted from the Nasdaq SmallCap Market, they could become subject to Rule 15g-9 under the Exchange Act, which imposes additional sales practice requirements on broker-dealers which sell such securities to persons other than established customers and "accredited investors" (generally, individuals with net worth in excess of $1,000,000 or annual incomes exceeding $200,000, or $300,000 together with their spouses). For transactions covered by this rule, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to sale. Consequently, the rule may adversely affect the ability of broker-dealers to sell the Company's securities and may adversely affect the ability of purchasers in this offering to sell any of the securities acquired hereby in the secondary market.

The Commission has adopted regulations which define a "penny stock" to be an equity security that has a market price (as therein defined) less than $5.00 per share or with an exercise price of less than $5.00 per share, subject to certain exceptions. For any transaction involving a penny stock, unless exempt, the rules require delivery, prior to any transaction in a penny stock, of a disclosure schedule prepared by the Commission relating to the penny stock market. Disclosure is also required to be made about commissions payable to both the broker-dealer and the registered representative and current quotations for the securities. Finally, monthly statements are required to be sent disclosing recent price information for the penny stock held in the account and information on the limited market in penny stocks.

The foregoing required penny stock restrictions will not apply to the Company's securities if such securities continue to be listed on the Nasdaq SmallCap Market and have certain price and volume information provided on a current and continuing basis or meet certain minimum net tangible assets or average revenue criteria. There can be no assurance that the Company's securities will qualify for exemption from these restrictions. In any event, even if the Company's securities were exempt from such restrictions, it would remain subject to Section 15(b)(6) of the Exchange Act, which gives the Commission the authority to prohibit any person that is engaged in unlawful conduct while participating in a distribution of a penny stock from associating with a broker-dealer or participating in a distribution of a penny stock, if the Commission finds that such a restriction would be in the public interest. If the Company's securities were subject to the existing or proposed rules on penny stocks, the market liquidity for the Company's securities could be severely adversely affected.

Certain Interlocking Relationships; Potential Conflicts of Interest

Steve H. Kanzer, the Chairman of the Board of Directors, is a full-time officer of Paramount Capital, Incorporated ("Paramount Capital") and of Paramount Capital Investments, LLC ("Paramount Investments"), an affiliate of Paramount Capital. In addition, Kenneth Johnson, the Director of Business Development of the Company, is a Technology Associate of Paramount Investments. Each of these individuals devotes only a portion of his time to the business of the Company. Paramount Capital acted as placement agent for Old Discovery in a private equity offering conducted during June through November 1996 (the "Unit Offering"). Paramount Investments is a merchant banking firm specializing in biotechnology companies. In the regular course of its business, Paramount Investments identifies, evaluates and pursues investment opportunities in biomedical and pharmaceutical products, technologies and companies. The DGCL

requires that any transactions between the Company and any of its affiliates be on terms that, when taken as a whole, are substantially as favorable to the Company as those then reasonably obtained from a person who is not an affiliate in an arm's-length transaction. Nevertheless, Paramount Investments is not obligated pursuant to any agreement or understanding with the Company to make any additional products or technologies available to the Company, and there can be no assurance that any biomedical or pharmaceutical product or technology identified by Paramount Investments or any other affiliates of Paramount Capital or Paramount Investments in the future will be made available to the Company.

Certain of the officers, directors, consultants, and advisors to the Company may from time to time serve as officers, directors, consultants or advisors to other biopharmaceutical or biotechnology companies. There can be no assurance that such other companies will not in the future have interests in conflict with those of the Company.

Potential Adverse Effect of Shares Eligible for Future Sale

The Company has outstanding approximately (i) 3,175,955 shares of Common Stock; (ii) 2,200,256 shares of Series B Preferred Stock convertible into 3,424,980 shares of Common Stock; (iii) 735,833 Class A Warrants to purchase an aggregate of 735,833 shares of Common Stock and 735,833 Class B Warrants to purchase an additional 735,833 shares of Common Stock; (iv) 498,333 Class B Warrants to purchase 498,333 shares of Common Stock; (v) a unit purchase option to purchase an aggregate of 173,333 shares of Common Stock, assuming exercise of the underlying warrants; (vi) outstanding options to purchase 630,993 shares of Common Stock; (vii) warrants to purchase 220,026 shares of Series B Preferred Stock; and (viii) warrants to purchase 85,625 shares of Common Stock. The Company also has 18,341 shares of Common Stock reserved for issuance upon exercise of options issuable under stock option plans. Holders of the Company's warrants and options are likely to exercise them when, in all likelihood, the Company could obtain additional capital on terms more favorable than those provided by warrants and options. Further, while these warrants and options are outstanding, the Company's ability to obtain additional financing on favorable terms may be adversely affected. The holders of the unit purchase options and certain stockholders have certain demand and "piggy-back" registration rights with respect to their securities. Exercise of such rights could involved substantial expense to the Company.

No prediction can be made as to the effect, if any, that the availability of such shares for sale will have on the market prices that may be quoted from time to time on the Nasdaq SmallCap Market. Nevertheless, the possibility that substantial amounts of the Company's Common Stock may be sold in the public market may adversely effect the prevailing market prices for the Company's Common Stock and could impair the Company's ability to raise capital in the future through the sale of equity securities. Actual sales or the prospect of future sales of shares of the Company's Common Stock under Rule 144 or otherwise may have a depressive effect upon the price of the Company's Common Stock and the market therefor.

Antitakeover Effects of Provisions of the Certificate of Incorporation and Delaware Law

The Company's Certificate of Incorporation, as amended, authorizes the issuance of up to 5,000,000 shares of preferred stock, of which 2,200,256 shares will be outstanding and of which 220,026 shares will be reserved for issuance upon the exercise of warrants. The Board of Directors of the Company will have the authority to fix and determine the relative rights and preferences of preferred shares, as well as the authority to issue such shares, without further stockholder approval. As a result, the Board of Directors of the Company could authorize the issuance of a series of preferred stock which would grant to holders the preferred right to the assets of the Company upon liquidation, the right to receive dividend coupons before dividends would be declared to Common

stockholders, and the right to the redemption of such shares, together with a premium, prior to the redemption of the Company's Common Stock. Common stockholders have no redemption rights. In addition, the Board could issue large blocks of preferred stock to fend against unwanted tender offers or hostile takeovers without further stockholder approval.

The Company is subject to Section 203 of the DGCL which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that such stockholder became an interested stockholder. In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such entity or person. The foregoing provisions could have the effect of discouraging others from making tender offers for the Company's shares and, as a consequence, they also may inhibit fluctuations in the market price of the Company's shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in the management of the Company.

Dividends Unlikely

The Company has never paid cash dividends on its capital stock and does not anticipate paying any cash dividends for the foreseeable future.

ITEM 2. DESCRIPTION OF PROPERTY.

The Company currently has its executive offices at 509 Madison Avenue, 14th Floor, New York, New York 10022. The Company's telephone number is (212) 223-9504 and its facsimile number is (212) 688-7978.

ATI currently has its executive offices at 3359 Durham Road, Doylestown, PA 18901. ATI's telephone number is (215) 794-3064 and its facsimile number is (215) 794-3239.

ITEM 3. LEGAL PROCEEDINGS.

The Company is not aware of any pending or threatened legal actions other than disputes arising in the ordinary course of its business that would not, if determined adversely to the Company, have a material adverse effect on the Company.

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

On November 24, 1997, the Company held a special meeting of shareholders at which three proposals were submitted to a vote of the stockholders.

Proposal No. 1

Submitted as Proposal No. 1 at the special meeting was the approval of the 1997 Merger. The number of affirmative votes, negative votes, withheld votes, abstentions and broker non-votes with respect to Proposal No. 1 (without giving effect to the Reverse Split) were as follows:

Affirmative Votes	Negative Votes	Abstentions	Broker Non-Votes
1,521,823	19,600	34,000	937,876

Proposal No. 2

Submitted as Proposal No. 2 at the special meeting was the approval of an amendment to the Company's certificate of incorporation to effect the Reverse Split. The number of affirmative votes, negative votes, abstentions and broker non-votes with respect to Proposal No. 2 (without giving effect to the Reverse Split) were as follows:

Affirmative Votes	Negative Votes	Abstentions	Broker Non-Votes
2,511,294	2,000	0	0

Proposal No. 3

Submitted as Proposal No. 3 at the special meeting was an amendment to the Company's 1995 Stock Option Plan increasing the number of shares of Common Stock available for issuance thereunder. The number of affirmative votes, negative votes, abstentions and broker non-votes with respect to Proposal No. 3 (without giving effect to the Reverse Split) were as follows:

Affirmative Votes	Negative Votes	Abstentions	Broker Non-Votes
1,510,623	29,800	3,500	969,376

PART II

ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

The Common Stock is traded on the Nasdaq SmallCap Market under the symbol "DSCO." In addition, the Company's units (consisting of Common Stock, Class A Warrants and Class B Warrants), Class A Warrants and Class B Warrants are approved for listing on the Nasdaq SmallCap Market. As of March 24, 1998, the number of stockholders of record of the Common Stock was approximately 105, and the number of beneficial owners of shares of the Common Stock held in street name was approximately 465. As of March 24, 1998, there were approximately 3,175,955 shares of Common Stock outstanding.

The following table sets forth the quarterly price ranges of the Discovery Common Stock for the periods indicated, as reported by Nasdaq. The following price ranges are adjusted for the Reverse Split.

	Low	High
First Quarter 1996	$10.88	15.75
Second Quarter 1996	12.00	15.38
Third Quarter 1996	7.50	14.25
Fourth Quarter 1996	6.00	9.38

First Quarter 1997	6.38	$ 9.75
Second Quarter 1997	3.75	6.00
Third Quarter 1997	3.56	6.00
Fourth Quarter 1997	3.75	10.31
First Quarter 1998 (through March 24)	3.94	9.00

The Company has not paid dividends on the Discovery Common Stock. It is anticipated that the Company will not pay dividends on the Discovery Common Stock in the foreseeable future.

ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND PLAN OF OPERATIONS

The following discussion reflects the historical results of Old Discovery as the 1997 Merger was accounted for as a reverse acquisition with Old Discovery as the acquiror for financial reporting purposes.

Plan of Operations

Since its inception, the Company has concentrated its efforts and resources in the development and commercialization of pharmaceutical products and technologies. The Company has been unprofitable since its founding and has incurred a cumulative net loss of approximately $12,418,000 as of December 31, 1997. The Company expects to incur significantly increasing operating losses over the next several years, primarily due to the expansion of its research and development programs, including clinical trials for some or all of its existing products and technologies and other products and technologies that it may acquire or develop. The Company's ability to achieve profitability depends upon, among other things, its ability to discover and develop products, obtain regulatory approval for its proposed products, and enter into agreements for product development, manufacturing and commercialization. None of the Company's products currently generates revenues and the Company does not expect to achieve revenues for the foreseeable future. Moreover, there can be no assurance that the Company will ever achieve significant revenues or profitable operations from the sale of any of its products or technologies.

The Company is currently engaged in the development and commercialization of investigational drugs that have previously been tested in humans or animals. The Company anticipates that during the next 12 months it will conduct substantial research and development of its products under development, including, without limitation, a Phase 1/2 clinical trial of SuperVent(TM) for the treatment of CF that was commenced by Discovery on March 17, 1997 (and, if such clinical trial is successfully completed, a Phase 2 clinical trial of SuperVent(TM) for the treatment of chronic bronchitis), a Phase 2 clinical trial of Surfaxin(TM) for the treatment of MAS that was commenced by ATI on May 27, 1997 and a Phase 2 clinical trial of Surfaxin((TM)) for the treatment of ARDS that was commenced by ATI on August 15, 1997. Discovery initiated on December 5, 1997 a Phase 1 clinical study of ST-630 as a once-daily, orally administered drug for the treatment of postmenopausal osteoporosis in the United States. Any clinical trials of the Company's products in development that have not yet commenced will require the receipt of the FDA approvals, and there can be no assurance as to the receipt or the timing of such approvals.

On March 5, 1998, Discovery and ATI executed the 1998 Merger Agreement. Upon consummation of the 1998 Merger, the current holders of outstanding shares of ATI Common Stock will be issued approximately 1,004,870 shares of Common Stock, and outstanding options exercisable for ATI Common Stock that are assumed by Discovery will become exercisable, in the aggregate, for approximately 424,235 shares of Common Stock. In addition, upon consummation of the 1998

Merger, options to purchase an additional 338,500 shares of Common Stock will be granted pursuant to employment agreements with the Company's new management team and options for the purchase of an additional 335,000 shares of Common Stock upon the achievement of corporate milestones will also be granted to such persons. The Common Stock to be issued in the 1998 Merger, the shares of Common Stock purchasable upon exercise of the options to be issued and assumed in connection with the 1998 Merger and the shares of Common Stock purchasable upon exercise of the options issued pursuant to the Management Agreement will represent approximately 23% of the Common Stock on a fully-diluted basis (exclusive of the Company's Class A and Class B Warrants) immediately following the 1998 Merger.

Upon consummation of the 1998 Merger, Robert Capetola, Ph.D., the Chief Executive Officer of ATI, will become the Chief Executive Officer of Discovery and the other members of ATI's management team will assume executive positions with Discovery. Discovery's principal executive offices will be consolidated with ATI's Doylestown, Pennsylvania facilities following the 1998 Merger. On March 5, 1998, Discovery and ATI entered into the Management Agreement, which provides for the management of Discovery on an interim basis by the ATI management team pending the consummation of the 1998 Merger. Upon execution of the Management Agreement, members of the ATI management team were granted options exercisable, in the aggregate, for the purchase of 126,500 shares of Common Stock.

LIQUIDITY

The Company anticipates that its current resources will permit it to meet its business objectives until approximately June 1999. The Company's working capital requirements will depend upon numerous factors, including, without limitation, progress of the Company's research and development programs, preclinical and clinical testing, timing and cost of obtaining regulatory approvals, levels of resources that the Company devotes to the development of manufacturing and marketing capabilities, technological advances, status of competitors and abilities of the Company to establish collaborative arrangements with other organizations, and as such there can be no assurance that the Company will not be required to raise additional capital prior to June 1999 or, in general, that the Company will be able to achieve its business objectives.

ITEM 7. FINANCIAL STATEMENTS.

See Index to Consolidated Financial Statements on Page F-1.

ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

On January 9, 1998, the Audit Committee of the Board of Directors of the Company reached a determination to retain Richard A. Eisner & Company, LLP ("RAE"), as the independent auditors to audit the Company's financial statements for fiscal year 1997. Prior to the 1997 Merger, RAE served as the independent auditors for Old Discovery. In addition, prior to the 1997 Merger, the Company's executive offices and principal accounting functions were located at the Company's prior executive offices in South San Francisco, California. The Company's annual audits for the years ended December 31, 1995 and 1996, conducted by its independent accountants, Ernst & Young, LLP ("Ernst & Young") were primarily staffed and performed out of Ernst & Young's Palo Alto, California office. As a consequence of the 1997 Merger, the executive offices and principal accounting functions of the Company have been relocated to New York City.

The Company believes that, with respect to the years ended December 31, 1995 and 1996 and the subsequent interim period through January 16, 1998, the Company did not have any disagreement on any matter of accounting principals or practices, financial statement disclosure or auditing scope or procedure, which disagreement, if not resolved to the satisfaction of Ernst & Young would have caused it to make reference in connection with its report on the Company's financial statements to the subject matter of the disagreement.

The 1995 and 1996 audit reports issued by Ernst & Young for the Company did not contain an adverse opinion or a disclaimer of opinion, and were not qualified or modified as to uncertainty, audit scope or accounting principles. However, in reissuing its audit report on the Company's 1996 financial statements in connection with the filing by the Company of its registration statement on Form S-4 filed with the Securities and Exchange Commission on August 25, 1997 (and the amendments thereto), Ernst & Young added an explanatory paragraph to such report with respect to the ability of the Company to continue as a going concern. During those years there were no events described in Item 304(a)(1)(iv)(B) of Regulation S-B promulgated under the Act.

PART III

ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(a) OF THE EXCHANGE ACT.

MANAGEMENT

The following table sets forth the names and positions of all the executive officers and directors of Discovery and ATI as of March 24, 1998. Since March 5, 1998, Discovery has been managed by the executive officers of ATI pursuant to the Management Agreement. See Items 1 and 6 of this Report for a description of certain transactions relating to the Management Agreement.

Discovery

Name	Age	Positions with the Company
James S. Kuo, M.D.	33	President, Chief Executive Officer and Director
Steve H. Kanzer, C.P.A., Esq.	34	Chairman of the Board of Directors
Evan Myrianthopoulos	33	Chief Financial Officer, Secretary and Director
David Crockford	52	Vice President of Regulatory Affairs
Juerg F. Geigy, Esq.	62	Director
Max Link, Ph.D	54	Director
Herbert H. McDade, Jr.	70	Director
Mark C. Rogers, M.D.	54	Director
Richard Sperber	55	Director
David Naveh, Ph.D.	44	Director

ATI

Name	Age	Positions with ATI
Robert J. Capetola, Ph.D.	48	President, Chief Executive Officer and Chairman of the Board of Directors
Harry Brittain	48	Vice President of Pharmaceutical and Chemical Development
Laurence B. Katz, Ph.D.	42	Vice President of Project Management and

		Clinical Administration
Chris Schaber	31	Vice President of Regulatory Affairs and Quality Control
Huei Tsai	58	Vice President of Biometrics
Thomas E. Wiswell, M.D.	45	Vice President of Clinical Research
Lisa Mastroianni	36	Director of Clinical Research
Steve H. Kanzer, C.P.A., Esq.	33	Director
James S. Kuo, M.D.	33	Director
Max Link, Ph. D.	57	Director
Milton Packer, M.D.	46	Director
Richard G. Power	68	Director
Mark G. Rogers, M.D.	54	Director
Marvin E. Rosenthale, Ph.D.	63	Director

James S. Kuo, M.D. has served as President, Chief Executive Officer and a Director of Discovery since the effective time of the 1997 Merger. From March 1996 until such time he held such positions with Old Discovery. He has been a Director of ATI since November 1996. Prior to joining Old Discovery, Dr. Kuo was employed from May 1995 to March 1996 by Pfizer, Inc., a multinational pharmaceutical company, as Associate Director of the Corporate Licensing and Development Division. At Pfizer, Dr. Kuo, was directly responsible for cardiovascular licensing and development, a business segment with approximately $2.9 billion in sales in 1995. Prior to his employment with Pfizer, Dr. Kuo, from September 1992 to May 1995, was Managing Director of Venture Analysis at HealthCare Investment Corporation, a venture capital fund which managed over $375 million in venture funds predominantly devoted to start up biopharmaceutical companies. Prior to his employment at HealthCare Investment Corporation, Dr. Kuo was Vice President of The Castle Group Ltd., a medical venture capital group. Dr. Kuo received his M.D. from The University of Pennsylvania School of Medicine and obtained his M.B.A. from The Wharton School of Business where he concentrated in health care management and finance. He received his B.A. in molecular biology from Haverford College and has conducted and published research at The Wistar Institute in Philadelphia.

Steve H. Kanzer, C.P.A., Esq. has served as Chairman of the Board of Directors of Discovery Laboratories, Inc. since the effective time of the 1997 Merger. From June 1996 until such time he was the Chairman of the Board of Old Discovery. He has been a Director of ATI since November 1996. Mr. Kanzer is also a Senior Managing Director of Paramount Capital, Inc. ("Paramount Capital"), a biotechnology investment bank, and Paramount Investments, LLC ("Paramount Investments"), a medical venture capital group that is an affiliate of Paramount Capital. Mr. Kanzer is a founder and currently a director of Boston Life Sciences, Inc. and Atlantic Pharmaceuticals, Inc. and is currently a director of Endorex, Inc. He has been a founder and director of several other public and private biotechnology companies including Avigen, Inc., Titan Pharmaceuticals, Inc. and Xenometrix, Inc. From October 1991 until January 1995, Mr. Kanzer was General Counsel of The Castle Group Ltd, an affiliate of Paramount Capital. From 1988 to 1991, Mr. Kanzer was an attorney at the law firm of Skadden, Arps, Meagher, Slate, & Flom. Mr. Kanzer received his J.D. from New York University School of Law and a B.B.A. in Accounting from Baruch College. He devotes only a portion of his time to the business of the Company.

Evan Myrianthopoulos has served as Chief Financial Officer of Discovery since December 1997 and as Chief Operating Officer, Secretary and a Director of Discovery since the effective time of the 1997 Merger. From June 1996 until such time he held such positions (other than Chief Financial Officer) with Old Discovery. Prior to joining Old Discovery, he was a Technology Associate of Paramount Capital Investments, L.L.C. from December 1995 until January 1987. Before joining Paramount Capital Investments, LLC, Mr. Myrianthopoulos managed a hedge fund for S + M

Capital Management in Englewood Cliffs, New Jersey. The fund specialized in syndicate and secondary stock issues and also engaged in arbitrage of municipal and mortgage bonds. Prior to his employment with S + M Capital Management, Mr. Myrianthopoulos was employed at the New York Branch of National Australia Bank where he was Assistant Vice President of Foreign Exchange trading. Mr. Myrianthopoulos received a B.S. in Economics and Psychology from Emory University in 1986.

David R. Crockford has served as Vice President of Regulatory Affairs of Discovery since the effective time of the 1997 Merger and held such position with Old Discovery from November 1996 until such time. From December 1991 to November 1996, Mr. Crockford served as Vice President of Regulatory Affairs at Oncologix, Inc. and at Alpha I Biomedicals, Inc., where he was responsible for product development planning activities, from preclinical testing through clinical development and regulatory strategies and submissions of pulmonary and cancer therapeutics.

Robert J. Capetola, Ph.D. has served as Chairman and Chief Executive Officer of ATI since its inception in October 1996. From February 1994 to May 1996, Dr. Capetola was Managing Director of Delta Biotechnology, a subsidiary of Ohmeda Pharmaceutical Products Division, a division of The BOC Group, plc ("Ohmeda"), in the U.K. He also served on the Board of Directors of Delta Biotechnology. From December 1992 to September 1996, Dr. Capetola served as Vice President of Research and Development at Ohmeda. He served on Ohmeda's operating board and was responsible for all aspects of Ohmeda's research and development, including preclinical research and development, clinical development, biometrics and regulatory affairs. From 1977 to 1992, Dr. Capetola held a variety of positions as a drug discovery scientist at Johnson & Johnson Pharmaceutical Research Institute, including Senior Worldwide Director of Experimental Therapeutics. Dr. Capetola received his B.S. from the Philadelphia College of Pharmacy & Science and his Ph.D. in pharmacology from Hahnemann Medical College.

Harry G. Brittain, Ph.D., has served as the Vice President for Pharmaceutical and Chemical Development of ATI since November 1996. He is a graduate of Queens College (B.S., 1970; M.S., 1972), and of the City University of New York (Ph.D. in physical chemistry, 1975). He was a postdoctoral fellow at the University of Virginia, and has held faculty positions at Ferrum College and Seton Hall University. Prior to joining ATI, Dr,. Brittain served as Director of Pharmaceutical Development for the Pharmaceutical Products Division of Ohmeda, Inc. Before that, he worked at Bristol-Myers Squibb, where he led a variety of groups within the Analytical R&D department. His research interests include studies of molecular optical activity and chirality, development of pharmaceutical dosage forms, and the physical characterization of pharmaceutical materials. He has authored approximately 195 research publications, and is a member of the editorial boards of numerous journals.

Laurence B. Katz, Ph.D., has served as Vice President of Project Management and Clinical Administration of ATI since November 1996. Prior to joining the Company, Dr. Katz was employed from April 1993 to November 1996 by Ohmeda Pharmaceutical Products Division, a division of The BOC Group, as Senior Director of Project Management and Clinical Administration. At Ohmeda, Dr. Katz was project team leader for the inhaled nitric oxide project and was responsible for the administration of all clinical trials within the company. Previously, Dr. Katz was employed by Ortho Pharmaceutical Corporation and the R.W. Johnson Pharmaceutical Research Institute, divisions of Johnson & Johnson, Inc. ("J&J"). While there he served as Senior Project Manager in the Project Planning & Management department from January 1990 to April 1993, and as a Principal Scientist in the Drug Discovery department from February 1983 to January 1990. Dr. Katz received a B.S. degree in biology from the University of Pennsylvania, his M.S. and Ph.D. degrees in pharmacology form the Philadelphia College of Pharmacy & Science, and was a post-doctoral research fellow at the University of Wisconsin-Madison.

Christopher J. Schaber has served as Vice President of Regulatory Affairs and Quality Assurance of ATI since November 1996. Prior to joining ATI, Mr. Schaber was employed from October 1994 to November 1996 by Ohmeda Pharmaceutical Products Division, a division of The BOC Group, as Director of Regulatory Affairs. At Ohmeda, Mr. Schaber was directly responsible for all regulatory strategies with the Food and Drug Administration and other Health Authority bodies. From 1989 to 1994, Mr. Schaber held a variety of regulatory positions of increasing importance with The Liposome Company, Inc. and Elkins-Sinn Inc., a division of Wyeth-Ayerst Laboratories. Mr. Schaber received his B.A. from Western Maryland College and his M.S. from Temple University. Mr. Schaber is currently pursuing his Ph.D. in Pharmaceutical Sciences-Regulatory Affairs with the Union Graduate School and is estimated to complete his doctoral program in May 1998. In 1994, Mr. Schaber also received his Regulatory Affairs Certification (RAC) from the Regulatory Affairs Professional Society.

Huei Tsai, Ph.D., has served as Vice President of Biometrics of ATI since February, 1997. Prior to joining ATI, Dr. Tsai was a statistical consultant after retiring from the position of Director of Biometrics and Clinical Information at Ohmeda Pharmaceutical Products Division, a division of The BOC Group. At Ohmeda, Dr. Tsai was responsible for all statistical, computer operations, database and data coordination. From 1994 to 1995, Dr. Tsai was a statistical consultant to a variety of companies, including Janssen Pharmaceutical Company. For seventeen years prior to that, Dr. Tsai held a variety of biostatistical positions at the Robert Wood Johnson Pharmaceutical Research Institute and Ortho Pharmaceutical Corporation (both wholly-owned subsidiaries of J&J), including Director of Biostatistics for Clinical Pharmacology. Dr. Tsai received a B.A. degree in economics from Tunghai University in 1962 and a Ph.D. in mathematical statistics from Oklahoma State University in 1976.

Max Link, Ph.D., has served as a Director of Discovery since the effective time of the 1997 Merger and was a Director of Old Discovery from 1996 until such time. He has been a Director of ATI since October 1996. Dr. Link has held a number of executive positions with pharmaceutical and health care companies. He currently serves on the Boards of Directors of three publicly-traded life science companies: Alexion Pharmaceuticals, Inc., Protein Design Labs, Inc., Human Genome Sciences, Inc., Cell Therapeutics, Inc., Procept, Inc. and Access Pharmaceuticals, Inc. From May 1993 until June 1994, Dr. Link was Chief Executive Officer of Corange Limited, the parent company of Boehringer Mannheim and DePuy, an orthopedic company. Prior to joining Corange, he served in a number of positions within Sandoz Pharma, Ltd., including Chief Executive Officer from 1987 until April 1992, and Chairman from April 1992 until May 1993.

Lisa Mastroianni, R.N., has served as Director of Clinical Research of ATI since January of 1997. Prior to joining the Company, Ms. Mastroianni was employed from November of 1994 to November of 1996 by Ohmeda Pharmaceutical Products Division, a division of The BOC Group as Senior Clinical Research Associate. At Ohmeda, Ms. Mastroianni was responsible for the management and completion of the Phase 2/3 clinical study in acute respiratory distress syndrome, supervision of internal personnel as well as management of a Contract Research Organization, and assisting in the development and management of a Phase 1 clinical study in congestive heart failure. Previously Ms. Mastroianni was employed by Sandoz Pharmaceuticals from March 1992 to November 1994 in their cardiovascular clinical research department and was responsible for monitoring Phase 3 lipid studies and managing and monitoring Phase 1 CHF studies. Ms. Mastroianni has her Bachelors degree in Nursing from Bloomfield College and has worked as a critical care nurse in a number of hospitals in the United States from 1985 to 1992.

Juerg F. Geigy, Esq. has served as a Director of Discovery since the effective time of the 1997 Merger and was a Director of Old Discovery from June 1996 until such time. Dr. Geigy is an

attorney at law in Basel, Switzerland specializing in corporate and tax law, portfolio management and venture capital consulting. Dr. Geigy is a director of the following companies: Pitney Bowes (Switzerland) AG, U.S. Ventures S.A., Strategic Healthcare Investment Fund and Rothschild Bank AG. Dr. Geigy has been a director of J. Henry Schroder Bank AG, Biogen S. A., Bank Julius Baer International Limited, Baer Holding AG, Great Pacific Capital S.A. and Petroferm N.V. Dr. Geigy has also been a member of the Advisory Board of Massey Burch Investment Group, a Vice-Chairman and CEO of Rothschild Corporate Finance Ltd., Chief Executive Officer of Julius Baer Atlantic Limited and a member of the Management Committee of Bank Julius Baer & Co. AG. Dr. Geigy has held the position of Treasurer of the parent company of Ciba Geigy Ltd. and Group Treasurer of J.R. Geigy Limited.

Herbert H. McDade, Jr. has served as a Director of Discovery since the effective time of the 1997 Merger and was a Director of Old Discovery from June 1996 until such time. Mr. McDade is the Chairman of Access Pharmaceutical and a member of the Boards of Directors of two other publicly-held companies, Cytrx Corporation and Shaman Pharmaceuticals, and Clarion Pharmaceuticals, Inc., which is privately held. Mr. McDade was employed with the Upjohn Company for 20 years and for 14 years as President of Revlon Health Care International.

Mark C. Rogers, M.D. has served as a Director of Discovery since the effective time of the 1997 Merger and was a Director of Old Discovery from June 1996 until such time. Dr. Rogers has been Senior Vice President, Corporate Development and Chief Technology Officer at Perkin-Elmer Corporation since 1996. Prior to Perkin-Elmer, Dr. Rogers was the Vice Chancellor for Health Affairs, Executive Director and Chief Executive Officer of Duke University Hospital and Health Network from 1992 to 1996. Prior to his employment at Duke, Dr. Rogers was on the faculty of Johns Hopkins University for 15 years where he served as Distinguished Faculty Professor and Chairman of the Department of Anesthesiology and Critical Care Medicine, Associate Dean for Clinical Practice, Director of the Pediatric Intensive Care Unit and Professor of Pediatrics. Dr. Rogers received his M.D. from Upstate Medical Center and his M.B.A. from The Wharton School of Business. He received his B.A. from Columbia University and held a Fulbright Scholarship

Richard Sperber has been a Director of Discovery since May 1994. Mr. Sperber has been President and Chief Executive Officer of The Global Medicines Group Inc., a consulting firm, since 1991. From 1988 to 1991 Mr. Sperber was a Director and Head of Business Development and Strategic Planning for Glaxo Pharmaceuticals U.K. Ltd., a subsidiary of Glaxo Holdings plc. Prior to his employment at Glaxo, Mr. Sperber held a variety of positions including Area Director for Ayerst International, responsible for Southeast Asia, and Director of Marketing for Schering-Plough Corp. responsible for Canada, Japan, Australia and Southeast Asia. Mr. Sperber received his B.S. from the University of Denver and attended graduate school at Columbia University.

David Naveh, Ph.D. has been a Director of Discovery since May 1996. Dr. Naveh has served as Director of Process Technology for Bayer Corporation since September 1994 and was Director of Process Development from 1992 through 1994. Dr. Naveh was Director of Biotechnology Operations for Centocor from 1990 to 1992 and was Director of Purification for Centocor from 1989 to 1990. From 1984 to 1988, Dr. Naveh was a manager at Schering-Plough Corp. Dr. Naveh was on the faculty of the University of Wisconsin, Madison as Assistant Professor from 1982 to 1984. He received his B.Sc. and M.S. in 1990 from the Technion, Haifa, Israel and his Ph.D. from the University of Minnesota.

Richard G. Power is a Principal and Executive Director of The Sage Group, founded in 1994, which specializes in providing strategic and transactional services to the managements and boards of, and investors in, health care companies. He serves on the Board of Directors of The Quantum Group, and Neuromedica, Inc. From 1980 to 1994, Mr. Power served as President of R.G. Power &

Associates, Inc., which specializes in worldwide business development and financing strategy for the health care industry. From 1955 to 1980, Mr. Power held senior management positions with several pharmaceutical industry firms, including SmithKline, Searle and as a corporate officer at J&J Mr. Power received his B.A. from Loras College in 1951, and attended graduate school at the University of Wisconsin.

Marvin E. Rosenthale, Ph.D., has served as President and Chief Executive Officer of Allergan Ligand Retinoid Therapeutics, Inc. ("ALRT") from 1994 until 1997. He joined the ALRT joint venture formed by Allergan and Ligand, the entity through which they combined their resources to pursue the development of retinoid research and development prior to ALRT, in August 1993 as Vice President. Prior to joining ALRT, Dr. Rosenthale served as Vice President, Drug Discovery Worldwide, at R. W. Johnson Pharmaceutical Research Institute from 1990 to 1993. From 1977 to 1990, Dr. Rosenthale served in a variety of positions in drug discovery research for Ortho Pharmaceutical Corporation, including director of the divisions of pharmacology and biological research and executive director of drug discovery research. From 1960 to 1977, he served in various positions with Wyeth Laboratories. Dr. Rosenthale received a Ph.D. in pharmacology from Hahnemann Medical College & Hospital, an M.Sc. in pharmacology from Philadelphia College of Pharmacy and Science and a B.Sc. in pharmacy from Philadelphia College of Pharmacy.

Milton Packer, M.D. has served in a variety of roles since 1992 and currently is the Dickinson W. Richards, Jr. Professor of Medicine, Professor of Pharmacology, Chief of the Division of Circulatory Physiology at the Columbia University College of Physicians and Surgeons, and Director of the Heart Failure Center at the Columbia Presbyterian Hospital. He is also a Clinical Research Scholar at Columbia. Dr. Packer's major research is focused on the pathophysiology and treatment of heart failure. He is on the Executive Committee of both the American Heart Association and the American College of Cardiology. He is a primary consultant to the National Institutes of Health and the Food and Drug Administration on the management of heart failure and on matters related to cardiovascular research and drug development and health care policy. From 1988 to 1992, Dr. Packer was Professor of Medicine at the Mt. Sinai School of Medicine. Dr. Packer received his B.S. degree from the Pennsylvania State University in 1971 and his M.D. degree from the Jefferson Medical College in 1973.

Thomas E. Wiswell, M.D., has served as Vice President of Clinical Research of ATI since April 1997. Since 1993, he has been a Professor of Pediatrics at Jefferson Medical College at Thomas Jefferson University in Philadelphia, Pennsylvania. From 1988 to 1993, he was an Associate Professor of Pediatrics at the F. Edward Herbert School of Medicine in Bethesda, Maryland. He retired as a Lieutenant Colonel from the U.S. Army on June 30, 1993 after twenty years on active duty. Dr. Wiswell is a graduate of the United States Military Academy at West Point and the University of Pennsylvania Medical School.

All directors hold office until the next annual meeting of stockholders of Discovery or ATI, as the case may be, or until their successors have been elected and qualified. Officers serve at the discretion of the applicable Board of Directors. The Bylaws of each of Discovery and ATI provide that directors and officers shall be indemnified against liabilities arising from their service as directors or officers to the fullest extent permitted by the laws of the State of Delaware, which generally requires that the individual act in good faith and in a manner he or she reasonably believes to be in or not opposed to the best interests of Discovery or ATI, as the case may be.

ITEM 10. EXECUTIVE COMPENSATION

Compensation Committee Interlocks and Insider Participation

The Compensation Committee of the Company's Board is comprised of Mr. McDade and Dr. Rogers. Neither Mr. McDade nor Dr. Rogers was at any time during the fiscal year ended December 31, 1997, or at any other time, an officer or employee of the Company. Neither Mr. McDade nor Dr. Rogers serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of the Company's Board of Directors or Compensation Committee.

The remainder of the information required to be included in this Item is incorporated by reference to the Company's Proxy Statement for its Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year ended December 31, 1997.

ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

Incorporated by reference to the Company's Proxy Statement for its Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year ended December 31, 1997.

ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

Incorporated by reference to the Company's Proxy Statement for its Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year ended December 31, 1997.

ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K.

(a) Exhibits

Exhibits are listed on the Index to Exhibits at the end of this Report. The exhibits required by Item 601 of Regulation S-B, listed on such Index in response to this Item, are incorporated herein by reference.

(b) Reports On Form 8-K

Two reports on Form 8-K were filed by the Company during the three months ended December 31, 1997. One report was filed on November 28, 1997, relating to a press release dated November 26, 1997, announcing the completion of the 1997 Merger. The second report was filed on December 11, 1997, relating to a press release dated December 10, 1997, announcing the completion of the enrollment of ATI's Phase 1B clinical trial in ARDS.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

DISCOVERY LABORATORIES, INC.

Date: March 30, 1998 By: /s/ Robert J. Capetola, Ph.D.

Robert J. Capetola, Ph.D.
Acting Chief Executive Officer

In accordance with the Exchange Act, this Report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Name & Title	Date
/s/ James S. Kuo	James S. Kuo, M.D. Director	March 30, 1998
/s/ Evan Myrianthopoulos	Evan Myrianthopoulos Chief Financial Officer (Principal Accounting Officer)	March 30, 1998
/s/ Steve H. Kanzer	Steve H. Kanzer, C.P.A., Esq. Chairman of the Board	March 30, 1998
	Mark C. Rogers, M.D. Director	March 30, 1998
	Herbert McDade, Jr. Director	March __, 1998
/s/ Max Link	Max Link, Ph.D. Director	March 30, 1998
	David Naveh, Ph.D. Director	March __, 1998
/s/ Juerg Geigy	Juerg Geigy, Esq. Director	March 30, 1998
/s/ Richard Sperber	Richard Sperber Director	March 30, 1998

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION
2.1*	Agreement and Plan of Merger dated as of March 5, 1998 among Discovery, ATI Acquisition Corp. and ATI.
	Exhibit A: Form of Employment Agreement between Discovery and Robert Capetola, Ph.D.
	Exhibit B: Form of Employment Agreement.
	Exhibits C, D and E: Notices of Grant of Stock Option
	Exhibit F: Form of Registration Rights Agreement among Discovery, Johnson & Johnson Development Corporation and The Scripps Research Institute.
	Exhibit G: Form of Investment Agreement.
	Exhibit H: Form of Lock-up Agreement among Discovery, ATI Acquisition Corp. and ATI.
	Exhibit I: Form of Discovery 1998 Stock Option Plan.
2.3**	Agreement and Plan of Reorganization and Merger, dated as of July 16, 1997, by and between Discovery and Old Discovery.
2.4**	Form of Affiliate's Agreement
2.5**	Form of Lock-Up Agreement executed by certain stockholders of Old Discovery that did not participate in the Unit Offering.
2.6**	Voting Agreement, dated as of August 4, 1997, by and between Old Discovery and Titan.
2.7**	Form of Voting Agreement between Discovery and certain stockholders of Old Discovery.
2.8***	Form of Subscription Agreement by and between Discovery and Certain Purchasers of Series A Convertible Preferred Stock and Common Stock of Old Discovery.
3.1*	Restated Certificate of Incorporation of Discovery, as amended to date.
3.2oo	By-laws of Discovery.
10.1	Reference is made to Exhibit 2.1.
10.2oo	Warrant Agreement, dated as of August 8, 1995 among Discovery,

	Continental Stock Transfer & Trust Company and D.H. Blair Investment Banking Corp.
10.3***+	Inventory Transfer/Stock Purchase Agreement dated October 28, 1996, among ATI, Johnson & Johnson Development Corporation ("JJDC"), The R.W. Johnson Pharmaceutical Research Institute and Ortho.
	Schedule A: Summary of significant available inventory
	Schedule B: Radiolabelled materials inventory
	Exhibit A: Form of Registration Rights Agreement
	Exhibit B: Form of Co-Sale Agreement
	Exhibit C: Certificate of Designations for Series A Preferred Stock
	Exhibit D: Certificate of Designations for Series B Preferred Stock
	Schedule I: Capitalization
10.4***	Investor Rights Agreement dated March 20, 1996, between Old Discovery and RAQ, LLC.
10.5***	Registration Rights Agreement dated October 28, 1996, between ATI, JJDC, Ortho and Scripps.
10.6*	Co-Sale and Registration Agreement between Discovery and Thomas Kennedy M.D. dated March 20, 1996.
10.7*	Co-Sale and Registration Agreement between Discovery and John Hoidal M.D. dated March 20, 1996.
10.8***	Co-Sale Agreement dated October 28, 1996, between ATI and certain shareholders.
10.9*	Employee Stock Purchase Agreement between Discovery and Steve Kanzer dated March 20, 1996.
10.10*	Employee Stock Purchase Agreement between Discovery and Steve Kanzer dated August 15, 1995.
10.11*	Employee Stock Purchase Agreement between Discovery and Evan Myrianthopoulos dated March 20, 1996.
10.12*	Employee Stock Purchase Agreement between Discovery and Evan Myrianthopoulos dated August 15, 1995.
10.13***	Stock Purchase Agreement dated October 28, 1996, between ATI and Scripps.
10.14***	Founder/Employee Stock Purchase Agreement dated October 10,

	1996, between ATI and Robert Capetola, Ph.D.
10.15***	Founder/Employee Stock Purchase Agreement dated October 10, 1996, between ATI and Charles Cochrane, M.D.
10.16***	Founder/Employee Stock Purchase Agreement dated October 10, 1996, between ATI and Susan Revak.
10.17***	Founder/Employee Stock Purchase Agreement dated October 10, 1996, between ATI and Sage Partners.
10.18*+	License Agreement between Discovery and Bar-Ilan dated November 25, 1997.
10.19**	License Agreement dated May 31, 1996, between Boehringer Ingelheim and Discovery.
10.20***+	License Agreement dated September 6, 1996, between Discovery and WARF, as amended on October 31, 1996.
10.21***+	Sublicense Agreement dated October 28, 1996 between ATI, Johnson & Johnson, Inc. and Ortho.
10.22***+	License Agreement between Discovery and The Charlotte-Mecklenburg Hospital Authority dated March 20, 1996.
10.23oo	Restated 1993 Stock Option Plan of Discovery.
10.24oo	1995 Stock Option Plan of Discovery.
10.25oo	Form of Escrow Agreement by and between Discovery, Continental Stock Transfer & Trust Company and certain securityholders of Discovery.
10.26oo	Form of Indemnification Agreement.
10.27*	Lease Agreement between Discovery and Newmark and Company Real Estate, Inc., dated May 29, 1997, for professional offices at 509 Madison Avenue, New York, New York.
10.28*	Lease Agreement between ATI and Kevin MacDonald and Marilyn MacDonald, dated November 8, 1996, for professional offices at 3359 Durham Road, Buckingham township, Pennsylvania, from November 11, 1996 to November 10, 2001.
10.29***	Scientific Advisory & Consulting Agreement dated March 20, 1996, between Discovery and Dr. Thomas Kennedy.
10.30***	Scientific Advisory & Consulting Agreement dated May 1, 1996, between Discovery and Dr. John Hoidal.
10.31***+	Letter of Intent dated October 17, 1996, between Discovery and

	Robert Capetola, Ph.D.
10.32***	Employment Agreement by and between Discovery and James S. Kuo, M.D. dated April 4, 1996
10.33***	Employment Agreement dated November 25, 1996, between Discovery and David Crockford.
10.34***	Management Agreement dated June 1, 1996 by and between Discovery and Steve Kanzer.
10.35*	Consulting Agreement dated October 1, 1996 between Discovery and Hector deLuca
10.36***	Employment Agreement dated October 1, 1996 between ATI and Robert J. Capetola, Ph.D.
10.37***+	Consulting Agreement dated December 9, 1996 between ATI and Dr. Charles Cochrane.
10.38***+	Consulting Agreement dated December 9, 1996 between ATI and Susan Revak.
10.39***	Consulting Agreement dated December 9, 1996 between ATI and Zenaida Oades.
10.40***	Consulting Agreement dated December 9, 1996 between ATI and Monica Cochrane.
10.41***	Consulting Agreement dated October 28, 1996 between ATI and The Sage Group.
10.42*	Letter Agreement between ATI and the Sage Group signed November 4, 1996.
10.43***	Financial Advisory Agreement dated November 8, 1996 between Discovery and Paramount Capital Incorporated.
10.44***+	Clinical Product Development Agreement dated January 29, 1997, between Discovery and Cook Imaging Corporation.
10.45***+	Clinical Product Development Agreement dated January 3, 1997, between ATI and Cook Imaging Corporation.
10.46*+	First Amendment to the Clinical Product Development Agreement, effective January 3, 1997, between ATI and Cook Imaging Corporation, dated January 16, 1998.
10.47***+	Research Funding and Option Agreement dated October 28, 1996, between Scripps and ATI, as amended by letter agreement dated February 26, 1997.

10.48***	Employment Agreement dated as of February 16, 1997 between ATI and Huei Tsai, PH.D.
10.49***	Employment Agreement dated as of June 1, 1997 between ATI and Thomas E. Wiswell, M.D.
10.50***+	Clinical Testing Agreement dated as of February 24, 1997 between Discovery and the University of Utah.
10.51*+	Clinical Development Services Agreement dated as of December 1, 1997 between Discovery and Covance Clinical Research Unit.
10.52*+	Supply Agreement between ATI and Polypeptides Laboratories, Inc., dated December 10, 1997, for the processing of peptides.
10.53*	Employment Agreement between ATI and Harry G. Brittain, Ph.D., dated November 1, 1996
10.54*	Employment Agreement between ATI and Laurence B. Katz, Ph.D., dated November 18, 1996
10.55*	Employment Agreement between ATI and Lisa Mastroianni, R.N., dated January 2, 1997
10.56*	Employment Agreement between ATI and Christopher J. Schaber, R.A.C., dated November 4, 1996
10.57*	Management Agreement between Discovery Laboratories, Inc. and Acute Therapeutics, Inc. dated as of March 5, 1998.
10.58*	Letter Agreement between ATI and Lehman Brothers dated November 10, 1997.
21.1*	Subsidiaries of Discovery.
27.1*	Financial Data Schedule.

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* Filed herewith.

** Incorporated by reference to Discovery's Registration Statement on Form S-4 (File No. 333- 34337).

*** Incorporated by reference to Discovery's Registration Statement on Form SB-2 (File No. 333-19375).

o Incorporated by reference to Discovery's Annual Report on Form 10-K-SB for the year ending December 31, 1995.

oo Incorporated by reference to Discovery's Registration Statement on Form SB-2 (File No. 33-92-886).

+ Confidential treatment requested as to certain portions of these exhibits. Such portions have been redacted.

DISCOVERY LABORATORIES, INC. AND SUBSIDIARY
(a development stage company)

Contents

INDEPENDENT AUDITORS' REPORT

Board of Directors and Stockholders
Discovery Laboratories, Inc.
New York, New York

We have audited the accompanying consolidated balance sheet of Discovery Laboratories, Inc. and subsidiary (a development stage company) as of December 31, 1997, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for the two years ended December 31, 1997, and the period from May 18, 1993 (inception) through December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements enumerated above present fairly, in all material respects, the consolidated financial position of Discovery Laboratories, Inc. and subsidiary as of December 31, 1997 and the consolidated results of their operations and their consolidated cash flows for each of the years in the two-year period ended December 31, 1997, and the period from May 18, 1993 (inception) through December 31, 1997, in conformity with generally accepted accounting principles.

Richard A. Eisner & Company, LLP

New York, New York
January 26, 1998

With respect to Note L
March 5, 1998

DISCOVERY LABORATORIES, INC. AND SUBSIDIARY
(a development stage company)

Consolidated Balance Sheet
December 31, 1997

ASSETS

Current assets:	
Cash and cash equivalents	$ 6,297,000
Investments	4,957,000
Prepaid expenses	190,000
Total current assets	11,444,000
Furniture and equipment, net of deprecation	181,000
Security deposits	30,000
	$ 11,655,000

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:	
Accounts payable and accrued expenses	$ 565,000
Dividends payable on preferred stock	238,000
Minority interest in preferred stock of subsidiary (Note H)	2,039,000
Commitments (Notes D, F, H[2] and K)	
Stockholders' Equity (Notes A, G and J):	
Preferred stock, $.001 par value; 5,000,000 shares authorized; 2,200,256 shares issued and outstanding (liquidation preference $29,703,000)	2,000
Common stock, $.001 par value; 20,000,000 authorized; 3,175,955 shares issued and outstanding	3,000
Additional paid-in capital	21,464,000
Deficit accumulated during the development stage	(12,656,000)
Total stockholders' equity	8,813,000
	$ 11,655,000

See notes to financial statements

DISCOVERY LABORATORIES, INC. AND SUBSIDIARY
(a development stage company)

Consolidated Statements of Operations

	Year Ended December 31,		May 18, 1993 (Inception) Through December 31,
	1997	1996	1997
Interest income	$ 713,000	$ 205,000	$ 918,000
Expenses:			
Write-off of acquired in-process research and development and supplies	3,663,000	2,200,000(1)	5,863,000
Research and development	4,378,000	540,000(1)	4,918,000
General and administrative	1,836,000	692,000	2,546,000
Interest		11,000	11,000
Total expenses	9,877,000	3,443,000	13,338,000
	(9,164,000)	(3,238,000)	(12,420,000)
Minority interest in net loss of subsidiary		2,000	2,000
Net loss	$(9,164,000)	$(3,236,000)	$(12,418,000)
Net loss per share - basic and diluted (Note B[9])	$ (3.42)	$ (1.96)	
Weighted average number of common shares outstanding	2,678,803	1,647,923	

(1) Reclassified to be comparative to current year presentation.

See notes to financial statements

DISCOVERY LABORATORIES, INC. AND SUBSIDIARY
(a development stage company)

Consolidated Statements of Changes in Stockholders' Equity

	Common Stock		Preferred Stock					
	Shares	Amount	Shares	Amount	Receivable	Stock Subscriptions Capital	Additional Paid-in Stage	Deficit Accumulated During the Development Total
Issuance of common shares, May 1993	440,720	$1,000			$(2,000)	$ 1,000		$ 0
Net loss							$ (1,000)	(1,000)
Expenses paid on behalf of the Company					1,000			1,000
Balance - December 31, 1993	440,720	1,000			(1,000)	1,000	(1,000)	0
Net loss								0
Balance - December 31, 1994	440,720	1,000			(1,000)	1,000	(1,000)	0
Issuance of common shares, February 1995	143,016				(1,000)	1,000		0
Net loss							(17,000)	(17,000)
Payment on stock subscriptions					2,000			2,000
Expenses paid on behalf of the Company						18,000		18,000
Balance - December 31, 1995	583,736	1,000			0	20,000	(18,000)	3,000
Issuance of common shares, March 1996	1,070,175	1,000				5,000		6,000
Issuance of private placement units August, October and November 1996	856,138	1,000	2,200,256	$2,000		18,933,000		18,936,000
Issuance of common shares for cash and compensation, September 1996	82,502					42,000		42,000
Exercise of stock options, July and October 1996	19,458					7,000		7,000
Net loss							(3,236,000)	(3,236,000)
Balance - December 31, 1996	2,612,009	3,000	2,200,256	2,000	0	19,007,000	(3,254,000)	15,758,000
Private placement expenses						(11,000)		(11,000)
Issuance of common shares pursuant to merger	546,433					2,459,000		2,459,000
Exercise of stock options, July, August and October 1997	17,513					9,000		9,000
Accumulated dividends on preferred stock							(238,000)	(238,000)
Net loss							(9,164,000)	(9,164,000)
Balance - December 31, 1997	3,175,955	$3,000	2,200,256	$2,000	$ 0	$21,464,000	$(12,656,000)	$ 8,813,000

See notes to financial statements

DISCOVERY LABORATORIES, INC. AND SUBSIDIARY
(a development stage company)

Consolidated Statements of Cash Flows

	Year Ended December 31,		May 18, 1993 (Inception) Through December 31,
	1997	1996	1997
Cash flows from operating activities:			
Net loss	$(9,164,000)	$ (3,236,000)	$(12,418,000)
Adjustments to reconcile net loss to net cash used in operating activities:			
Write-off of acquired in-process research and development and supplies	3,663,000	2,200,000	5,863,000
Write-off of licenses	683,000		683,000
Depreciation and amortization	40,000	24,000	64,000
Changes in:			
Prepaid expenses	(141,000)	(18,000)	(159,000)
Accounts payable and accrued expenses	129,000	230,000	359,000
Other assets	(30,000)		(30,000)
Expenses paid on behalf of company			18,000
Employee stock compensation		42,000	42,000
Reduction of research and development supplies	(161,000)		(161,000)
Net cash used in operating activities	(4,981,000)	(758,000)	(5,739,000)
Cash flows from investing activities:			
Acquisition of furniture and equipment	(114,000)	(83,000)	(197,000)
Acquisition of licenses		(711,000)	(711,000)
Purchase of investments	(7,539,000)	(13,064,000)	(20,603,000)
Proceeds from sale or maturity of investments	16,051,000		16,051,000
Net cash payments on merger	(1,454,000)		(1,454,000)
Net cash provided by (used in) investing activities	6,944,000	(13,858,000)	(6,914,000)
Cash flows from financing activities:			
Proceeds on private placements of units, net of expenses	(11,000)	18,936,000	18,925,000
Collections on stock subscriptions and proceeds on exercise of stock options	9,000	13,000	25,000
Net cash (used in) provided by financing activities	(2,000)	18,949,000	18,950,000
Net (decrease) increase in cash and cash equivalents	(1,961,000)	4,333,000	6,297,000
Cash and cash equivalents - beginning of period	4,336,000	3,000	0
Cash and cash equivalents - end of period	$ 6,297,000	$ 4,336,000	$ 6,297,000
Noncash transactions:			
Accrued dividends on ATI preferred stock	$ 238,000		$ 238,000

NOTE A - THE COMPANY AND BASIS OF PRESENTATION

Discovery Laboratories, Inc. (the "Company"), formerly known as Ansan Pharmaceuticals, Inc. ("Ansan"), was incorporated in Delaware on November 6, 1992 and was a wholly owned subsidiary of Titan Pharmaceuticals, Inc. ("Titan"). The Company was formed to license and develop pharmaceutical products to treat a variety of human diseases. In August 1995, Ansan issued its securities in an initial public offering and ceased to be a subsidiary of Titan. In November 1997, Ansan merged (the "Merger") with Discovery Laboratories, Inc., a former Delaware corporation ("Old Discovery"), and was the surviving corporate entity. Subsequent to the Merger, Ansan changed its name to Discovery Laboratories, Inc. Pursuant to the Merger, each outstanding share of Old Discovery's common stock was converted into 1.167471 shares of the Company's common stock and each share of Old Discovery's Series A convertible preferred stock was converted into one share of the Company's Series B preferred stock (the "Exchange Ratios"). The Company also assumed all outstanding options and warrants to purchase Old Discovery's common stock and Series A preferred stock which became exercisable for the Company's common stock and Series B preferred stock, respectively, based on the Exchange Ratios. In connection with the Merger, the Company and Titan entered into arrangements providing for the relinquishment by the Company of rights to certain drug compounds and the transfer of such rights to Titan in exchange for (i) a 2% net royalty payable by Titan to the Company from net sales of such drug compounds (see Note F[3]), and (ii) the cancellation of all Ansan common stock owned by Titan. On consummation of the merger, 13,000 shares of Ansan Series A preferred stock held by Old Discovery were cancelled.

The Merger was accounted for as a reverse acquisition with Old Discovery as the acquirer for financial reporting purposes since Old Discovery's stockholders owned approximately 92% of the merged entity on a diluted basis. The consolidated financial statements include the historical accounts of Old Discovery and its majority owned subsidiary Acute Therapeutics, Inc. ("ATI") and the accounts of Ansan from November 25, 1997 (the date of acquisition). The assets and liabilities of Ansan acquired are recorded at fair value on the date of the merger. The difference between the fair value of the net assets acquired and value of the common stock issued plus merger related costs has been attributed to in-process research and development and has been recorded as an expense upon acquisition.

The following assets were acquired and the costs of the acquisition were as follows:

Assets acquired:	
Cash	$ 281,000
Investments	400,000
Prepaid expenses	31,000
Furniture and equipment	25,000
In-process research and development	3,663,000
	$4,400,000
Acquisition costs:	
Assumption of accounts payable and accrued expenses	$ 206,000
Ansan Series A Preferred Stock (purchased by Old Discovery in July 1997 and cancelled upon completion of the Merger)	1,300,000
Common stock issued to Ansan stockholders, 546,433 shares, at fair value	2,459,000
Transaction costs	435,000
	$4,400,000

NOTE A - THE COMPANY AND BASIS OF PRESENTATION (CONTINUED)

The following pro forma unaudited financial information gives effect to the Merger as if it had occurred at the beginning of the respective periods. A nonrecurring charge of $3,663,000 for in-process research and development which was recorded by the Company upon consummation of the merger has not been considered in the pro forma results.

	Year Ended December 31,	
	1997	1996
Interest income	$ 811,000	$ 363,000
Expenses:		
Research and development	5,400,000	3,921,000
General and administrative	2,556,000	1,949,000
Interest		11,000
Total expenses	7,956,000	5,881,000
Minority interest in net loss of subsidiary		2,000
Net loss	$(7,145,000)	$(5,516,000)
Net loss per common share - basic and diluted	$ (2.26)	$ (2.51)
Weighted average number of common shares outstanding	3,164,383	2,194,356

The accompanying financial statements include the accounts of the Company and its majority owned subsidiary, Acute Therapeutics, Inc. ("ATI"). All intercompany balances and transactions have been eliminated. No allocation of ATI's net loss for the year ended December 31, 1997, has been attributed to the minority interest since the accumulated losses exceed the minority's common equity interest.

Concurrently with the Merger, the Company's Board of Directors and stockholders approved a 1 for 3 reverse stock split of its common stock, Class A and Class B warrants and options to purchase shares of the Company's common stock (the "Reverse Split").

All references to shares and per share amounts have been adjusted to reflect the Exchange Ratios and the Reverse Split.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

[1] Cash and cash equivalents:

The Company considers all highly liquid investments purchased with a maturity of three months or less to be cash equivalents.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

[2] Investments:

The investments are classified as available for sale, and are comprised of United States government obligations and shares in a mutual fund which invests in income producing securities. Investments are recorded at fair value which approximates cost. Any appreciation/depreciation on these investments is recordable as a separate component of stockholders equity until realized.

[3] Furniture and equipment:

Furniture and equipment is recorded at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets (five to seven years).

[4] Licenses:

Through March 1997 licenses were capitalized and were being amortized on a straight-line basis over their respective terms of 15 to 17 years. During the quarter ended June 30, 1997, the Company determined that since they will not pursue any alternative uses for the licenses, that all license costs would be written off as research and development costs.

[5] Research and development:

Research and development costs are charged to operations as incurred.

[6] Use of estimates:

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

[7] Long-lived assets:

In accordance with Statement of Financial Accounting Standards No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," the Company records impairment losses on long-lived assets used in operations, including intangible assets, when events and circumstances indicate that the assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. No such losses have been recorded.

[8] Stock-based compensation:

During 1996, the Company adopted Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123"). The provisions of SFAS No. 123 allow companies to either expense the estimated fair value of employee stock options or to continue to follow the intrinsic value method set forth in Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees" ("APB 25") but disclose the pro forma effects on net income (loss) had the fair value of the options been expensed. The Company has elected to continue to apply APB 25 in accounting for its employee stock option incentive plans. See Note I to the financial statements for further information.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

[9] Net loss per share:

During the year ended December 31, 1997, the Company adopted Statement of Financial Accounting Standards No. 128 "Earnings per Share" which had no effect on the previously reported net loss per share. Net loss per share is computed based on the weighted average number of common shares outstanding for the periods and common shares issuable for little or no cash consideration, adjusted to reflect the Exchange Ratios and the reverse stock split. Potential common shares not included in the calculation of net loss per share for the year ended December 31, 1997 as the effect would be anti-dilutive, are as follows (Notes G and I):

	Number of Potential Common Shares
Series B convertible preferred stock	3,424,980
Placement agent's warrants to acquire Series B convertible preferred stock	342,498
Stock options	371,993

[10] Recent accounting pronouncements:

Recently issued accounting pronouncements concerning disclosure of information about capital structure, reporting comprehensive income and disclosure about segments of an enterprise are not expected to have a material effect on the presentation of the Company's financial statements.

NOTE C - FURNITURE AND EQUIPMENT

At December 31, 1997 furniture and equipment comprised of the following:

Furniture	$ 59,000
Equipment	163,000
	222,000
Less accumulated depreciation	41,000
	$181,000

NOTE D - EMPLOYMENT AGREEMENTS

An employment agreement with the Company's President and CEO provides for an annual salary of $175,000 through April 1999. An employment agreement with an executive officer provides for an annual salary of approximately $141,000 through November 1999. The agreements include the issuance of options, bonuses and salary increases, and contain renewal options.

The Company has also entered into two three year consulting agreements which provide for aggregate annual fees of approximately $48,000 through March 1999.

NOTE E - INCOME TAXES

At December 31, 1997, the Company has available for federal income tax purposes net operating loss carryforwards of approximately $14,600,000 expiring through 2011, that may be used to offset future taxable income. As a result of the ownership change pursuant to the Merger, Ansan's portion of the net operating loss carryforward of approximately $9,500,000 through November 1997, is limited in accordance with Section 382 of the Internal Revenue Code. Pursuant to Section 382 of the Internal Revenue Code, the utilization of these carryforwards may become further limited if certain ownership changes occur. The Company has research and development credit carryforwards of approximately $373,000 which expire in 2011. Ansan's portion of these credits of approximately $179,000 are also subject to a Section 382 limitation. There will be an annual amount available to offset future taxable income.

The principal difference between the deficit accumulated during the development stage for financial reporting purposes and the net operating loss carryforward for tax purposes is primarily due to the write-off of the acquired in-process research and development and supplies and certain research and development expenses which are not currently deductible for tax purposes. The Company has provided a valuation reserve against the full amount of the deferred tax asset of $7,354,000. The components of the deferred tax assets are net operating loss benefits of approximately $5,410,000, acquired in-process research and development and supplies write-off of approximately $765,000 and research and development costs not currently deducted and research credits of approximately $1,179,000. The valuation reserve is required since the likelihood of realization cannot be determined. The valuation reserve increased by approximately $6,124,000 and $1,223,000 for the years ended December 31, 1997 and 1996, respectively. The difference between the statutory federal income tax rate of 34% and the Company's effective tax rate of 0% is due to the increase in the valuation reserve.

NOTE F - LICENSE AGREEMENTS

[1] In 1996, the Company entered into a license agreement with the Charlotte-Mecklenburg Hospital Authority for the use of the active compound in SuperVent, a therapy which the Company is clinically testing. The Company paid a license issue fee of $86,400 and has agreed to pay royalties on future sales and to pay future patent-related costs. The license expires upon expiration of the underlying patents.

[2] In 1996, the Company entered into a license agreement with the Wisconsin Alumni Research Foundation ("WARF") for the use of the patented compound ST-630 in the treatment of post-menopausal osteoporosis. The Company paid WARF an option fee of $25,000 in June 1996 and a license issue fee of $400,000 in October 1996 and is obligated to make future milestones payments aggregating $3,095,000 and pay royalties on future sales. The license expires upon expiration of the underlying patents.

[3] In 1992, the Company entered into research (which expired in 1994) and license agreements with Bar-Ilan Research and Development Company, Ltd. ("Bar-Ilan"), an entity located in Israel. Pursuant to the license agreement, the Company received certain exclusive worldwide licenses to inventions and confidential information related to the research program in exchange for the research funding and specified royalties on future sales and/or sublicensing arrangements. In November 1997, in connection with the Merger, the Company and Bar-Ilan agreed to enter into a new license agreement in order to permit certain of the Company's rights under the original Bar-Ilan license agreement to be licensed to Titan (see Note A). Pursuant to the new license agreement, the Company is obligated to pay royalties to Bar-Ilan on any of its sales of licensed products. To maintain license exclusivity, the Company is obligated to make minimum royalty payments of $25,000 in 1998 and $60,000 in each calendar year thereafter.

NOTE F - LICENSE AGREEMENTS (CONTINUED)

[3] (continued)

Bar-Ilan's agreement with Titan includes the obligation for making the minimum royalty payments in 1998 and thereafter to maintain license exclusively. In addition, the agreement includes future milestone payments aggregating $200,000 (to be shared equally by the Company and Titan, pursuant to a separate agreement between the Company and Titan, in the event both companies achieve the milestone) and royalties on future sales. In the event the agreement between Bar-Ilan and Titan is terminated, Bar-Ilan has the right to require the Company to assume all rights and obligations under the Titan agreement. The Company does not intend to pursue development of the compounds under the license agreement and is seeking to sublicense that technology.

[4] In May 1996, the Company signed a licensing agreement with Boehringer Ingelheim GmbH ("Boehringer") to acquire the rights in the United States and the European Union to develop a new intravenous formulation of the drug Apafant(TM) for all clinical indications. Pursuant to the agreement, the Company may be obligated to make future milestone and royalty payments to Boehringer. However, under certain circumstances, Boehringer may participate in further development and commercialization of Apafant(TM) and, in such circumstances, would be obligated to make milestone and royalty payments to the Company.

[5] See Note H[1] with respect to a sublicense agreement between ATI and Johnson & Johnson, Inc.

NOTE G - STOCKHOLDERS' EQUITY

Private placement:

In 1996, pursuant to a private placement offering, Old Discovery sold approximately 44 units (each unit consisting of securities converted in the Merger into 50,000 shares of Series B convertible preferred stock and 19,458 shares of common stock of the Company). Preferred stockholders have voting rights based upon the number of shares of common stock issuable upon conversion of the preferred shares. Each share of preferred stock is convertible at the option of the holders thereof into 1.556628 shares of common stock of the Company. The conversion rate will be adjusted under certain circumstances based on the future market price of the common stock. Net proceeds from the private placement approximated $19,000,000.

The placement agent for the offering received approximately $2,860,000 in cash plus warrants which, pursuant to the merger give the holders thereof the right to acquire 220,026 shares of Series B preferred stock at a price of $11 per share, through November 8, 2006 and to acquire 85,625 shares of common stock at a price of $0.64 per share, through November 8, 2006. The warrants contain certain anti-dilution provisions and may be exercised on a "net exercise" basis pursuant to a provision that does not require the payment of any cash to the Company.

Unit offering:

In August 1995, the Company issued an aggregate of 498,333 units (including 65,000 units pursuant to the underwriter's overallotment option) at $15.00 per unit in an initial public offering (the "Offering"). Each unit consisted of one share of common stock, one redeemable Class A warrant, and one Class B warrant. Each Class A warrant entitles the holder to purchase one share of common stock and one Class B warrant at an exercise price of $19.50 per share. Each Class B warrant entitles the holder to purchase one share of common stock an exercise price of $26.25 per share.

NOTE G - STOCKHOLDERS' EQUITY (CONTINUED)

Unit offering: (continued)

In connection with the Offering, the holders of the Company's common stock and options to purchase common stock placed, on a pro rata basis, 121,246 shares (including 115,491 shares held by the Company pending cancellation pursuant to the Merger (Note A)) and options to purchase 12,086 shares of common stock into escrow (the "Escrow Shares" and "Escrow Options", respectively). The Escrow Shares and Escrow Options are not transferable or assignable; however, the Escrow Shares may be voted. Holders of Escrow Options may exercise their options prior to their release from escrow; however, the shares issuable upon any such exercise will continue to be held in escrow. The Escrow Shares and Escrow Options will be released from escrow if, and only if, certain earnings or market price criteria have been met. If the conditions are not met by March 31, 2000, the Escrow Shares and Escrow Options will be cancelled and contributed to the Company's capital.

The release of Escrow Shares and Escrow Options held by employees, officers, directors, consultants and their relatives will be deemed compensatory. Accordingly, the Company will recognize as compensation expense, during the period in which the earnings or market price targets are met, a one-time charge to reflect the then fair market value of the shares released from escrow. Such charges could substantially reduce the Company's net income or increase the net loss. The amount of compensation expense recognized by the Company will not affect the total stockholders equity.

NOTE H - INVESTMENT IN ACUTE THERAPEUTICS, INC.

[1] Formation of Acute Therapeutics, Inc.:

On October 28, 1996, the Company invested $7.5 million in a newly formed subsidiary, ATI, in exchange for 600,000 shares of Series A convertible preferred stock of ATI, then representing 75% of the outstanding voting securities of ATI following such transaction.

Concurrent with the Company's investment in ATI, Johnson & Johnson, Inc. ("J&J"), Ortho Pharmaceuticals, Inc. (a wholly owned subsidiary of J&J), and ATI entered into an agreement (the "J&J License Agreement") granting an exclusive license of Surfaxin(TM) technology to ATI in exchange for certain license fees ($200,000 of which was paid in November 1996), milestone payments aggregating $2,750,000, royalties and 40,000 shares of ATI common stock. J&J contributed its Surfaxin(TM) raw material inventory and manufacturing equipment to ATI in exchange for 2,200 shares of nonvoting Series B preferred stock of ATI having a $2.2 million liquidation preference and a $100 per share cumulative annual dividend. Dividends of $238,000 have accrued to the benefit of J&J through December 31, 1997. However, such dividends are only required to be paid upon liquidation of ATI or redemption of the preferred stock. The inventory and equipment were valued at $2,200,000 (the value of the preferred shares issued to J&J) and were charged to expense as their intended use is for research and development activities. The Scripps Research Institute ("Scripps") received 40,000 shares of common stock of ATI in exchange for its consent to the J&J License Agreement.

In 1997, ATI and J&J determined that certain of the raw material inventory to be received pursuant to the J&J License Agreement was not available. ATI negotiated with J&J a price adjustment and proportionate reduction of the liquidation preference of the Series B preferred stock issued of approximately $161,000 and a corresponding reduction of 161 Series B preferred shares held by J&J. The price adjustment has been accounted as a credit to research and development expense in 1997.

The co-founders (some of who are also consultants to ATI) of ATI purchased an aggregate of 120,000 shares of ATI common stock for $.01 per share and were granted options to purchase an aggregate of 44,800 shares of common stock of ATI at an exercise price of $.01 per share vesting after a five-year term, subject to acceleration and 40,000 shares of common stock of ATI at an exercise price of $.32 per share vesting in April 1997.

NOTE H - INVESTMENT IN ACUTE THERAPEUTICS, INC. (CONTINUED)

[2] Commitments:

(a) In 1996, ATI entered into a four-year employment agreement with its President, Chief Executive Officer and Chairman of the Board of Directors providing for a base salary of $225,000 per year. The agreement includes additional payments in the aggregate amount of $150,000 on the completion of specified events and the issuance of bonuses in each year of employment. In 1996 and 1997, ATI also entered into three-year employment agreements with six employees providing for aggregate annual salaries of $829,000. Certain of these agreements provide for the issuance of bonuses at the discretion of ATI's Chief Executive Officer and the issuance of options to purchase ATI's common stock. The agreements expire on various dates through May 2000.

ATI entered into various two-year consulting agreements providing for aggregate annual fees of $300,000 plus royalties on net commercial sales of licensed products sold by ATI or its sublicensees and an 18-month consulting agreement providing for monthly fees of $7,500.

(b) ATI entered into a research funding and option agreement with Scripps to provide certain funding of research activities. The agreement is for an initial term of two years with renewal provisions for additional one year periods. The agreement provides for Scripps to grant an option to ATI to acquire an exclusive license for the application of technology developed from the research program. Pursuant to the agreement, in 1997 ATI paid Scripps $460,000, of which approximately $383,000 has been charged to research and development expense in 1997 and the balance of which will be charged to research and development expense in 1997.

(c) In November 1997, ATI entered into a one year exclusive agreement with Lehman Brothers, Inc. ("Lehman") for financial advisory services. The agreement provides for ATI to pay Lehman a retainer of $100,000 of which $25,000 was paid through December 31, 1997.

(d) ATI leases its office and laboratory space pursuant to an operating lease requiring aggregate annual payments of approximately $67,000 through November 2001.

[3] ATI stock option plan:

ATI adopted the 1996 Stock Option/Stock Issuance Plan (the "ATI Plan") consisting of a Discretionary Option Grant program for employees and an Automatic Option Grant Program under which option grants will automatically be made at periodic intervals to eligible nonemployee directors to purchase shares of common stock, in either case at an exercise price equal to at least 85% of the fair market value of the common stock on the grant date. Under the Discretionary Option Grant program, options will be granted to employees either as incentive stock options or nonstatutory options and will vest over a specified period of time (generally three to five years) as determined by the ATI Board of Directors. ATI has reserved 234,800 shares of common stock for issuance under these plans.

In January 1998, ATI granted additional options to purchase 7,500 shares of common stock to eligible employees and nonemployees at $0.75 per share for a ten year term. ATI also granted a consultant an option to purchase 5,000 shares of common stock at $1.25 per share, which will vest on the occurance of certain events.

NOTE I - STOCK OPTIONS

The Company's 1993 Stock Option Plan which was amended and restated (the "1993 Plan"), provided that incentive stock options may be granted to employees, and nonstatutory stock options may be granted to employees, directors, consultants and affiliates. No further options will be granted under the Company's 1993 Plan. In May 1995, the Company adopted the 1995 Stock Option Plan (the "1995 Option Plan"). A total of 395,800 shares of common stock were reserved and authorized for issuance under the 1995 Option Plan.

Options granted under the 1993 and 1995 Plans expire no later than ten years from the date of grant, except when the grantee is a 10% shareholder of the Company or an affiliate company, in which case the maximum term is five years form the date of grant. The exercise price shall be at least 100%, 85% and 110% of the fair value of the stock subject to the option on the grant date, as determined by the board of directors, for incentive stock options, nonstatutory stock options and options granted to 10% shareholders of the Company or affiliate company, respectively. Options granted under the 1993 Option Plan are exercisable immediately upon grant, however, the shares issuable upon exercise of the options are subject to repurchase by the Company. Such repurchase rights will lapse as the shares vest over a period of five years from the date of grant.

On consummation of the Merger the Company assumed Old Discovery's outstanding options which were exchanged at the Exchange Ratio for options to purchase the Company's common stock (Note A). The pro forma effects of applying SFAS No. 123 and the stock options activity shown below are those of Old Discovery's 1996 Stock Option /Stock Issuance Plan (the "Discovery Plan") through the date of the Merger and the Plans described above after the Merger as the Merger was accounted for as a reverse acquisition.

The Company applies APB 25 in accounting for the Discovery Plan and the ATI Plan and, accordingly, recognizes compensation expense for the difference between the fair value of the underlying common stock and the exercise price of the option at the date of grant. The effect of applying SFAS No. 123 on pro forma net loss is not necessarily representative of the effects on reported net income or loss for future years due to, among other things, (i) the vesting period of the stock options and (ii) the fair value of additional stock options in future years. Had compensation cost for the Company's stock option plans been determined based upon the fair value of the options at the grant date of awards under the plans consistent with the methodology prescribed under SFAS No. 123, the Company's net loss for each of the years ended December 31, 1997 and 1996 would have been approximately $9,219,000 or $3.44 per share and $3,246,000 or $1.97 per share, respectively. The fair value of the options granted are estimated at $0.24 and $0.28 per share for the Discovery Plan and the ATI Plan, respectively, for the year ended December 31, 1997, and $0.16 and $0.11 per share for the Discovery Plan and the ATI Plan, respectively, for the year ended December 31, 1996, on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions: dividend yield 0%, volatility of 0%, risk-free interest rate of 6.53% for 1997 and 6.51% for 1996, and expected life of ten years.

NOTE I - STOCK OPTIONS (CONTINUED)

Additional information with respect to Old Discovery stock option activity is summarized as follows:

	Price Per Share	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life
Outstanding at January 1, 1996:				
Options granted	$0.26-$0.51	38,916	$0.32	
Options exercised	0.26-0.51	(19,458)	0.39	
Outstanding December 31, 1996:	0.26-0.51	19,458	0.26	8.42 years
Options granted	0.51	257,589	0.51	
Options exercised	0.51	(17,514)	0.51	
Options forfeited	0.51	(5,999)	0.51	
Ansan options outstanding	0.18-4.50	118,459	4.19	
Options outstanding at December 31, 1997	0.18-4.50	371,993	1.67	6.61 years
Options exercisable at December 31, 1997	0.18-4.50	252,912	1.80	6.49

Additional information with respect to the ATI Plan stock option activity is summarized as follows:

	Price Per Share	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life
Outstanding at January 1, 1996:				
Options granted	0.01-$0.32	144,800	$.22	
Outstanding at December 31, 1996:	0.01-0.32	144,800	.22	8.8 years
Options granted	0.32-0.75	52,000	.58	
Options exercised	0.32	(2,000)	.32	
Outstanding at December 31, 1997	0.01-0.75	194,800	.32	8.9 years
Options exercisable at December 31, 1997	0.32-0.75	89,500	.50	9.0 years

NOTE J - STOCKHOLDERS' EQUITY

Common shares reserved for issuance:

The Company has reserved shares of common stock for issuance upon conversion of preferred stock and exercise of options as follows:

(i)	Preferred stock (Note G)	3,424,980
(ii)	Stock option plan	395,800
(iii)	Old Discovery stock options	253,534
(iv)	Placement agent warrants (Note G):	
	Conversion of preferred stock	342,498
	Common stock	85,625
(v)	Class A warrants	735,833
(vi)	Class B warrants	1,234,167
(vii)	Underwriter's option	173,333

NOTE K - COMMITMENTS

[1] In December 1997, the Company entered into an agreement with a clinical research institute for clinical studies to be performed on behalf of the Company. The agreement specifies payments to be made by the Company on the successful completion of certain phases of the study that aggregate to approximately $394,000, $50,000 of which was paid and charged to expense in 1997.

[2] In May 1997, the Company entered into an agreement to lease office space for a period of three years. Future minimum lease payments (excluding ATI's operating lease commitment (Note H[2])) are as follows:

	Amount
1998	$ 91,000
1999	93,000
2000	47,000
	$ 231,000

Total rent expense for the years ended December 31, 1997 and 1996 was approximately $164,000 and $31,000, respectively.

NOTE L - SUBSEQUENT EVENTS

On March 5, 1998, the Company entered into an agreement and plan of reorganization and merger with ATI and ATI Acquisition Corp. ("Acquisition Sub"), a wholly owned subsidiary of the Company (the "ATI Merger Agreement"). Pursuant to the ATI Merger Agreement, subject to receipt of approval of the stockholders of the Company and ATI and the fulfillment of other conditions, Acquisition Sub will merge (the "ATI Merger") with and into ATI in a transaction in which (i) ATI will be the surviving corporation, (ii) the existing holders of ATI common stock will receive 3.91 shares of common stock for each share of ATI common stock held by such holders and (iii) certain outstanding ATI options will be assumed by Discovery and will become exercisable for 3.91 shares of common stock per share of ATI common stock for which such options are presently exercisable (the "ATI Transaction"). Pending the closing of the merger, the Company will be managed by ATI's management team pursuant to a management agreement entered into simultaneously with the execution of the ATI Merger Agreement (the "Management Agreement"). The Company has agreed to pay to ATI 50% of the salary expense attributable to the ATI management team during the period from the execution of the ATI Merger Agreement

NOTE L - SUBSEQUENT EVENTS (CONTINUED)

through the date of any termination or abandonment of the transactions contemplated by the ATI Merger Agreement if the ATI Merger is not consummated due to a breach of the ATI Merger Agreement by Discovery or its stockholders. Members of ATI's management team (the "ATI Management Members") will be issued options to purchase an aggregate of 338,500 shares of the Company's common stock in connection with the ATI Merger and additional options to purchase an aggregate of 335,000 shares subject to the achievement of certain corporate milestones. Upon execution of the ATI Management Agreement, ATI Management Members were granted options to purchase an aggregate of 126,500 shares of the Company's common stock, which will vest on the earlier of the consummation of the ATI Merger or on the termination of the ATI Management Agreement by the Company in the absence of a material breach thereof by ATI, provided that in the case of the ATI Management Members other than its President, such options shall vest over a three-year period in the event the ATI Merger is completed. If the ATI Merger has not occurred by July 15, 1998 due to action or inaction by the Company, its management or its stockholders, all such options shall be immediately vested in full.

Pro forma results of operations of the Company, giving effect to the ATI Merger as if it had occurred at the beginning of 1997 and 1996 would not differ from the historical consolidated results of the Company as the operations of ATI have been included in the consolidated results of the Company. A nonrecurring charge of $5,199,000 for in-process research and development which will be recorded by the Company upon consummation of the ATI Merger, has not been considered in the pro forma results.

AGREEMENT AND PLAN OF MERGER

among

DISCOVERY LABORATORIES, INC.

ATI ACQUISITION CORP.

AND

ACUTE THERAPEUTICS, INC.

March 5, 1998

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated March 5, 1998, by and among Discovery Laboratories, Inc., a Delaware corporation ("Buyer" or "Discovery"), ATI Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Buyer ("Acquisition Subsidiary"), and Acute Therapeutics, Inc., a Delaware corporation ("Seller" or "Acute").

RECITALS:

WHEREAS, upon and subject to the terms and conditions of this Agreement, Acquisition Subsidiary will merge with and into Seller (the "Merger") and Seller will become a wholly-owned subsidiary of Buyer;

WHEREAS, the Boards of Directors of Seller and Buyer have each determined that it is in the best interests of their respective stockholders for Buyer to acquire Seller upon the terms and subject to the conditions set forth herein; and

WHEREAS, also in furtherance of such acquisition, the Boards of Directors of Seller and Buyer have each approved this Agreement and the Merger of Acquisition Subsidiary with and into Seller in accordance with the Delaware General Corporation Law ("DGCL"), and upon the terms and subject to the conditions set forth herein; and

WHEREAS, the Board of Directors of Seller has resolved to recommend approval of this Agreement and the Merger to the holders of shares of Seller's Common Stock, $0.001 par value per share (the "Common Shares") and the holder of shares of Seller's Series A Preferred Stock, $0.001 par value per share (the "Series A Acute Preferred Shares");

WHEREAS, for federal income tax purposes it is intended that the Merger qualify as a reorganization under the provisions of Section 368(a) of the United States Internal Revenue Code of 1986, as amended (the "Code"); and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Seller, Buyer and Acquisition Subsidiary hereby agree as follows:

ARTICLE 1

THE MERGER

Section 1.1 The Merger. Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.2 hereof), Seller and Acquisition Subsidiary shall consummate the Merger pursuant to which Acquisition Subsidiary shall be merged with and into Seller in accordance with Section 251 of the DGCL, the separate corporate existence of Acquisition Subsidiary shall cease, and Seller shall continue as the surviving corporation in the Merger (Seller is sometimes referred to as the "Surviving Corporation").

Section 1.2 Closing and Effective Time . The closing of the Merger (the "Closing") shall take place (i) at 10:00 a.m., New York time, on a date to be specified by the parties, which shall be no later than the fifth business day after satisfaction or waiver of all of the conditions set forth in Article 6 hereof, at the offices of Brobeck, Phleger & Harrison LLP, 1633 Broadway, 47th Floor, New York, NY 10019 or (ii) at such other time and place as Buyer and Seller shall agree (the "Closing Date"). Immediately after completion of the Closing, the parties shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") executed in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the Delaware Secretary of State, or such time as is agreed upon by the parties and specified in the Certificate of Merger, and such time is hereinafter referred to as the "Effective Time." The date of the Effective Time is hereinafter referred to as the "Effective Date."

Section 1.3 Directors and Officers of the Surviving Corporation. The directors and officers of Seller at the Effective Time shall be the initial directors and officers, respectively, of the Surviving Corporation.

Section 1.4 Certificate of Incorporation. The certificate of incorporation of Acquisition Subsidiary in effect at the Effective Time shall be the certificate of incorporation of the Surviving Corporation until amended in accordance with applicable law.

Section 1.5 Bylaws. The bylaws of Acquisition Subsidiary in effect at the Effective Time shall be the bylaws of the Surviving Corporation until amended in accordance with applicable law.

Section 1.6 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of Seller and Acquisition Subsidiary shall vest in the Surviving Corporation, and all debts, liabilities and duties of Seller and Acquisition Subsidiary shall become the debts, liabilities and duties of the Surviving Corporation.

ARTICLE 2

CONVERSION OR EXCHANGE OF SECURITIES

Section 2.1 Conversion of Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Acquisition Subsidiary, Seller, or the holders of any Common Shares or Series A Acute Preferred Shares or Series B Acute Preferred Shares (as herein defined) or any shares of capital stock of Acquisition Subsidiary:

(a) Acquisition Subsidiary Capital Stock. Each issued and outstanding share of capital stock of Acquisition Subsidiary shall be converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Series A Acute Preferred Shares. All Common Shares that are owned by Seller and all Series A Acute Preferred Shares that are owned by Buyer shall be cancelled and extinguished without any conversion thereof and no consideration shall be delivered in exchange therefor.

(c) Conversion of Common Shares. Each issued and outstanding Common Share (other than Common Shares to be canceled in accordance with Section 2.1(b) and any dissenting Common Shares which are held by stockholders exercising appraisal rights pursuant to the DGCL ("Dissenting Stockholders")) shall by virtue of the Merger and without any action on the part of the holder thereof, be automatically converted into the right to receive, upon surrender of the certificate formerly representing such Common Share (the "Common Share Certificate") in the manner provided in Section 2.3 below, 3.91 shares of Common Stock, $.001 par value of Buyer ("Buyer Common Stock"). The number of shares of Buyer Common Stock into which each Common Share will be automatically converted is referred to as the "Conversion Ratio." All such Common Shares, when so converted, shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such Common Shares shall cease to have any rights with respect thereto, except the right to receive the merger consideration therefor upon the surrender of such certificate in accordance with Section 2.3, or, in the case of Dissenting Stockholders, the right, if any, to receive payment from the Surviving Corporation of the fair value of such Common Shares as determined in accordance with the DGCL. No fractional shares of Buyer Common Stock shall be issued and, in lieu thereof, a cash payment shall be made pursuant to Section 2.3(c).

Section 2.2 Exchange of Series B Acute Preferred Shares. Each issued and outstanding Share of Seller's Series B Preferred Stock, $0.001 par value per share (the "Series B Acute Preferred Shares") shall, at the Closing, be exchanged for one share of Series A Preferred Stock, $0.001 par value per share of Buyer (the "Discovery Preferred Shares"), pursuant to an exchange agreement between Buyer and Johnson & Johnson Development Corporation ("JJDC")(the "Exchange Agreement") in form and substance reasonably acceptable to Buyer and Seller.

Section 2.3 Payment for Common Shares; Surrender of Certificates

(a) Letter of Transmittal. As soon as practicable after the Effective Time, Buyer will send to each record holder of Common Shares at the Effective Time a letter of transmittal and other appropriate materials for use in surrendering Common Share Certificates to Buyer's transfer agent, who shall be appointed exchange agent with respect to the Merger (the "Exchange Agent").

(b) Payment Procedures. Promptly after the Effective Time, Buyer shall request that the Exchange Agent distribute to each former holder of Common Shares, upon surrender to the Exchange Agent of one or more Common Share Certificates for cancellation together with a duly executed and properly completed letter of transmittal, the shares of Buyer Common Stock receivable by such holder in accordance with the provisions of Section 2.1(c). If Buyer Common Stock is to be delivered to a person other than the person in whose name a Common Share Certificate is so registered, the Common Share Certificate is so surrendered shall be properly endorsed, with signatures guaranteed, or otherwise in proper form for transfer, and the person requesting such payment shall pay any transfer or other taxes required by reason of the delivery to a person other than the registered holder of such Common Share Certificate surrendered, or such person shall establish to the satisfaction of Buyer that such tax has been paid or is not

applicable. No interest shall be paid on any consideration payable in the Merger to former holders of Common Shares.

(c) No Fractional Shares.

(i) No fractional shares of Buyer Common Stock shall be issued as a result of the Merger. In lieu of the issuance of fractional shares, cash adjustments will be paid to the former holder of Common Shares in respect of any fraction of a share of Buyer Common Stock which would otherwise be issuable under this Agreement. Such cash adjustment shall be equal to an amount determined by multiplying (A) the fractional share of Buyer Common Stock to which the holder of Seller Common Stock would be otherwise entitled under Section 2.1(c) (after aggregating all shares of Buyer Common Stock to which such holder is entitled), by (B) the average closing price of shares of Buyer Common Stock on The Nasdaq Small Cap Market for the twenty trading days immediately preceding the Effective Date.

(ii) As soon as practicable after the determination of the amount of cash, if any, to be paid to former holders of Common Shares with respect to any fractional share interests of Buyer Common Stock, the Exchange Agent shall promptly pay such amounts to such former holders of Common Shares subject to and in accordance with the terms of this Section 2.3. Buyer will make available to the Exchange Agent the cash necessary for this purpose.

Section 2.4 Appraisal Rights. Notwithstanding any other provision of this Agreement to the contrary, including but without limitation Section 6.3(f), Common Shares held by a holder who has not voted such Common Shares in favor of the approval of this Agreement and the Merger or consented thereto in writing and with respect to which appraisal rights shall have been demanded and perfected in accordance with Section 262 of the DGCL (the "Dissenting Common Shares") and as of the Effective Time not withdrawn shall not be converted into the right to receive the consideration payable pursuant to Section 2.1(c) at or after the Effective Time, but such Common Shares shall become the right to receive such consideration as may be determined to be due to holders of Dissenting Common Shares pursuant to the laws of the State of Delaware unless and until the holder of such Dissenting Common Shares withdraws his or her demand for such appraisal or becomes ineligible for such appraisal. If a holder of Dissenting Common Shares shall withdraw his or her demand for such appraisal or shall become ineligible for such appraisal (through failure to perfect or otherwise), then, as of the Effective Time or the occurrence of such event, whichever last occurs, such holder's Dissenting Common Shares shall automatically be converted into and represent the right to receive the merger consideration as provided in Section 2.1(c). Seller shall give Buyer (i) prompt written notice of any demands for appraisal of Common Shares received by Seller and (ii) the opportunity to participate in and direct all negotiations and proceedings with respect to any such demands. Seller shall not, without prior written consent of Buyer, make any payment with respect to, or settle, offer to settle or otherwise negotiate, any such demands.

Section 2.5 Seller Option Plan.

(a) Assumption of Options. Each outstanding option to purchase Common Shares issued to employees, non-employee directors and consultants of Seller pursuant to Seller's 1996 Stock Option/Stock Issuance Plan, as amended (the "Seller Option Plan"), except for options to purchase 44,800 Common Shares granted on October 10, 1996, as listed on Schedule 2.5 hereto which shall terminate on the Closing, whether vested or unvested (each a "Stock Option"), shall remain outstanding after the Effective Time and shall be assumed by Buyer. The parties intend that Buyer's assumption of the Stock Options shall be treated as "assuming a stock option in a transaction to which Section 424(a) applies" within the meaning of Section 424 of the Code and this subsection (a) shall be interpreted and applied consistent with such intent. Each Stock Option assumed by Buyer shall be exercisable upon the same terms and conditions as under the Seller Option Plan and applicable option agreement issued thereunder, except that (i) such option shall be exercisable for that number of shares of Buyer Common Stock equal to the number of Common Shares for which such option was exercisable times the Conversion Ratio, and (ii) the exercise price of such option shall be equal to the exercise price of such option divided by the Conversion Ratio. The number of shares of Buyer Common Stock subject to an option assumed by Buyer shall be rounded to the nearest whole number (with .5 rounded up) and the exercise price thereof shall be rounded up to the nearest whole cent.

(b) Notice. As soon as practicable after the Effective Time, Buyer shall deliver to the holders of Stock Options appropriate notices setting forth such holders' rights pursuant to the Buyer Option Plan (as defined in Section 4.2 hereof). The agreements evidencing the grants of such Stock Options shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 2.5 after giving effect to the Merger).

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer and Acquisition Subsidiary as follows:

Section 3.1 Organization.

(a) Except as set forth in Section 3.1 of the disclosure schedule delivered to Buyer on or before the date hereof (the "Seller Disclosure Schedule"), Seller is a corporation duly organized, validly existing and in good standing under the laws of Delaware and has the requisite corporate power and authority and any necessary governmental authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted, and, except as set forth in Section 3.1 of the Seller Disclosure Schedule, is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failure which, when taken together with all other such failures, would not have a Seller Material Adverse Effect (as defined below in Section 3.1(b)). Seller does not own or control any subsidiary.

(b) The term "Seller Material Adverse Effect" means any individual material adverse effect, or adverse effects which in the aggregate (whether or not related and whether or not any individual effect is material) have a material adverse effect, on the business, operations, properties (including intangible properties), condition (financial or otherwise), assets or liabilities of Seller or could reasonably be expected to prevent or materially delay the consummation of the Merger.

Section 3.2 Capitalization.

(a) Capitalization. The authorized capital stock of Seller consists of 2,000,000 Common Shares, par value $0.001 per share and 1,000,000 shares of Preferred Stock, $0.001 par value per share, of which 600,000 shares are designated Series A Acute Preferred Shares and 2,200 shares are designated Series B Acute Preferred Shares. The outstanding Series A Acute Preferred Shares are convertible into 600,000 shares of Common Shares at the conversion price in effect with respect thereto. The Series B Acute Preferred Shares are not convertible. As of December 31, 1997, (i) 202,000 Common Shares were issued and outstanding, (ii) 600,000 Series A Acute Preferred Shares were issued and outstanding and were convertible into 600,000 Common Shares, (iii) 2,039 Series B Acute Preferred Shares were issued and outstanding and held by JJDC, (iv) no shares of Common Stock were held in the treasury of Seller, and (v) 202,300 Common Shares were reserved for issuance upon exercise of outstanding options under the Seller Option Plan. Section 3.2 of the Seller Disclosure Schedule sets forth a true and correct list as of December 31, 1997 of all holders of options to purchase Common Shares, the number of such options outstanding as of such date and the exercise price per option. All of the outstanding shares of Common Shares have been duly authorized and validly issued and are fully paid and nonassessable and free of preemptive rights. Except as set forth in this Section 3.2 and in Section 3.2 of the Seller Disclosure Schedule, there are no other options, warrants or other rights, convertible debt, agreements, arrangements or commitments of any character obligating Seller to issue or sell any shares of capital stock of or other equity interests in Seller. Seller is not obligated to redeem, repurchase or otherwise reacquire any of its capital stock or other securities.

(b) Seller does not directly or indirectly own or have a right to acquire an equity interest in any corporation, partnership, joint venture or other business association or entity.

Section 3.3 Authorization; Validity of Agreement; Necessary Action. Seller has full corporate power and authority to execute and deliver this Agreement, all agreements to which Seller is or will be a party that are exhibits to this Agreement and the Management Agreement of even date herewith between Buyer and Seller (the "Management Agreement") and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Seller of this Agreement and such other agreements and the consummation of the Merger and of the other transactions contemplated hereby and thereby, have been duly authorized by the Board of Directors of Seller and no other corporate or stockholder action on the part of Seller is necessary to authorize the execution and delivery by Seller of this Agreement and such other agreements and the consummation of the transactions contemplated hereby and thereby (other than the approval of this Agreement and the Merger by the holders of a majority of the outstanding shares of Seller capital stock entitled to vote with respect thereto). This Agreement and such other agreements have been duly executed and delivered by Seller and, assuming due and valid authorization, execution and delivery hereof by the other parties thereto are valid and binding obligations of Seller, enforceable against Seller in accordance with its terms.

Section 3.4 Consents and Approvals; No Violations. Except for the filings or the consents, authorizations or approvals under the agreements set forth in Section 3.4 of the Seller Disclosure Schedule and the filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Securities Exchange Act of 1934 (the "Exchange Act"), the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), state securities or blue sky laws, the DGCL and the filing and recordation of a Certificate of Merger under the DGCL, neither the execution, delivery or performance of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby nor compliance by Seller with any of the provisions hereof will (i) conflict with or result in any breach of any provision of the certificate of incorporation or the bylaws of Seller, (ii) require

any filing with, or permit, authorization, consent or approval of any court, arbitration tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, domestic or foreign (a "Governmental Entity") on the part of Seller, (iii) require the consent of any person under, result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Seller is a party or by which Seller or any of its properties or assets may be bound (the "Seller Specified Agreements"), the lack of which consent, or which violation, breach or default, individually or in the aggregate, could reasonably be expected to have a Seller Material Adverse Effect or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, any of its subsidiaries or any of their properties or assets.

Section 3.5 [RESERVED]

Section 3.6 Absence of Certain Changes. Since December 31, 1997, except as contemplated by this Agreement, there has not been:

(a) any Seller Material Adverse Effect;

(b) any material damage, destruction or loss (whether or not covered by insurance) with respect to any of the material assets of Seller;

(c) any issuance, redemption or acquisition of capital stock by Seller or any declaration or payment of any dividend or other distribution in cash, stock or property with respect to capital stock;

(d) any stock split, reverse stock split, combination, reclassification or other similar action with respect to capital stock;

(e) any entry into any material commitment or transaction (including, without limitation, any borrowing or capital expenditure) other than in the ordinary course of business or as contemplated by this Agreement;

(f) any acquisition or disposition of rights (pursuant to license, sublicense or otherwise) under or with respect to any patent, copyright, trademark, tradename or other intellectual property right or registration thereof or application therefor;

(g) any mortgage, pledge, security interest or imposition of lien or other encumbrance on any material asset of Seller; or

(h) any change by Seller in accounting principles or methods except insofar as may have been required by a change in generally accepted accounting principles and disclosed in the Buyer Financial Statements (as defined in Section 4.5 below).

Except as set forth in Section 3.6 of the Seller Disclosure Schedule, since December 31, 1997 Seller has conducted its business only in the ordinary course and in a manner consistent with past practice and has not made any material change in the conduct of its business or operations. Except as set forth in Section 3.6 of the Seller Disclosure Schedule, no person has or will have the right to receive any severance, bonus, other payment, increase or change in benefits or vesting of stock options, shares or other benefits as a result of any of the transactions contemplated by this Agreement.

Section 3.7 No Undisclosed Liabilities. Except as set forth in Section 3.7 of the Seller Disclosure Schedule, and except as reflected in the Buyer Financial Statements, Seller has no liabilities of any nature (whether accrued, absolute, contingent or otherwise), except those liabilities incurred in the ordinary course of business which could not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect.

Section 3.8 Litigation. Except as disclosed in Section 3.8 of the Seller Disclosure Schedule, there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Seller, threatened against Seller. Except as disclosed in Section 3.8 of the Seller Disclosure Schedule, Seller is not subject to any outstanding order, writ, injunction or decree.

Section 3.9 No Default; Compliance with Applicable Laws. The business of Seller is not being conducted in default or violation of any term, condition or provision of (i) its certificate of incorporation or bylaws, (ii) any Seller Specified Agreement or (iii) any federal, state, local or foreign statute, law, ordinance, rule, regulation, judgment, decree, order, concession, grant, franchise, permit or license or other governmental authorization or approval applicable to Seller, excluding from the foregoing clauses (ii) and (iii), defaults or violations which could not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect. As of the date of this Agreement, no investigation or review by any Governmental Entity or other entity with respect to Seller is pending or, to the knowledge of Seller, threatened, nor has any Governmental Entity or other entity indicated an intention to conduct the same. Seller has in effect all Federal, state, local and foreign governmental approvals, authorizations, certificates, filings, franchises, licenses, notices, permits and rights ("Seller Permits") necessary for it to own, lease or operate its properties and assets and to carry on its business as now conducted, and there has occurred no default under any such Seller Permit.

Section 3.10 Intellectual Property. Except as set forth in Section 3.10 of the Seller Disclosure Schedule, or as could not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, Seller owns or possesses adequate licenses or other valid rights to use all patents, trademarks, trade names, copyrights, service marks, trade secrets, know-how and other proprietary rights and information used or held for use in connection with the business of Seller as currently conducted, and Seller is unaware of any assertion or claim challenging the validity of any of the foregoing. Section 3.10 of the Seller Disclosure Schedule lists all material licenses, sublicenses and other agreements to which Seller is a party and pursuant to which (i) any third party is authorized to use any intellectual property right of Seller and (ii) Seller is authorized to use any intellectual property rights (other than pursuant to shrink-wrap licenses and other software licenses) of a third party, true and correct copies of which have been provided to Buyer and Acquisition Subsidiary. The conduct of the business of Seller as currently conducted does not conflict in any way with any patent, license, trademark, or copyright of any third party. To the knowledge of Seller, there are no infringements of any proprietary rights owned by or licensed by or to Seller that could reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Seller has taken reasonable security measures to protect the confidentiality of its trade secrets. Except as set forth in Section 3.10 of the Seller Disclosure Schedule, all current and past employees or consultants of Seller, who, either alone or in concert with others, developed, invented, discovered, derived, programmed or designed such trade secrets, or who have or had access to information disclosing such trade secrets, have entered into confidentiality and non-disclosure agreements with Seller (the "Seller Trade Secret Agreements"). Any exception which has been taken to the Trade Secrets Agreements (for example an employee or consultant excluding a prior invention) is described in Section 3.10 of the Seller Disclosure Schedule, including the exception taken and the employee taking such exception. To the knowledge of Seller, neither Seller, nor its employees or its consultants have caused any of Seller's trade secrets to become part of the public knowledge or literature, nor has Seller, its employees or consultants permitted

any such trade secrets to be used, divulged or appropriated for the benefit of persons to the material detriment of Seller.

Section 3.11 Tax Returns and Payments. Except as set forth in Section 3.11 of the Seller Disclosure Schedule, all tax returns and reports with respect to Seller required by law to be filed under the laws of any jurisdiction, domestic or foreign, have been duly and timely filed and all taxes, fees or other governmental charges of any nature which were required to have been paid have been paid or provided for. Seller has no knowledge of any unpaid taxes or any actual or threatened assessment of deficiency or additional tax or other governmental charge or a basis for such a claim against Seller. Seller has no knowledge of any tax audit of Seller by any taxing or other authority in connection with any of its fiscal years; Seller has no knowledge of any such audit currently pending or threatened, and Seller has no knowledge of any tax liens on any of the properties of Seller.

Section 3.12 Certificate of Incorporation and Bylaws. Seller has heretofore furnished to Buyer and Acquisition Subsidiary a complete and correct copy of the certificate of incorporation and the bylaws, each as amended to the date hereof, of Seller. Such certificate of incorporation and bylaws are in full force and effect. Seller is not in violation of any of the provisions of its certificate of incorporation or bylaws.

Section 3.13 Title to Property.

(a) Seller has good and marketable title, or valid leasehold rights in the case of leased property, to all real property and all personal property purported to be owned or leased by it, free and clear of all material liens, security interests, claims, encumbrances and charges, excluding (i) immaterial liens for fees, taxes, levies, imposts, duties or governmental tax of any kind which are not yet delinquent or are being contested in good faith by appropriate proceedings which suspend the collection thereof, (ii) immaterial liens for mechanics, materialmen, laborers, employees, suppliers or other liens arising by operation of law for sums which are not yet delinquent or are being contested in good faith by appropriate proceedings, (iii) purchase money liens on office, computer and related equipment and supplies incurred in the ordinary course of business, and (iv) liens or defects in title or leasehold rights that, individually or in the aggregate, could not reasonably be expected to have a Seller Material Adverse Effect.

(b) Consummation of the Merger will not result in any breach of or constitute a default (or an event with which notice or lapse of time or both would constitute a default) under, or give to others any rights of termination or cancellation of, or require the consent of others under, any lease in which Seller is a lessee, except for breaches or defaults which, individually, or in the aggregate, could not reasonably be expected to have a Seller Material Adverse Effect.

Section 3.14 Employee Benefits and Contracts.

(a) Section 3.14 of the Seller Disclosure Schedule lists all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) maintained by Seller. Each of such employee benefit plans complies in all material respects with applicable requirements of ERISA or the Code of 1986 and no "reportable event" or "prohibited transaction" (as such terms are defined in ERISA) has occurred with respect to any such plan, and no termination, if it has occurred or were to occur before the Effective Date, would present a risk of liability to any Governmental Entity or other persons that would have a Seller Material Adverse Effect.

(b) Seller has never maintained an employee benefit plan subject to Section 412 of the Code or Title IV of ERISA. Each employee benefit plan of Seller intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service

confirming such qualification. Seller has never had an obligation to contribute to a "multi-employer plan" as defined in Section 4001(a)(3) of ERISA. There are no unfunded obligations under any employee benefit plan of Seller providing benefits after termination of employment to any employee or former employee, including but not limited to retiree health coverage and deferred compensation, but excluding continuation of health coverage required to be continued under Section 4980(B) of the Code. Each employee benefit plan of Seller may be amended or terminated by Seller without the consent or approval of any other person. There is no employee benefit plan, stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan, or severance benefit plan of Seller, any of the benefits of which will be increased or the vesting of the benefits under which will be accelerated by the occurrence of any of the transactions contemplated by this Agreement or the benefits under which will be calculated on the basis of the transactions contemplated by this Agreement.

(c) Seller is not obligated to make any parachute payment, as defined in Section 280G(b)(2) of the Code, nor will any parachute payment be deemed to have occurred as a result of or arising out of any of the transactions contemplated by this Agreement. Seller has no contract, agreement, obligation or arrangement with any employee or other person, any of the benefits of which will be increased or the vesting of the benefits under which will be accelerated by any change of control of Seller or the occurrence of any of the transactions contemplated by this Agreement or the benefits under which will be calculated on the basis of the transactions contemplated by this Agreement.

Section 3.15 Employment; Labor Matters.

(a) Seller has delivered to Buyer true, complete and correct copies of all employment agreements and all consulting agreements to which Seller is a party.

(b) Except as set forth in Section 3.15 of the Seller Disclosure Schedule (i) Seller is not a party to any outstanding employment agreements or contracts with directors, officers, employees or consultants; (ii) Seller is not a party to any agreement, policy or practice that requires it to pay termination or severance pay to employees (other than as required by law); and (iii) Seller is not a party to any collective bargaining agreement or other labor union contract applicable to persons employed by Seller, nor does Seller know of any activities or proceedings of any labor union to organize any such employees.

Section 3.16 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 3.17 Environmental Laws. Except as could not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect: (i) Seller is in compliance with all applicable Environmental Laws (as defined below); (ii) all past noncompliance, if any, of Seller with Environmental Laws or Environmental Permits (as defined below) has been resolved without any pending, ongoing or future obligation, cost or liability; and (iii) Seller has not released or transported a Hazardous Material (as defined below), in violation of any Environmental Law.

For purposes of this Agreement:

(a) "Environmental Law" shall mean any law and any enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the environment or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Material, as in effect as of the date hereof.

(b) "Environmental Permit" shall mean any permit, approval, identification number, license or other authorization required under or issued pursuant to any applicable Environmental Law.

(c) "Hazardous Material" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local government authority, any state or the United State Government.

Section 3.18 Insurance. Section 3.18 of the Seller Disclosure Schedule sets forth a true and complete list of all insurance policies in force at the date hereof, with respect to the assets, properties or operations of Seller. True and complete copies of all such insurance policies have been made available to Buyer and Acquisition Subsidiary by Seller. Such policies are in full force and effect.

Section 3.19 Contracts and Commitments.

(a) Except as disclosed in Section 3.10, 3.15 or 3.19 of the Seller Disclosure Schedule, Seller is not a party or subject to:

(i) any plan, contract or arrangement, written or oral, which requires aggregate payments by Seller in excess of $50,000 per year or which provides for bonuses, pensions, deferred compensation, severance pay or benefits, retirement payments, profit-sharing, or the like;

(ii) any joint marketing, joint development or joint venture contract or arrangement or any other agreement which has involved or is expected to involve a sharing of profits with other persons;

(iii) any lease for real or personal property in which the amount of payments which Seller is required to make on an annual basis exceeds $50,000;

(iv) any agreement, contract, mortgage, indenture, lease, instrument, license, franchise, permit, concession, arrangement, commitment or authorization which may be, by its terms, terminated or breached by reason of the execution of this Agreement, the Merger, or the consummation of the transactions contemplated hereby or thereby;

(v) except for trade indebtedness incurred in the ordinary course of business, any instrument evidencing or related in any way to indebtedness in excess of $50,000 incurred in the acquisition of companies or other entities or indebtedness in excess of $50,000 for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, indemnification or otherwise;

(vi) any contract containing covenants purporting to limit Seller's freedom to compete in any line of business or in any geographic area or with any third party,

(vii) any agreement, contract or commitment relating to capital expenditures and involving future obligations in excess of $50,000; or

(viii) any other agreement, contract or commitment which is material to Seller taken as a whole.

(b) Except as disclosed in Section 3.19 of the Seller Disclosure Schedule, each agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license and commitment listed in Section 3.19 of the Seller Disclosure Schedule is valid and binding on Seller and the other party(ies) thereto, is in full force and effect, and neither Seller, nor to the knowledge of Seller any other party thereto, has breached any material provision of, or is in material default under the terms of, any such agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license or commitment.

(c) There is no agreement, judgment, injunction, order or decree binding upon Seller which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice of Seller, any acquisition of property by Seller or the conduct of business by Seller as currently conducted or as proposed to be conducted by Seller.

Section 3.20 Interests of Officers and Directors. To Seller's knowledge, except as set forth in Section 3.20 of the Seller Disclosure Schedule, no officer or director of Seller has had, either directly or indirectly, a material interest in: (i) any person or entity which purchases from or sells, licenses or furnishes to Seller any goods, property rights or services; (ii) except for the employment or consulting contracts listed in Section 3.15 of the Seller Disclosure Schedule, any contract or agreement to which Seller is a party or by which it may be bound or affected; or (iii) any property, real or personal, tangible or intangible, used in or pertaining to its business.

Section 3.21 Questionable Payments. Neither Seller nor to its knowledge any director, officer, agent or other employee of Seller has: (i) made any payments or provided services or other favors in the United States of America or in any foreign country in order to obtain preferential treatment or consideration by any Governmental Entity with respect to any aspect of the business of Seller; or (ii) made any political contributions which would not be lawful under the laws of the United States or the foreign country in which such payments were made. Neither Seller nor to its knowledge any director, officer, agent or other employee of Seller has been the subject of any inquiry or investigation by any Governmental Entity in connection with payments or benefits or other favors to or for the benefit of any governmental or armed services official, agent, representative or employee with respect to any aspect of the business of Seller or with respect to any political contribution.

Section 3.22 Certain Tax Matters. Neither Seller nor, to the knowledge of Seller, any of its affiliates has taken or agreed to take any action that could be expected to prevent the Merger from constituting a transaction qualifying under Section 368 of the Code. Seller is not aware of any agreement, plan or other circumstances that could reasonably be expected to prevent the Merger from so qualifying under Section 368 of the Code.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER AND ACQUISITION SUBSIDIARY

Buyer and Acquisition Subsidiary represent and warrant to Seller as follows:

Section 4.1 Organization.

(a) Except as set forth in Section 4.1 of the disclosure schedule delivered to Seller on or before the date hereof (the "Buyer Disclosure Schedule"), each of Buyer and Acquisition Subsidiary (which is the only subsidiary of Buyer other than Seller) is a corporation duly organized, validly existing and in good

standing under the laws of the jurisdiction of its incorporation and has the requisite corporate power and authority and any necessary governmental authority to own, operate or lease the properties that it purports to own, operate or lease and to carry on its business as it is now being conducted, and, except as set forth in Section 4.1 of the Buyer Disclosure Schedule, is duly qualified as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failure which, when taken together with all other such failures, would not have a Buyer Material Adverse Effect (as defined below in Section 4.1(b)).

(b) The term "Buyer Material Adverse Effect" means any individual material adverse effect, or adverse effects which in the aggregate (whether or not related and whether or not any individual effect is material) have a material adverse effect, on the business, operations, properties (including intangible properties), condition (financial or otherwise), assets or liabilities of Buyer and its subsidiaries taken as a whole or that could reasonably be expected to prevent or materially delay the consummation of the Merger.

(c) For purposes of this Article 4 and Article 5, Acute shall not be considered to be a subsidiary of Buyer.

Section 4.2 Capitalization.

(a) Capitalization. The authorized capital stock of Buyer consists of 20,000,000 shares of Buyer Common Stock, par value $0.001 per share, and 5,000,000 shares of Preferred Stock, par value $0.001 per share, of which 2,420,282 are designated Series B Convertible Preferred Stock (the "Series B Preferred Stock"). As of December 31, 1997, (i) 3,176,065 shares of Buyer Common Stock were issued and outstanding, (ii) 2,200,256 shares of Series B Preferred Stock were issued and outstanding and were convertible into 3,424,980 shares of Buyer Common Stock, (iii) 115,491 shares of Buyer Common Stock were held in the treasury of the Buyer, (iv) 253,535 shares of Buyer Common Stock were reserved for issuance upon exercise of outstanding options issued under the 1996 Stock Option Plan of Discovery Laboratories, Inc., a former Delaware corporation ("Old Discovery") and outside such plan and assumed by Buyer, (v) an aggregate of 116,162 shares of Buyer Common Stock were reserved for issuance under stock options granted pursuant to Buyer's 1993 and 1995 Stock Option Plans (the "Buyer Option Plans"), (vi) an aggregate of 2,297 shares of Buyer Common Stock were reserved for issuance under stock options granted by Buyer outside the Buyer Option Plans, (vii) an aggregate of 2,055,624 shares of Buyer Common Stock were reserved for issuance under outstanding warrants as more fully described in Section 4.2 of the Buyer Disclosure Schedule, (viii) 342,499 shares of Buyer Common Stock were reserved for issuance upon conversion of the 220,026 shares of Series B Preferred Stock issuable upon the exercise of outstanding warrants, and (ix) 173,333 shares of Buyer Common Stock were reserved for issuance upon exercise of Buyer's outstanding unit purchase option (including warrants issuable upon the exercise of such unit purchase option). Section 4.2 of the Buyer Disclosure Schedule sets forth a true and correct list as of December 31, 1997 of all holders of options to purchase shares of Buyer Common Stock, the number of such options outstanding as of such date and the exercise price per option. All of the outstanding shares of Buyer Common Stock have been duly authorized and validly issued and are fully paid and nonassessable and free of preemptive rights. Except as set forth in this Section 4.2 and Section 4.2 of the Buyer Disclosure Schedule, there are no other options, warrants or other rights, convertible debt, agreements, arrangements or commitments of any character obligating Buyer or Acquisition Subsidiary to issue or sell any shares of capital stock of or other equity interests in Buyer or Acquisition Subsidiary other than Buyer's obligation to reset the conversion price applicable to the Series B Preferred Stock under the circumstances described in Buyer's Restated Certificate of Incorporation. Buyer is not obligated to redeem, repurchase or otherwise reacquire any of its capital stock or other securities.

(b) Except as set forth in Section 4.2 of the Buyer Disclosure Schedule, all of the outstanding shares of the capital stock of Acquisition Subsidiary are beneficially owned by Buyer, directly or indirectly, and all such shares have been duly authorized, validly issued and are fully paid and nonassessable and are owned by either Buyer or one of its subsidiaries free and clear of all liens, security interests, charges, claims or encumbrances of any nature whatsoever. There are no existing options, calls or commitments of any character relating to the issued or unissued capital stock or other securities of Acquisition Subsidiary. Except as set forth in Section 4.2 of the Buyer Disclosure Schedule, Buyer does not directly or indirectly own or have a right to acquire an equity interest in any corporation, partnership, joint venture or other business association or entity.

Section 4.3 Authorization; Validity of Agreement; Necessary Action. Each of Buyer and Acquisition Subsidiary has full corporate power and authority to execute and deliver this Agreement and all agreements to which Buyer and Acquisition Subsidiary is or will be a party that are exhibits to this Agreement, including the Employment Agreements (as defined in Section 6.2 herein), and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Buyer and Acquisition Subsidiary of this Agreement, and the consummation of the Merger and of the other transactions contemplated hereby and thereby, have been duly authorized by the Boards of Directors of Buyer and Acquisition Subsidiary, as the case may be, and no other corporate or stockholder action on the part of Buyer and Acquisition Subsidiary is necessary to authorize the execution and delivery by Buyer or Acquisition Subsidiary of this Agreement and the consummation of the transactions contemplated hereby and thereby (other than the approval of this Agreement and the Merger by the holders of a majority of the outstanding shares (on an as-converted basis) of Buyer capital stock entitled to vote with respect thereto). This Agreement has been duly executed and delivered by Buyer and Acquisition Subsidiary and assuming due and valid authorization, execution and delivery hereof by Seller, is a valid and binding obligation of Buyer and Acquisition Subsidiary, as the case may be, enforceable against Buyer and Acquisition Subsidiary in accordance with their respective terms.

Section 4.4 Consents and Approvals; No Violations. Except for the filings or the consents, authorizations or approvals under the agreements set forth in Section 4.4 of the Buyer Disclosure Schedule and the filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, the Exchange Act, the HSR Act, state securities or blue sky laws, the DGCL and the filing and recordation of a Certificate of Merger under the DGCL, neither the execution, delivery or performance of this Agreement by Buyer nor the consummation by Buyer of the transactions contemplated hereby nor compliance by Buyer with any of the provisions hereof will (i) conflict with or result in any breach of any provision of the certificate of incorporation or the bylaws of Buyer or Acquisition Subsidiary, (ii) require any filing with, or permit, authorization, consent or approval of, a Governmental Entity, on the part of Buyer or Acquisition Subsidiary, (iii) require the consent of any person under, result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Buyer or Acquisition Subsidiary is a party or by which any of them or any of their properties or assets may be bound (the "Buyer Specified Agreements"), the lack of which consent, or which violation, breach or default, individually or in the aggregate, could reasonably be expected to have a Buyer Material Adverse Effect, or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, Acquisition Subsidiary or any of their properties or assets.

Section 4.5 SEC Reports and Financial Statements.

(a) Buyer has timely filed with the Securities and Exchange Commission (the "SEC"), and has delivered to Seller, true and complete copies of, all forms, reports, schedules, statements and other

documents required to be filed by it since January 1, 1996, under the Securities Act of 1933, as amended, or the Exchange Act (collectively, the "SEC Documents"). Except as set forth in Section 4.5 of the Buyer Disclosure Schedule, the SEC Documents (i) were prepared in accordance with the requirements of the Securities Act or the Exchange Act, as the case may be, including without limitation the applicable accounting requirements thereunder and the published rules and regulations of the SEC with respect thereto, (ii) when filed, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (iii) taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Acquisition Subsidiary is not required to file any statements or reports with the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act.

(b) Except as set forth in Section 4.5 of the Buyer Disclosure Schedule, the consolidated financial statements of Buyer contained in the SEC Documents (the "Buyer Financial Statements"), have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present the financial position and the results of operations and cash flows (and changes in financial position, if any) of Buyer and Acquisition Subsidiary as of the respective dates and for the respective periods thereof, except that the unaudited interim quarterly financial statements were or are subject to normal and recurring year-end adjustments which were or are not expected to be material in amount and did not or may not have included footnote disclosure that would otherwise be required by GAAP. Except as set forth in Section 4.5 of the Buyer Disclosure Schedule, Buyer is not aware of any facts or circumstances which would require Buyer to amend or restate any of the SEC Documents, including without limitation the financial information included therein.

Section 4.6 Absence of Certain Changes. Since December 31, 1997, except as contemplated by this Agreement or set forth in Section 4.6 of the Buyer Disclosure Schedule, there has not been:

(a) any Buyer Material Adverse Effect;

(b) any material damage, destruction or loss (whether or not covered by insurance) with respect to any of the material assets of Buyer or Acquisition Subsidiary;

(c) any issuance, redemption or acquisition of capital stock by Buyer or Acquisition Subsidiary or any declaration or payment of any dividend or other distribution in cash, stock or property with respect to capital stock;

(d) any stock split, reverse stock split, combination, reclassification or other similar action with respect to capital stock;

(e) any entry into any material commitment or transaction (including, without limitation, any borrowing or capital expenditure) other than in the ordinary course of business or as contemplated by this Agreement;

(f) any acquisition or disposition of rights (pursuant to license, sublicense or otherwise) under or with respect to any patent, copyright, trademark, tradename or other intellectual property right or registration thereof or application therefor;

(g) any mortgage, pledge, security interest or imposition of lien or other encumbrance on any material asset of Buyer or Acquisition Subsidiary; or

(h) any change by Buyer in accounting principles or methods except insofar as may have been required by a change in generally accepted accounting principles and disclosed in the SEC Documents.

Except as set forth in Section 4.6 of the Buyer Disclosure Schedule, since December 31, 1997, Buyer and its subsidiaries have conducted their business only in the ordinary course and in a manner consistent with past practice and have not made any material change in the conduct of the business or operations of Buyer and Acquisition Subsidiary taken as a whole. Except as set forth in Section 4.14(b) of the Buyer Disclosure Schedule, no person has or will have the right to receive any severance, bonus, other payment, increase or change in benefits or vesting of stock options, shares or other benefits as a result of any of the transactions contemplated by this Agreement.

Section 4.7 No Undisclosed Liabilities. Except as set forth in Section 4.7 of the Buyer Disclosure Schedule, and except as reflected in the Buyer Financial Statements contained in the SEC Documents, Buyer and Acquisition Subsidiary have no liabilities of any nature (whether accrued, absolute, contingent or otherwise), except those liabilities incurred in the ordinary course of business which could not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

Section 4.8 Litigation. Except as disclosed in the SEC Documents or in Section 4.8 of the Buyer Disclosure Schedule, there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Buyer, threatened against Buyer. Except as disclosed in the SEC Documents or in Section 4.8 of the Buyer Disclosure Schedule, neither Buyer nor Acquisition Subsidiary is subject to any outstanding order, writ, injunction or decree.

Section 4.9 No Default; Compliance with Applicable Laws. Except as disclosed in Section 4.9 of the Buyer Disclosure Schedule, the business of each of Buyer and Acquisition Subsidiary is not being conducted in default or violation of any term, condition or provision of (i) its certificate of incorporation or bylaws, (ii) any Buyer Specified Agreement or (iii) any federal, state, local or foreign statute, law, ordinance, rule, regulation, judgment, decree, order, concession, grant, franchise, permit or license or other governmental authorization or approval applicable to Buyer or Acquisition Subsidiary, excluding from the foregoing clauses (ii) and (iii), defaults or violations which could not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect. Except as disclosed in Section 4.9 of the Buyer Disclosure Schedule, as of the date of this Agreement, no investigation or review by any Governmental Entity or other entity with respect to Buyer or Acquisition Subsidiary is pending or, to the knowledge of Buyer, threatened, nor has any Governmental Entity or other entity indicated an intention to conduct the same. Each of Buyer and Acquisition Subsidiary has in effect all Federal, state, local and foreign governmental approvals, authorizations, certificates, filings, franchises, licenses, notices, permits and rights ("Buyer Permits") necessary for it to own, lease or operate its properties and assets and to carry on its business as now conducted, and there has occurred no default under any such Buyer Permit.

Section 4.10 Intellectual Property. Except as set forth in Section 4.10 of the Buyer Disclosure Schedule, or as could not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect, Buyer and its subsidiaries own or possess adequate licenses or other valid rights to use all patents, trademarks, trade names, copyrights, service marks, trade secrets, know-how and other proprietary rights and information used or held for use in connection with the business of Buyer and its subsidiaries as currently conducted, and Buyer is unaware of any assertion or claim challenging the validity of any of the foregoing. Section 4.10 of the Buyer Disclosure Schedule lists all material licenses, sublicenses and other agreements to which the Buyer or Acquisition Subsidiary is a party and pursuant to which (i) any third party

is authorized to use any intellectual property right of the Buyer or Acquisition Subsidiary and (ii) Buyer or its subsidiaries are authorized to use any intellectual property rights (other than pursuant to shrink-wrap licenses and other software licenses) of a third party, true and correct copies of which have been provided to Seller. Except as set forth in Section 4.10 of the Buyer Disclosure Schedule, the conduct of the business of Buyer and its subsidiaries as currently conducted does not conflict in any way with any patent, license or copyright of any third party. To the knowledge of Buyer, except as set forth in Section 4.10 of the Buyer Disclosure Schedule, there are no infringements of any proprietary rights owned by or licensed by or to Buyer or Acquisition Subsidiary that could reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect. Buyer has taken reasonable security measures to protect the confidentiality of its trade secrets. All current and past employees or consultants of Buyer, who, either alone or in concert with others, developed, invented, discovered, derived, programmed or designed such trade secrets, or who have or had access to information disclosing such trade secrets, have entered into confidentiality and non-disclosure agreements with Buyer (the "Buyer Trade Secret Agreements"). Any exception which has been taken to the Buyer Trade Secrets Agreements (for example an employee or consultant excluding a prior invention) is described in Section 4.10 of the Buyer Disclosure Schedule, including the exception taken and the employee taking such exception. To the knowledge of Buyer, neither Buyer, nor its employees or its consultants have caused any of Buyer's trade secrets to become part of the public knowledge or literature, nor has Buyer, its employees or consultants permitted any such trade secrets to be used, divulged or appropriated for the benefit of persons to the material detriment of Buyer.

Section 4.11 Tax Returns and Payments. All tax returns and reports with respect to Buyer or Acquisition Subsidiary required by law to be filed under the laws of any jurisdiction, domestic or foreign, have been duly and timely filed and all taxes, fees or other governmental charges of any nature which were required to have been paid have been paid or provided for. Buyer and Acquisition Subsidiary have no knowledge of any unpaid taxes or any actual or threatened assessment of deficiency or additional tax or other governmental charge or a basis for such a claim against Buyer or Acquisition Subsidiary. Buyer and Acquisition Subsidiary have no knowledge of any tax audit of Buyer or Acquisition Subsidiary by any taxing or other authority in connection with any of its fiscal years; Buyer and Acquisition Subsidiary have no knowledge of any such audit currently pending or threatened, and Buyer and Acquisition Subsidiary have no knowledge of any tax liens on any of the properties of Buyer or Acquisition Subsidiary.

Section 4.12 Certificate of Incorporation and Bylaws. Buyer and Acquisition Subsidiary have heretofore furnished to Seller a complete and correct copy of the certificate of incorporation and the bylaws, each as amended to the date hereof, of Buyer and Acquisition Subsidiary. Such certificate of incorporation and bylaws are in full force and effect. Neither Buyer nor Acquisition Subsidiary is in violation of any of the provisions of its certificate of incorporation.

Section 4.13 Title to Property.

(a) Except as disclosed in Section 4.13 to the Buyer Disclosure Schedule, Buyer and Acquisition Subsidiary has good and marketable title, or valid leasehold rights in the case of leased property, to all real property and all personal property purported to be owned or leased by them, free and clear of all material liens, security interests, claims, encumbrances and charges, excluding (i) immaterial liens for fees, taxes, levies, imposts, duties or governmental tax of any kind which are not yet delinquent or are being contested in good faith by appropriate proceedings which suspend the collection thereof, (ii) immaterial liens for mechanics, materialmen, laborers, employees, suppliers or other liens arising by operation of law for sums which are not yet delinquent or are being contested in good faith by appropriate proceedings, (iii) purchase money liens on office, computer and related equipment and supplies incurred in the ordinary course of business, and (iv) liens or defects in title or leasehold rights that, individually or in the aggregate, could not reasonably be expected to have a Buyer Material Adverse Effect.

(b) Except as set forth in Section 4.13(b) of the Buyer Disclosure Schedule, consummation of the Merger will not result in any breach of or constitute a default (or an event with which notice or lapse of time or both would constitute a default) under, or give to others any rights of termination or cancellation of, or require the consent of others under, any lease in which Buyer or Acquisition Subsidiary is a lessee, except for breaches or defaults which, individually or in the aggregate, could not reasonably be expected to have a Buyer Material Adverse Effect.

Section 4.14 Employee Benefits and Contracts.

(a) Section 4.14 of the Buyer Disclosure Schedule lists all employee benefit plans (as defined in Section 3(3) of the ERISA) maintained by Buyer and Acquisition Subsidiary. Each of such employee benefit plans complies in all material respects with applicable requirements of ERISA or the Internal Revenue Code of 1986, as amended (the "Code") and no "reportable event" or "prohibited transaction" (as such terms are defined in ERISA) has occurred with respect to any such plan, and no termination, if it has occurred or were to occur before the Effective Date, would present a risk of liability to any Governmental Entity or other persons that would have a Buyer Material Adverse Effect.

(b) Buyer and Acquisition Subsidiary has never maintained an employee benefit plan subject to Section 412 of the Code or Title IV of ERISA. Each employee benefit plan of Buyer or Acquisition Subsidiary intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service confirming such qualification. Neither Buyer nor Acquisition Subsidiary has ever had an obligation to contribute to a "multi-employer plan" as defined in Section 4001(a)(3) of ERISA. There are no unfunded obligations under any employee benefit plan of Buyer or Acquisition Subsidiary providing benefits after termination of employment to any employee or former employee, including but not limited to retiree health coverage and deferred compensation, but excluding continuation of health coverage required to be continued under Section 4980(B) of the Code. Each employee benefit plan of Buyer or Acquisition Subsidiary may be amended or terminated by Buyer or Acquisition Subsidiary without the consent or approval of any other person. There is no employee benefit plan, stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan, or severance benefit plan of Buyer or Acquisition Subsidiary, any of the benefits of which will be increased or the vesting of the benefits under which will be accelerated by the occurrence of any of the transactions contemplated by this Agreement or the benefits under which will be calculated on the basis of the transactions contemplated by this Agreement, except as set forth in Section 4.14(b) of the Buyer Disclosure Schedule.

(c) Neither Buyer nor Acquisition Subsidiary is obligated to make any parachute payment, as defined in Section 280G(b)(2) of the Code, nor will any parachute payment be deemed to have occurred as a result of or arising out of any of the transactions contemplated by this Agreement. Neither Buyer nor Acquisition Subsidiary has any contract, agreement, obligation or arrangement with any employee or other person, any of the benefits of which will be increased or the vesting of the benefits under which will be accelerated by any change of control of Buyer or Acquisition Subsidiary or the occurrence of any of the transactions contemplated by this Agreement or the benefits under which will be calculated on the basis of the transactions contemplated by this Agreement except as set forth in Section 4.14(b) of the Buyer Disclosure Schedule.

Section 4.15 Employment; Labor Matters.

(a) Buyer has delivered to Seller true, complete and correct copies of all employment agreements and all consulting agreements to which Buyer or Acquisition Subsidiary is a party.

(b) Except as set forth in Section 4.15 of the Buyer Disclosure Schedule (i) neither Buyer nor Acquisition Subsidiary is a party to any outstanding employment agreements or contracts with directors, officers, employees or consultants; (ii) neither Buyer nor Acquisition Subsidiary is a party to any agreement, policy or practice that requires it to pay termination or severance pay to employees (other than as required by law); and (iii) neither Buyer nor Acquisition Subsidiary is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by Buyer or Acquisition Subsidiary, nor does Buyer or Acquisition Subsidiary know of any activities or proceedings of any labor union to organize any such employees.

Section 4.16 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by and on behalf of Buyer or Acquisition Subsidiary.

Section 4.17 Environmental Laws. Except as disclosed in Section 4.17 of the Buyer Disclosure Schedule or as could not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect: (i) Buyer and Acquisition Subsidiary is in compliance with all applicable Environmental Laws; (ii) all past noncompliance, if any, of Buyer or Acquisition Subsidiary with Environmental Laws or Environmental Permits has been resolved without any pending, ongoing or future obligation, cost or liability; and (iii) neither Buyer nor Acquisition Subsidiary has released or transported a Hazardous Material, in violation of any Environmental Law.

Section 4.18 Insurance. Section 4.18 of the Buyer Disclosure Schedule sets forth a true and complete list of all insurance policies in force at the date hereof, with respect to the assets, properties or operations of each of Buyer and Acquisition Subsidiary. True and complete copies of all such insurance policies have been made available to Seller by Buyer. Such policies will not be terminated as a result of the Merger, subject to payment of applicable premiums. Such policies also are in full force and effect.

Section 4.19 Contracts and Commitments.

(a) Except as disclosed in Section 4.10, 4.15 or 4.19 of the Buyer Disclosure Schedule, neither Buyer nor Acquisition Subsidiary is a party or subject to:

(i) any plan, contract or arrangement, written or oral, which requires aggregate payments by Buyer or Acquisition Subsidiary in excess of $50,000 per year or which provides for bonuses, pensions, deferred compensation, severance pay or benefits, retirement payments, profit-sharing, or the like;

(ii) any joint marketing, joint development or joint venture contract or arrangement or any other agreement which has involved or is expected to involve a sharing of profits with other persons;

(iii) any lease for real or personal property in which the amount of payments which Buyer or Acquisition Subsidiary is required to make on an annual basis exceeds $50,000;

(iv) any agreement, contract, mortgage, indenture, lease, instrument, license, franchise, permit, concession, arrangement, commitment or authorization which may be, by its terms, terminated or breached by reason of the execution of this Agreement, the Merger, or the consummation of the transactions contemplated hereby or thereby;

(v) except for trade indebtedness incurred in the ordinary course of business, any instrument evidencing or related in any way to indebtedness in excess of $50,000 incurred in the acquisition of companies or other entities or indebtedness in excess of $50,000 for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, indemnification or otherwise;

(vi) any contract containing covenants purporting to limit Buyer's or Acquisition Subsidiary's freedom to compete in any line of business or in any geographic area or with any third party,

(vii) any agreement, contract or commitment relating to capital expenditures and involving future obligations in excess of $50,000; or

(viii) any other agreement, contract or commitment which is material to Buyer and Acquisition Subsidiary taken as a whole.

(b) Except as disclosed in Section 4.19 of the Buyer Disclosure Schedule, each agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license and commitment listed in Section 4.19 of the Buyer Disclosure Schedule is valid and binding on Buyer or Acquisition Subsidiary and the other party(ies) thereto, as applicable, and assuming due and valid authorization, execution and delivery by all counter parties, is in full force and effect, and neither Buyer, Acquisition Subsidiary, nor to the knowledge of Buyer any other party thereto, has breached any material provision of, or is in material default under the terms of, any such agreement, contract, mortgage, indenture, plan, lease, instrument, permit, concession, franchise, arrangement, license or commitment.

(c) There is no agreement, judgment, injunction, order or decree binding upon the Buyer or Acquisition Subsidiary which has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice of Buyer or Acquisition Subsidiary, any acquisition of property by Buyer or Acquisition Subsidiary or the conduct of business by Buyer or Acquisition Subsidiary as currently conducted or as proposed to be conducted by Buyer or Acquisition Subsidiary.

Section 4.20 Interests of Officers and Directors. To Buyer's knowledge, except as set forth in Section 4.20 of the Buyer Disclosure Schedule, no officer or director of Buyer or Acquisition Subsidiary has had, either directly or indirectly, a material interest in: (i) any person or entity which purchases from or sells, licenses or furnishes to Buyer or Acquisition Subsidiary any goods, property rights or services; (ii) except for the contracts listed in Section 4.15 of the Buyer Disclosure Schedule, any contract or agreement to which Buyer or Acquisition Subsidiary is a party or by which it may be bound or affected; or (iii) any property, real or personal, tangible or intangible, used in or pertaining to its business or that of Acquisition Subsidiary.

Section 4.21 Questionable Payments. Neither Buyer nor Acquisition Subsidiary nor to its knowledge any director, officer, agent or other employee of Buyer or Acquisition Subsidiary has: (i) made any payments or provided services or other favors in the United States of America or in any foreign country in order to obtain preferential treatment or consideration by any Governmental Entity with respect to any aspect of the business of Buyer or Acquisition Subsidiary; or (ii) made any political contributions which would not be lawful under the laws of the United States or the foreign country in which such payments were made. Neither Buyer nor Acquisition Subsidiary nor to its knowledge any director, officer, agent or other employee of Buyer or Acquisition Subsidiary has been the subject of any inquiry or investigation by any Governmental Entity in connection with payments or benefits or other favors to or for the benefit of any

governmental or armed services official, agent, representative or employee with respect to any aspect of the business of Buyer or Acquisition Subsidiary or with respect to any political contribution.

Section 4.22 Certain Tax Matters. Except as disclosed in Section 4.22 of the Buyer Disclosure Schedule, neither Buyer nor, to the knowledge of Buyer, any of its affiliates has taken or agreed to take any action that could be expected to prevent the Merger from constituting a transaction qualifying under Section 368 of the Code. Buyer is not aware of any agreement, plan or other circumstances that could reasonably be expected to prevent the Merger from so qualifying under Section 368 of the Code.

Section 4.23 No Prior Activities. Except for obligations or liabilities incurred in connection with its incorporation or organization or the negotiation and consummation of this Agreement and the transactions contemplated hereby (including any financing), Acquisition Subsidiary has not incurred any obligations or liabilities, and has not engaged in any business or activities of any type or kind whatsoever or entered into any agreements or arrangements with any person or entity. Acquisition Subsidiary is a wholly-owned subsidiary of Buyer.

ARTICLE 5

COVENANTS

Section 5.1 Interim Operations of Seller and Buyer. Seller and Buyer each hereby covenants and agrees with the other that, except (i) as expressly contemplated by this Agreement, (ii) as set forth in Section 5.1 of the Seller Disclosure Schedule, (iii) as set forth in Section 5.1 of the Buyer Disclosure Schedule or (iv) as agreed in writing by Seller and Buyer, after the execution and delivery of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time:

(a) the business of such party and its subsidiaries shall be conducted only in the ordinary and usual course and, to the extent consistent therewith, each party and its subsidiaries shall use its reasonable commercial efforts to preserve its business organization intact and maintain its existing relations with customers, suppliers, employees, creditors and business partners;

(b) each such party shall not, directly or indirectly, amend its or any of its subsidiaries' certificate of incorporation or bylaws or similar organizational documents;

(c) each such party shall not, and it shall not permit its subsidiaries to: (i)(A) declare, set aside or pay any dividend or other distribution payable in cash, stock or property with respect to such party's capital stock or that of its subsidiaries, or (B) redeem, purchase or otherwise acquire directly or indirectly any of such party's capital stock (or options, warrants, calls, commitments or rights of any kind to acquire any shares of capital stock) or that of its subsidiaries; (ii) issue, sell, pledge, dispose of or encumber any additional shares of, or securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, capital stock of any class of such party or its subsidiaries, other than Common Shares or Buyer Common Stock issuable upon the exercise of options and warrants outstanding on the date hereof and described in Section 3.2 of this Agreement or the Seller Disclosure Schedule or Section 4.2 of this Agreement or the Buyer Disclosure Schedule; (iii) split, combine or reclassify the outstanding capital stock of such party or of its subsidiaries; or (iv) amend or otherwise modify the terms of any rights, warrants or options with respect to such party or of its subsidiary's capital stock;

(d) each such party shall not, and it shall not permit its subsidiaries to, acquire or agree to acquire, or dispose of or agree to dispose of, any material assets, either by purchase, merger, consolidation, sale of shares in any of its subsidiaries or otherwise, other than in the ordinary course of business;

(e) each such party shall not, and it shall not permit its subsidiaries to, transfer, lease, license, sell, mortgage, pledge or encumber any assets;

(f) except as contemplated by Section 4.14(b), neither such party nor its subsidiaries shall: (i) grant any increase in the compensation payable to any of its officers, directors or key employees; or (ii)(A) adopt any new, or (B) except as contemplated by Section 2.5, amend or otherwise increase, or accelerate the payment or vesting of the amounts payable or to become payable under any existing, bonus, incentive compensation, deferred compensation, severance, profit sharing, stock option, stock purchase, insurance, pension, retirement or other employee benefit plan, agreement or arrangement; or (iii) enter into or modify or amend any employment or severance agreement with or, except as required by applicable law, grant any severance or termination pay to any officer, director or employee of Seller or any of its subsidiaries; or (iv) enter into any collective bargaining agreement;

(g) neither such party nor any of its subsidiaries shall, without the other party's prior written consent, which consent shall not be unreasonably withheld, modify, amend or terminate any of its contracts or waive, release or assign any rights or claims;

(h) neither such party nor any of its subsidiaries shall: (i) incur or assume any indebtedness for money borrowed; (ii) modify any such indebtedness or other liability; (iii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person, other than immaterial amounts in the ordinary course of business consistent with past practice and other than for any subsidiary; (iv) make any loans, advances or capital contributions to, or investments in, any other person (other than to wholly-owned subsidiaries of such party); (v) change any of its methods of reporting income or deductions for federal income tax purposes from those employed in the preparation of the federal income tax returns for the year ended December 31, 1997, or (vi) enter into any material commitment or transaction except as contemplated by this Agreement;

(i) neither such party nor any of its subsidiaries shall change any of the accounting methods, practices or policies used by it unless required by a change in GAAP;

(j) such party shall not, and it shall not permit its subsidiaries to, make or agree to make any new capital expenditures in excess of $10,000 in the aggregate;

(k) such party shall not, and it shall not permit its subsidiaries to, make any tax election (unless required by law) or settle or compromise any income tax liability; and

(l) neither party nor any of its subsidiaries will enter into an agreement, contract, commitment or arrangement to do any of the foregoing, or to authorize, recommend, propose or announce an intention to do any of the foregoing.

Section 5.2 Access; Confidentiality. Each of Seller and Buyer shall (and Buyer shall cause each of its subsidiaries to) (a) afford to the officers, employees, accountants, counsel and other representatives of Seller and Buyer, as the case may be, reasonable access to and the right to inspect and observe, during normal business hours during the period prior to the Effective Time, its personnel, accountants, representatives, properties, books, contracts, insurance policies, commitments and records, offices, plants and other facilities, (b) make available promptly to Seller or Buyer, as the case may be (i) a copy of each

report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal securities laws, if applicable and (ii) all other information concerning its business, properties and personnel as Seller or Buyer may reasonably request. Each party will treat any such information in accordance with the provisions of the letter agreement dated the date hereof between Seller and Buyer (the "Confidentiality Agreement"). No investigation conducted by Seller or Buyer shall impact any representation or warranty given by Seller to Buyer hereunder.

Section 5.3 Additional Agreements. Subject to the terms and conditions herein provided, each of the parties hereto shall use all reasonable commercial efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations, or to remove any injunctions or other impediments or delays, legal or otherwise, to consummate and make effective the Merger and the other transactions contemplated by this Agreement. Buyer also agrees to timely file all filings required to be made with the SEC with respect to such transactions.

Section 5.4 Consents and Approvals; HSR Act. Each of Seller, Buyer and Acquisition Subsidiary will take all reasonable actions necessary to comply promptly with all legal requirements which may be imposed on it with respect to this Agreement and the transactions contemplated hereby (which actions shall include, without limitation, furnishing all information required under the HSR Act and in connection with approvals of or filings with any other Governmental Entity) and will promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them or any of their subsidiaries in connection with this and the transactions contemplated hereby. Each of Seller, Buyer and Acquisition Subsidiary will, and will cause its subsidiaries to, take all reasonable actions necessary to obtain (and will cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any Governmental Entity or other public or private third party required to be obtained or made by Buyer, Acquisition Subsidiary, Seller or any of their subsidiaries in connection with the Merger or the taking of any action contemplated thereby or by this Agreement. Each party shall promptly inform the other party of any communication with, and any proposed understanding, undertaking, or agreement with, any Governmental Entity regarding any such filings or any such transaction.

Section 5.5 Exclusivity. From the date hereof until the earlier of termination of this Agreement or consummation of the Merger, neither Seller nor Buyer nor any of their officers, directors, employees, representatives (including any investment banker, attorney or accountant retained by them), agents or affiliates shall directly or indirectly encourage, solicit, initiate, facilitate or conduct discussions or negotiations with, provide any information to, or enter into any agreement with, any corporation, partnership, person or other entity or group concerning or expressing an interest in or proposing any merger, consolidation, reorganization, share exchange, business combination, liquidation, dissolution sale of all or other significant assets or securities or other similar transaction involving such party, except to the extent required by their fiduciary duties as determined by the Board of Directors of such party after discussion with their counsel.

Section 5.6 Publicity. So long as this Agreement is in effect, neither Seller, Buyer nor any of their respective affiliates shall issue or cause the publication of any press release or other public announcement with respect to the Merger, this Agreement or the other transactions between the parties contemplated hereby without the prior consultation of the other party, except as may be required by law or by any listing agreement with a national securities exchange or trading market.

Section 5.7 Notification of Certain Matters. Seller shall give prompt notice to Buyer and Acquisition Subsidiary, and Buyer and Acquisition Subsidiary shall give prompt notice to Seller, of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any representation or warranty made by such party or parties in this Agreement to be untrue or inaccurate in any

material respect at or prior to the Effective Time and (ii) any failure of Seller, Buyer or Acquisition Subsidiary, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.7 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice. Seller also shall give prompt notice to Buyer, and Buyer or Acquisition Subsidiary shall give prompt notice to Seller, of:

(i) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated by this Agreement (unless the requirement for such consent is set forth in Section 3.4 of the Seller Disclosure Schedule or Section 4.4 of the Buyer Disclosure Schedule);

(ii) any notice or other communication from any Governmental Entity in connection with the transactions contemplated by this Agreement;

(iii) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting it or any of its subsidiaries or which relate to the consummation of the transactions contemplated by this Agreement; and

(iv) any occurrence of any event having, or which could reasonably be expected to have, a Seller Material Adverse Effect or Buyer Material Adverse Effect.

Section 5.8 Indemnification. Notwithstanding Section 8.7 hereof, Buyer agrees that all rights to indemnification existing in favor of directors, officers or employees of Seller as provided in Seller's certificate of incorporation or bylaws, with respect to matters occurring through the Effective Time, shall survive the Merger and shall continue in full force and effect. If the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then and in each such case, proper provision shall be made so that the successors and assigns of the Surviving Corporation assume the obligations set forth in this Section 5.8.

Section 5.9 Approval of Stockholders.

(a) Buyer shall, promptly after the date of this Agreement, take all actions necessary in accordance with the requirements of the bylaws of the National Association of Securities Dealers, Inc. ("NASD"), DGCL and its certificate of incorporation and bylaws to convene a meeting of Buyer's stockholders to act on this Agreement (the "Buyer Stockholders' Meeting") and Buyer shall consult with Seller in connection therewith.

(b) Unless Seller's Board of Directors in the good faith exercise of its fiduciary duties, after receiving advice from outside legal counsel, determines not to recommend, or to withdraw its recommendation that such matters be approved by Seller's stockholders, Seller shall, promptly after the date of this Agreement, take all actions necessary in accordance with DGCL and its certificate of incorporation and bylaws to obtain the unanimous written consent of Seller's stockholders to act on this Agreement, and Seller shall consult with Buyer in connection therewith.

Section 5.10 Buyer Proxy Statement. Unless the Board of Directors of Buyer in the good faith exercise of its fiduciary duties determines not to recommend the Merger and this Agreement to its stockholders (or to withdraw such recommendation), Buyer, acting through its Board of Directors, shall, in accordance with applicable law:

(i) after consultation with Seller and its legal counsel, diligently prepare and file with the SEC as soon as reasonably practicable after the date of this Agreement (but in no event later than 30 days after the date hereof), a preliminary proxy or information statement relating to the Merger and this Agreement and use commercially reasonable efforts (x) to obtain and furnish the information required to be included by the SEC in the Buyer Proxy Statement (as hereinafter defined) and, after consultation with Seller and its counsel, to respond promptly to any comments made by the SEC with respect to the preliminary proxy or information statement and cause a definitive proxy or information statement, including any amendment or supplement thereto (the "Buyer Proxy Statement") to be mailed to its stockholders, provided that no amendment or supplement to the Buyer Proxy Statement will be made by Buyer without consultation with Seller and its counsel and (y) to obtain the necessary approvals of the Merger and this Agreement by its stockholders;

(ii) prepare the preliminary proxy statement and prepare and revise the Buyer Proxy Statement so that at the date mailed to Buyer's stockholders and at the time of the meeting of Buyer's stockholders to be held in connection with the Merger, the Buyer Proxy Statement will (x) not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order that the statements made therein, in light of the circumstances under which they are made, not misleading (except that Buyer shall not be responsible under this clause (ii) with respect to statements made therein based on information supplied by Seller expressly for inclusion in the Buyer Proxy Statement), and (y) comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder; and

(iii) make at the Buyer's Stockholder's Meeting, and include in the Proxy Statement, the recommendation of the Board that stockholders of Buyer vote in favor of the approval of the Merger and the authorization and adoption of this Agreement.

Section 5.11 Seller Information Statement.

(a) Seller shall afford Buyer and its legal counsel a reasonable opportunity to review and comment on any solicitation materials, including solicitation of action by written consent, that Seller distributes to its stockholders in connection with the Merger, which shall be diligently prepared and distributed to Seller's stockholders as soon as reasonably practicable after the date of this Agreement and, at such date, such solicitation materials will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order that the statements made therein, in light of the circumstances under which they are made, not misleading (except that Seller shall not be responsible under this Section 5.11(a) with respect to statements made therein based on information supplied by Buyer expressly for inclusion in such solicitation materials). To the greatest extent practicable, information required to be disclosed in both the Buyer Proxy Statement and any such solicitation materials shall be disclosed in an identical manner.

(b) Seller shall furnish to Buyer, and revise, written information concerning itself expressly for inclusion in the Buyer Proxy Statement, including without limitation by reviewing and commenting (with

respect to information concerning Seller) on drafts of the Buyer Proxy Statement and the preliminary proxy statement to be prepared pursuant to Section 5.10. Seller shall inform Buyer of any change regarding such information so that such Seller-furnished information will not, at both the date mailed to Buyer stockholders and at the time of the meeting of Buyer stockholders to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated in Seller furnished information or necessary in order to make the statements made in Seller-furnished information, in light of the circumstances under which they are made, not misleading.

Section 5.12 Tax Treatment. Each party hereto shall use all reasonable efforts to cause the Merger to qualify and shall not take, and shall use all reasonable efforts to prevent any affiliate of such party from taking, any actions which could prevent the Merger from qualifying as a reorganization under the provisions of Section 368(a) of the Code.

Section 5.13 Form S-8. With respect to the Seller Option Plan, Buyer shall take all corporate action necessary or appropriate to, as soon as practicable after the Effective Time, file a registration statement on Form S-8 (or any successor or other appropriate form) with respect to the shares of Buyer Common Stock which will be subject to options outstanding under such plan as of the Closing to the extent such registration statement is required under applicable law in order for such shares of Buyer Common Stock to be sold without restriction, and Buyer shall use reasonable efforts to maintain the effectiveness of such registration statements (and maintain the current status of the prospectuses contained therein) for so long as such options under such plan remain outstanding.

Section 5.14 Reservation of Buyer Common Stock. Buyer shall reserve from its authorized but unissued shares of Buyer Common Stock that number of shares of Buyer Common Stock issuable upon exercise of the Seller Stock Options assumed by Buyer.

Section 5.15 Consolidation of Operations. Buyer and Seller shall cooperate with one another with a view toward consolidating the operations of Buyer and Seller at Seller's principal executive offices and eliminating duplicative staffing and overhead as soon as reasonably possible.

Section 5.16 Consolidation of Board of Directors. Buyer will utilize good faith efforts to decrease the membership of the Board of Directors of Buyer to a total of seven (7) members by the first anniversary of the date of this Agreement. It is agreed and understood that this Section 5.16 shall not require (i) Buyer to amend its organizational documents or (ii) Buyer's directors to take any actions inconsistent with their fiduciary duties.

Section 5.17 Incentive Bonus Payments. Buyer and Seller agree that the incentive bonus payments to be made to Robert J. Capetola, pursuant to Section 4.e. of the Capetola Employment Agreement attached as Exhibit A hereto, and to each of Harry G. Brittain, Cynthia Davis, Laurence B. Katz, Lisa Mastroianni, Christopher Schaber, Huei Tsai and Thomas Wiswell, pursuant to Section 4.d. of the employment agreements to be entered into with such individuals in the form of Exhibit B hereto, shall be determined for each of the above-named individuals by Buyer's Compensation Committee, shall be paid in either cash or equity as determined by such Compensation Committee, shall be in the following aggregate amounts and shall be paid upon the achievement of each of the following milestones (which are set forth in the aforementioned agreements): (a) $150,000 upon the successful completion of Phase II studies for any compound under development in Discovery's portfolio (each a "Portfolio Compound"); (b) $500,000 upon the successful completion of Phase II studies for any Portfolio Compound; and (c) $1,000,000 upon receipt of marketing approval in the United States for any Portfolio Compound. The aforementioned bonuses shall be paid only once for each of the milestones.

ARTICLE 6

CONDITIONS

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger shall be subject to the satisfaction on or prior to the Effective Time of each of the following conditions, any and all of which may be waived in whole or in part by Seller, Buyer or Acquisition Subsidiary, as the case may be, to the extent permitted by applicable law:

(a) Stockholder Approval. This Agreement shall have been approved by the requisite vote of the stockholders of Seller, Buyer and Acquisition Subsidiary;

(b) Statutes. No statute, rule, order, decree or regulation shall have been enacted or promulgated by any Governmental Entity which prohibits the consummation of the Merger;

(c) Injunctions. There shall be no order or injunction of a court or other governmental authority of competent jurisdiction in effect precluding, restraining, enjoining or prohibiting consummation of the Merger;

(d) Tax Opinions. Buyer shall have received from Roberts, Sheridan & Kotel, P.C., counsel to Buyer, a written opinion dated as of the Closing Date to the effect that the Merger, when effected in accordance with this Agreement, will qualify as a reorganization under Section 368(a) of the Code; Seller shall have received from Brobeck, Phleger & Harrison LLP, counsel to Seller, a written opinion dated as of the Closing Date to the effect that the Merger, when effected in accordance with this Agreement, will qualify as a reorganization under Section 368(a) of the Code;

(e) Capetola Employment Agreement. Robert J. Capetola shall have entered into an employment agreement with Buyer, in the form attached as Exhibit A hereto;

(f) Key Executive Employment Agreements. Buyer and each of Harry G. Brittain, Cynthia Davis, Laurence B. Katz, Lisa Mastroianni, Christopher Schaber, Huei Tsai and Thomas Wiswell shall have entered into employment agreements as mutually agreed to by Buyer and Seller, substantially in the form attached as Exhibit B hereto (the "Key Executive Employment Agreements");

(g) Exchange Agreement. Buyer shall have entered into the Exchange Agreement with JJDC.

(h) Board of Directors. On the Effective Date, the Board of Directors of Buyer shall consist of Robert J. Capetola, Steve Kanzer, Max Link, Herbert McDade, David Naveh, Milton Packer, Richard Power, Mark Rogers, Marvin Rosenthale, and Richard Sperber.

(i) No Litigation. After the date hereof, there shall not be threatened, or instituted and continuing, any action, suit or proceeding against Seller, Buyer or Acquisition Subsidiary, by any Governmental Entity or any other person directly or indirectly relating to the Merger or any other transactions contemplated by this Agreement which individually or in the aggregate could reasonably be expected to have a Seller Material Adverse Effect or Buyer Material Adverse Effect.

Section 6.2 Additional Conditions to Obligations of Seller. The obligation of Seller to effect the Merger is also subject to the fulfillment of the following conditions:

(a) Representations and Warranties. The representations and warranties of Buyer and Acquisition Subsidiary contained in this Agreement shall be true and correct on the date hereof and shall also be true and correct on and as of the Effective Time, with the same force and effect as if made on and as of the Effective Time, unless the failure of such representations and warranties to be true and correct could not reasonably be expected to cause, individually or in the aggregate, a Buyer Material Adverse Effect (as applied to such dates);
(b) Agreements, Conditions and Covenants. Buyer and Acquisition Subsidiary shall have performed or complied in all material respects with all agreements, conditions and covenants required by this Agreement to be performed or complied with by them on or before the Effective Time;

(c) Certificate of Chairman of the Board. Seller shall have received a certificate of the Chairman of the Board of Directors of Buyer to the effect that each of the conditions specified in clauses (a) and (b) of this Section 6.2 have been satisfied;

(d) Stock Option Agreements. In addition to the Stock Options assumed by Buyer under Section 2.4, Buyer shall have granted stock options pursuant to Buyer Stock Option Plan in the forms of option agreements attached hereto as Exhibit C, Exhibit D and Exhibit E, to certain of Seller's employees as set forth on Schedule 6.2(d), for an aggregate of 338,500, 175,000 and 160,000 shares of Common Stock, respectively.

(e) Opinion. Seller shall have received an opinion dated as of the Closing Date from Roberts, Sheridan & Kotel P.C., counsel to Buyer and Acquisition Subsidiary, covering the matters set forth in Schedule 6.2(e).

(f) Registration Rights Agreement. Buyer shall have entered into a Registration Rights Agreement with JJDC and The Scripps Research Institute, substantially in the form attached hereto as Exhibit F.

Section 6.3 Additional Conditions to Obligations of Buyer and Acquisition Subsidiary. The obligations of Buyer and Acquisition Subsidiary to effect the Merger are also subject to the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct on the date hereof and shall also be true and correct on and as of the Effective Time, with the same force and effect as if made on and as of the Effective Time, unless the failure of such representations and warranties to be true and correct as of such dates could not reasonably be expected to cause, individually or in the aggregate, a Seller Material Adverse Effect (as applied to such dates);

(b) Agreements, Conditions and Covenants. Seller shall have performed or complied in all material respects with all agreements, conditions and covenants required by this Agreement to be performed or complied with by it on or before the Effective Time;

(c) Officer's Certificate. Buyer shall have received a certificate of the Chief Executive Officer of Seller to the effect that each of the conditions specified in clauses (a) and (b) of this Section 6.3. have been satisfied.

(d) Investment Agreement. Each holder of Common Shares shall have executed and delivered to Buyer the form of Investment Agreement attached as Exhibit G hereto.

(e) Opinion. Buyer shall have received an opinion dated as of the Closing Date from Brobeck, Phleger & Harrison LLP, counsel to Seller, covering the matters set forth in Schedule 6.3(e).

(f) Dissenting Common Shares. The aggregate number of Common Shares held by Dissenting Stockholders shall not be equal to or exceed five percent (5%) of the outstanding Common Shares immediately prior to the Effective Time.

(g) Contractual Lock-up Agreements. Each common stockholder and optionholder of Seller shall have entered into an agreement with Buyer substantially in the form of Exhibit H attached hereto.

(h) Buyer Stock Option Plan. The 1998 stock option plan of Buyer (the "1998 Stock Option Plan") in the form attached as Exhibit I hereto, shall have been approved by the requisite vote of the stockholders of Buyer.

(i) Termination Agreement. Seller shall enter into a letter agreement terminating the Co-Sale Agreement dated as of October 28, 1996 by and between Seller and the stockholders listed on Schedule A thereto.

ARTICLE 7

TERMINATION

Section 7.1 Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval of the terms of this Agreement by the stockholders of Buyer or Seller:

(a) by mutual written consent of the Boards of Directors of Buyer and Seller;

(b) by either Buyer or Seller if any Governmental Entity shall have issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting consummation of the Merger and such order, decree or ruling or other action shall have become final and nonappealable;

(c) by either Buyer or Seller, if the Merger shall not have been consummated by [July 15], 1998; provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(c) shall not be available to any party whose failure (or the failure of the affiliates of which) to perform any of its obligations under this Agreement has been the cause of, or resulted in, the failure of the Merger to occur on or before such date; provided, further, that for this purpose, Buyer and Seller shall not be deemed to be affiliates of each other; directors, officers and employees of Seller shall be deemed to act only on behalf of such Seller; and directors, officers and employees of Buyer or Acquisition Subsidiary shall be deemed to act only on behalf of Buyer and/or Acquisition Subsidiary; and provided further that an individual holding positions on the boards of both Seller, on the one hand, and Buyer or Acquisition Subsidiary, on the other hand, shall be deemed to act only on behalf of Buyer and/or Acquisition Subsidiary unless such interpretation would be manifestly unreasonable;

(d) by Buyer or Acquisition Subsidiary, in the event of a breach by Seller of any representation, warranty, covenant or other agreement contained in this Agreement which cannot be or has not been cured within thirty (30) days after the giving of written notice to Seller and which, individually or in the aggregate, has had or could reasonably be expected to have, a Seller Material Adverse Effect; or

(e) by Seller, in the event of a breach by Buyer or Acquisition Subsidiary of any of their respective representations, warranties, covenants or other agreements contained in this Agreement, which cannot be or has not been cured within thirty (30) days after the giving of written notice to Buyer or Acquisition Subsidiary, and which, individually or in the aggregate, has had or could reasonably be expected to have, a Buyer Material Adverse Effect.

Section 7.2 Effect of Termination. In the event of a termination of this Agreement by either Seller or Buyer as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Buyer, Acquisition Subsidiary or Seller or their respective officers or directors, except with respect to Sections 3.16, 4.16, 5.2, this Section 7.2 and Article 8; provided, however, that nothing herein shall relieve any party of liability for any breach this Agreement.

ARTICLE 8

MISCELLANEOUS

Section 8.1 Fees and Expenses. All fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

Section 8.2 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified and supplemented in any and all respects, whether before or after any vote of the stockholders of Seller or Buyer contemplated hereby, by written agreement of the parties hereto, at any time prior to the Closing Date with respect to any of the terms contained herein; provided, however, that after the approval of this Agreement by the stockholders of Seller or Buyer, no such amendment, modification or supplement shall reduce the amount or change the form of the consideration to be received by Seller stockholders in the Merger.

Section 8.3 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Effective Time.

Section 8.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon receipt, and shall be given to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Buyer or Acquisition Subsidiary, to:

Discovery Laboratories, Inc.
509 Madison Avenue
Suite 1406
New York, NY 10022
Telephone: (212) 223-9504
Facsimile: (212) 688-7978

Attention: Steve H. Kanzer, Esq.

with copies to:

Roberts, Sheridan & Kotel, P.C.
Tower Forty-Nine
12 East 49th Street
New York, NY 10017
Telephone: (212) 299-8600
Facsimile: (212) 299-8686

Attention: Kenneth G. Alberstadt, Esq.

(b) if to Seller, to:

Acute Therapeutics, Inc.
3359 Durham Road
Doylestown, PA 18901
Telephone: (215) 794-3064
Facsimile: (215) 794-3239

Attention: Robert J. Capetola, Ph. D.

with copies to:

Brobeck, Phleger & Harrison LLP
1633 Broadway
47th Floor
New York, NY 10019
Telephone: (212) 581-1600
Facsimile: (212) 586-7878

Attention: Ellen B. Corenswet, Esq.

Section 8.5 Interpretation. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation". As used in this Agreement, the term "affiliate(s)" shall have the meaning set forth in Rule 12b-2 of the Exchange Act. As used in this Agreement, a "subsidiary" of any entity shall mean

all corporations or other entities in which such entity owns a majority of the issued and outstanding capital stock or equity or similar interests.

Section 8.6 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 8.7 Entire Agreement; No Third Party Beneficiaries; Rights of Ownership. This Agreement and the Confidentiality Agreement (including the documents and the instruments referred to herein and therein): (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) other than the provisions of Section 5.8 hereof, nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give to any person, firm or corporation other than the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated hereby.

Section 8.8 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 8.9 Governing Law. This Agreement and the legal relations between the parties hereto will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the choice of law principles thereof.

Section 8.10 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that Acquisition Subsidiary may assign, in its sole discretion, any or all of its rights, interests and obligations hereunder to Buyer or to any direct or indirect wholly owned subsidiary of Buyer. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF, Buyer, Acquisition Subsidiary and Seller have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

Buyer

By: /s/ James S. Kuo

Name: James S. Kuo, M.D.

Title: Chief Executive Officer

Acquisition Subsidiary

By: /s/ James S. Kuo

Name: James S. Kuo, M.D.

Title: President

Seller

By: /s/ Robert J. Capetola

Name: Robert J. Capetola, Ph.D.

Title: President and Chief Executive Officer

EXHIBIT A

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of [_____ __], 1998 by and between Discovery Laboratories, Inc., a Delaware corporation (the "Company"), and Robert Capetola, Ph.D. (the "Executive").

WHEREAS, the Company and Executive desire that Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of four (4) years commencing on [_____ __], 1998 (the "Commencement Date") and continuing until [_____ __], 2002, subject, however, to prior termination as hereinafter provided in Section 5 (the "Employment Period").

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as President and Chief Executive Officer of the Company. Executive shall be responsible for overall management of the Company and all operating managers of the Company shall report to Executive. Executive shall at all times report to, and shall be subject to the policies established by, the Company's Board of Directors (the "Board") or any Executive Committee thereof. The Company agrees that, at all times during the Employment Period, it will nominate Executive for election to the Board of Directors of the Company. Executive shall immediately resign from any Board position held by him at the expiration or termination of the Employment Period.

b. Location of Employment. Executive's principal place of business shall be at the Company's offices to be located within thirty (30) miles of Doylestown, Pennsylvania. Such office shall serve as the Company's principal executive office.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During his employment with the Company, Executive shall devote substantially all of his business time, attention and efforts to the high quality performance of his duties to the Company.

b. No Other Employment. During his employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors. Notwithstanding the foregoing provisions of this Section 3.b., Executive may perform services in connection with charitable or civic activities to the extent such participation does not materially interfere with the performance of Executive's duties for the Company.

c. Non-Competition. During the Employment Period and for eighteen (18) months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity compete with the Company's business of developing or commercializing pulmonary surfactants, Vitamin D analogs or any other category of compounds which forms the basis of the Company's products or products under development (a "Competing Business"), or (ii) directly or indirectly solicit employees of the Company. Notwithstanding the provisions of this Section 3.c., nothing herein shall prohibit Executive from (i) holding less than one percent (1%) of the outstanding capital stock of a publicly held corporation engaged in a Competing Business; (ii) serving on one or more Boards of Directors of for-profit or non-profit corporations so long as, in the aggregate, such commitments do not interfere with the performance of Executive's duties for the Company and such corporations are not engaged in any Competing Business; or (iii) after his employment with the Company terminates for any reason, being employed by a multi-division corporation that engages in a Competing Business so long as Executive works in a division of such corporation which is not primarily engaged in a Competing Business and Executive has no responsibilities for the direct supervision of, and will not in the ordinary course of discharging his responsibilities become involved in the analysis of proprietary data or marketing strategies relating to, any Competing Business.

4. Compensation and Benefits.

a. Initial Bonus. The Company shall pay to Executive an initial sign-on bonus of One Hundred Thousand Dollars ($100,000) upon the execution of this Agreement.

b. Base Compensation. During the first year of the Employment Period, the Company shall pay to Executive, payable in accordance with the Company's standard payroll policy, base annual compensation of Two Hundred Thirty Six Thousand Two Hundred Fifty Dollars ($236,250), less all required withholdings. Such base salary shall be increased annually during the Employment Period by a minimum of five percent (5%) per year.

c. Bonuses. During the Employment Period, Executive shall be entitled to a minimum year-end bonus equal to twenty percent (20%) of his base compensation for each year and, at the discretion of the Compensation Committee of the Board of Directors of the Company, any additional bonus that may be awarded him.

d. Benefits. During the Employment Period, Executive will be entitled to all such family health and medical benefits and disability insurance as are provided to officers of the Company generally. In addition, the Company will provide to Executive (i) term life insurance on behalf of Executive's beneficiaries in the amount of Two Million Dollars ($2,000,000) for the term of this Agreement, and (ii) long-term disability insurance, subject to a combined premium cap of Fifteen Thousand Dollars ($15,000) per year.

e. Incentive Bonus. Executive shall be eligible for incentive bonuses as follows:

(i) Fifty Thousand Dollars ($50,000) upon the execution of each partnering or similar arrangement involving Surfaxin having a Value (as hereinafter defined) to the Company in excess of Ten Million Dollars ($10,000,000). For purposes of this Agreement, "Value" shall mean the total payments, including without limitation, contingent payments prior to or at receipt of marketing approval for the compound under development in the Company's portfolio (each a "Portfolio

Compound") involved in the relevant agreement, to be paid to Discovery from corporate partnering transactions or from any other transactions for the development, clinical testing, regulatory approval, manufacturing and/or marketing of a Portfolio Compound, including without limitation upfront fees, milestone payments, research and development and other contractual commitments.

(ii) In amounts to be determined by the Company's Compensation Committee, to be paid in either cash or equity, upon the achievement of each of the following milestones (which bonuses shall be paid only once for each of the milestones): (a) the successful completion of Phase II studies for any Portfolio Compound; (b) the successful completion of Phase III studies of any Portfolio Compound; and (c) receipt of marketing approval in the United States for any Portfolio Compound.

f. Stock Options. The Board of Directors of the Company has granted to Executive, on the date hereof, incentive stock options to purchase: (i) 115,090 shares of Common Stock, $0.001 par value of the Company (the "Common Stock"), pursuant to the terms of the Notice of Grant attached hereto as Exhibit B, (ii) 59,500 shares of Common Stock, subject to acceleration at such time as the market capitalization of the Company exceeds $75 million, pursuant to the terms of the Notice of Grant attached hereto as Exhibit C, and (iii) 54,240 shares of Common Stock, subject to acceleration upon consummation of a corporate partnering deal having a total Value of at least $20 million, pursuant to the terms of the Notice of Grant attached hereto as Exhibit D.

5. Termination of Employment.

a. Termination for Cause. The Company may terminate Executive's employment at any time for "Cause," as herein defined. For the purposes of this Agreement, "Cause" shall mean (i) breach of any contractual obligations relating to noncompetition, assignment of inventions, protection of intellectual property or confidentiality, (ii) gross negligence or willful misconduct relating to the performance of employment responsibility or (iii) the commission of any felony or any other crime involving moral turpitude.

b. Termination without Cause. If Executive's employment is terminated by the Company without Cause, the following provisions shall apply:

(i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

(ii) Executive shall be entitled to receive severance payments equal to his base compensation for an eighteen (18) month period, not subject to setoff by the Company, but subject to the execution by the Executive of a Release, substantially in the form attached hereto as Exhibit E, with respect to all employment-related matters. Such severance shall be payable in six (6) equal installments, with the first installment payable on the date of receipt of the foregoing release and the subsequent installments payable at three (3) month intervals thereafter.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing his duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this Section 5.c., Executive or his estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

d. Lock-up Period. Executive shall not directly or indirectly, sell, offer, contract to sell, transfer the economic risk of ownership, make any short sale, pledge or otherwise dispose of any shares of Common Stock issued or issuable upon the exercise of options, or any securities convertible into or exchangeable or exercisable for such options, granted to Executive for a one-year lock-up period following any termination of Executive's employment by (i) the Company for Cause or (ii) Executive to the extent such termination constitutes a breach of this Agreement.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the Commonwealth of Pennsylvania as applied to agreements among Pennsylvania residents entered into and to be performed entirely within Pennsylvania without regards to the application of choice of law rules.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery, on the date of scheduled delivery by a nationally recognized overnight service or two (2) days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or addresses as either party shall designate to the other in accordance with this Section 6.e.

f. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of Executive. The Employment Agreement by and between Executive and Acute Therapeutics, Inc., dated

October 1, 1996, is hereby terminated and shall be of no further force or effect and that he shall have no further rights under said agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

DISCOVERY LABORATORIES, INC.

By: Steve H. Kanzer
Its: Director (on behalf of the Board of Directors)

Address: 787 Seventh Avenue
New York, New York 10019

EXECUTIVE:

Robert Capetola, Ph.D.

Address: 6097 Hidden Valley Drive
Doylestown, PA 18901

ACUTE THERAPEUTICS, INC. (for purposes of Section 6.f. only)

By: Robert J. Capetola, Ph.D.
Its: President and Chief Executive Officer

Address: 3359 Durham Road
Doylestown, PA 18901

EXHIBIT B
FORM OF EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of [_____ __,] 1998 by and between Discovery Laboratories, Inc., a Delaware corporation (the "Company"), and _____ (the "Executive").

WHEREAS, the Company and Executive desire that Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of three (3) years commencing on [_____ __,] 1998 (the "Commencement Date") and continuing until [_____ __,] 2001, subject, however, to prior termination as hereinafter provided in Section 5 (the "Employment Period").

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as _____. Executive shall be responsible for _____.

b. Location of Employment. Executive's principal place of business shall be at the Company's office to be located within thirty (30) miles of Doylestown, Pennsylvania.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During his employment with the Company, Executive shall devote substantially all of his business time, attention and efforts to the high quality performance of his duties to the Company.

b. No Other Employment. During his employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors.

c. Non-Competition During Employment. During the Employment Period and for eighteen (18) months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity (i) compete with the Company in the business of developing or commercializing pulmonary surfactants, Vitamin D analogs or any other category of compounds which forms the basis of the Company's products or products under development (a "Competing Business"), or (ii) directly or indirectly solicit employees of the Company.

4. Compensation and Benefits.

a. Base Compensation. During the term of this Agreement, the Company shall pay to Executive base annual compensation of _____ ($_____), less all required withholdings.

b. Bonuses.

(1) Incentive Bonus. Executive shall be eligible for incentive bonuses in amounts to be determined by the Company's Compensation Committee after consultation with the Company's Chief Executive Officer, to be paid in either cash or equity, upon the achievement of each of the following milestones (which bonuses shall be paid only once for each of the milestones): (a) the successful completion of Phase II studies for any compound under development in the Company's portfolio (each a "Portfolio Compound"); (b) the successful completion of Phase III studies for any

Portfolio Compound; and (c) receipt of marketing approval in the United States for any Portfolio Compound.

(2) Additional Bonus. Executive shall be eligible for such year-end bonus, which may be paid in either cash or equity, or both, as is awarded at the discretion of the Compensation Committee of the Board of Directors of the Company after consultation with the Company's Chief Executive Officer.

c. Benefits. During her employment with the Company, the Company shall provide reasonable medical and disability benefits to Executive. In addition, the Company will provide to Executive term life insurance on behalf of Executive's beneficiaries in the amount of Executive's annual salary for the term of this Agreement.

d. Stock Options. The Board of Directors of the Company has granted to Executive, on the date hereof, incentive stock options to purchase: (i) _____ shares of Common Stock, $0.001 par value of the Company (the "Common Stock"), pursuant to the terms of the Notice of Grant attached hereto as Exhibit B, (ii) _____ shares of Common Stock, subject to acceleration at such time as the market capitalization of the Company exceeds $75 million, pursuant to the terms of the Notice of Grant attached hereto as Exhibit C, and (iii) _____ shares of Common Stock, subject to acceleration upon consummation of a corporate partnering deal having a total Value (as hereinafter defined) of at least $20 million, pursuant to the terms of the Notice of Grant attached hereto as Exhibit D. For purposes of this Agreement, "Value" shall mean the total payments, including without limitation, contingent payments prior to or at receipt of marketing approval for the Portfolio Compound involved in the relevant agreement, to be paid to Discovery from corporate partnering transactions of from any other transactions for the development, clinical testing, regulatory approval, manufacturing and/or marketing of a Portfolio Compound, including without limitation upfront fees, milestone payments, research and development and other contractual commitments.

5. Termination of Employment.

a. Termination for Good Cause. The Company may terminate Executive's employment at any time for "Good Cause," as herein defined. For the purposes of this Agreement, "Good Cause" includes, but is not limited to, gross misconduct, gross neglect of duties, acts involving moral turpitude, material breach by Executive of this Agreement or the Confidentiality Agreement or any act or omission involving fraud, embezzlement, or misappropriation of any property or proprietary information of the Company by Executive which is not cured by Executive within fifteen (15) days after receipt of written notice from the Company.

b. Termination without Good Cause. If Executive's employment is terminated by the Company without Good Cause, the following provisions shall apply:

i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

ii) Executive shall be entitled to receive severance payments equal to his base compensation, payable on normal Company payroll dates, for a ____ month period, subject to setoff for other employment or consulting income received by Executive.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing his duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this Section 5.c., Executive or his estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the Commonwealth of Pennsylvania as applied to agreements among Pennsylvania residents entered into and to be performed entirely within Pennsylvania without regards to the application of choice of law rules.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery, on the date of scheduled delivery by a nationally recognized overnight service or two (2) days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or addresses as either party shall designate to the other in accordance with this Section 6.e.

f. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of

Executive. The Employment Agreement by and between Executive and Acute Therapeutics, Inc., dated _____, is hereby terminated and shall be of no further force or effect.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

DISCOVERY LABORATORIES, INC.

By: Robert Capetola, Ph.D.
Its: President

Address: 3359 Durham Road
Doylestown, Pennsylvania 18901

EXECUTIVE:

Address:

ACUTE THERAPEUTICS, INC.
(for purposes of Section 6.f. only)

By: Robert Capetola, Ph.D.
Its: President

Address: 3359 Durham Road
Doylestown, Pennsylvania 18901

EXHIBIT C

DISCOVERY LABORATORIES, INC.
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock, par value $0.001 per share, of Discovery Laboratories, Inc. (the "Corporation"):

Optionee: _____

Grant Date: [Closing Date of the Merger]

Exercise Price: $[FMV as of the closing of the Merger]

Number of Option Shares: _____ shares

Expiration Date: [Tenth anniversary of the closing of the Merger]

Type of Option: [Incentive Stock Option - Subject to $100,000 Limit]

Date Exercisable: [Date of the closing of the Merger], subject to vesting as described below.

Vesting Schedule: The Option Shares shall initially be unvested and subject to repurchase by the Corporation, at the Exercise Price paid per share. Optionee shall acquire a vested interest in, and the Corporation's repurchase right shall lapse with respect to, one-third of the Option Shares on each of the first, second and third anniversaries of _____, 1998, (the "Closing Date"), the date of closing under the Agreement and Plan of Merger dated March ____, 1998 among the Corporation, ATI Acquisition Corp. and Acute Therapeutics, Inc. However, in the event that Optionee's Service is terminated by the Corporation prior to the third anniversary of the Closing Date for any reason other than Cause, as defined in the Employment Agreement, or a breach by Optionee of the Employment Agreement, vesting of the Option Shares shall accelerate so that the Corporation's repurchase right shall lapse with respect to, and Optionee shall acquire a vested interest in, all of the Option Shares as of the effective date of such termination. In no event shall any additional Option Shares vest after Optionee's termination of Service.

Optionee understands and agrees to be bound by the terms of the Option as set forth in the Stock Option Agreement attached hereto as Exhibit A. Optionee understands and agrees that

the Option is granted subject to and in accordance with the terms of the Corporations's 1998 Stock Incentive Plan (the "Plan") attached hereto as Exhibit B.

REPURCHASE RIGHTS. OPTIONEE HEREBY AGREES THAT ALL UNVESTED OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO A REPURCHASE RIGHT EXERCISABLE BY THE CORPORATION AND ITS ASSIGNS. THE TERMS OF SUCH RIGHT SHALL BE SPECIFIED IN A STOCK PURCHASE AGREEMENT, IN FORM AND SUBSTANCE SATISFACTORY TO THE CORPORATION, EXECUTED BY OPTIONEE AT THE TIME OF THE OPTION EXERCISE.

No Employment or Service Contract. Nothing in this Notice shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any parent or subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service in accordance with applicable law or the Employment Agreement.

Definitions. All capitalized terms used and not otherwise defined in this Notice shall have the meaning assigned to them in this Notice or in the Stock Option Agreement.

DATED: _____, 1998

DISCOVERY LABORATORIES, INC.

By:_____

Title

_____
OPTIONEE

Address: _____

_____

ATTACHMENTS:
Exhibit A - Stock Option Agreement
Exhibit B - 1998 Stock Incentive Plan

EXHIBIT A

DISCOVERY LABORATORIES, INC.

STOCK OPTION AGREEMENT

RECITALS

A. Optionee is to render valuable services to the Corporation, and this Agreement is executed in connection with the Corporation's grant of an option to Optionee under the Plan, as provided in the Employment Agreement dated as of , 1998 between the Corporation and Optionee (the "Employment Agreement").

B. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning assigned to them in the attached Appendix.

NOW, THEREFORE, it is hereby agreed as follows:

1. Grant of Option. The Corporation hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. Option Term. This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5, 6 or 16.

3. Limited Transferability. This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, if this option is designated a Non-Statutory Option in the Grant Notice, then this option may, in connection with Optionee's estate plan, be assigned in whole or in part during Optionee's lifetime to one or more members of Optionee's immediate family or to a trust established for the exclusive benefit of one or more such family members. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

4. Exercisability/Vesting.

(a) This option shall be immediately exercisable for any or all of the Option Shares, whether or not the Option Shares are vested in accordance with the Vesting Schedule and shall remain so exercisable until the Expiration Date or sooner termination of the option term under Paragraph 5, 6 or 16.

(b) Optionee shall, in accordance with the Vesting Schedule, vest in the Option Shares in one or more installments over his or her period of Service. Vesting in the Option Shares may be accelerated pursuant to the provisions of Paragraph 5 or 6. In no event, however, shall any additional Option Shares vest following Optionee's cessation of Service.

5. Cessation of Service. The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(i) Should Optionee cease to remain in Service for any reason (other than as specified in any of paragraphs (ii) through (vii) below) while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the three (3)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(ii) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this Option. Such right shall lapse and this option shall cease to be outstanding upon the earlier of (A) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (B) the Expiration Date.

(iii) Should Optionee cease Service by reason of Disability while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the twelve (12)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(iv) Should Optionee's Service be terminated by the Corporation prior to the third anniversary of the Closing Date for any reason other than Cause or a breach by Optionee of the Employment Agreement, vesting of the Option Shares shall accelerate so that the Corporation's repurchase right shall lapse with respect to, and Optionee shall acquire a vested interest in, all of the Option Shares as of the effective date of such termination. In such event, this option shall remain exercisable until the earlier of (A) the expiration of the twelve (12)-month period measured from the date of such termination or (B) the Expiration Date.

(v) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of vested option Shares for which the option is exercisable at the time of, or as a result of, Optionee's cessation of Service. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any Option Shares for which the Option has not been exercised. To the extent Optionee is not vested in the Option Shares at the time of, or as a result of, Optionee's cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

(vi) Should Optionee's Service be terminated by the Corporation for Cause or should Optionee terminate his or her Service in breach of the Employment Agreement, then this option shall terminate immediately and cease to remain outstanding.

(vii) In the event of a Corporate Transaction, the provisions of Paragraph 6 shall govern the period for which this option is to remain exercisable following Optionee's cessation of Service and shall supersede any provisions to the contrary in this paragraph.

6. Corporate Transaction.

a. In the event of any Corporate Transaction, the Option Shares at the time subject to this option but not otherwise vested shall automatically vest in full so that this option shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the Option Shares as fully-vested shares and may be exercised for any or all of those vested shares. However, the Option Shares shall not vest on such an accelerated basis if and to the extent: (i) this option is assumed by the successor corporation (or parent thereof) in the Corporate Transaction and the Corporation's repurchase rights with respect to the unvested Option Shares are assigned to such successor corporation (or parent thereof) or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested Option Shares at the time of the Corporate Transaction (the excess of the Fair Market Value of those Option Shares over the Exercise Price payable for such shares) and provides for subsequent payout in accordance with the same Vesting Schedule applicable to those unvested Option Shares as set forth in the Grant Notice.

b. Immediately following the Corporate Transaction, this option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) in connection with the Corporate Transaction.

c. If this option is assumed in connection with a Corporate Transaction, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

d. Should there occur an Involuntary Termination of Optionee's Service within eighteen (18) months following a Corporate Transaction in which this option is assumed or replaced and the Corporation's repurchase rights with respect to the unvested Option Shares are assigned, all the Option Shares at the time subject to this option but not otherwise vested shall automatically vest, and the Corporation's repurchase rights with respect to those Option Shares shall terminate, so that this option shall immediately become exercisable for all those Option Shares as fully-vested shares of Common Stock and may be exercised for any or all of those vested Option Shares at any time prior to the earlier of (i) the Expiration Date or (ii) the expiration of the one (l)-year period measured from the date of such Involuntary Termination.

e. This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. Adjustment in Option Shares. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

8. Stockholder Rights. The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record of the purchased shares.

9. Manner of Exercising Option.

a. In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(1) To the extent the option is exercised for vested Option Shares, deliver to the Secretary of the Corporation an executed notice of exercise in substantially the form of Exhibit I to this Agreement (the "Exercise Notice") in which there is specified the number of Option Shares which are to be purchased under the exercised option. To the extent the option is exercised for unvested Option Shares, deliver to the Corporation an executed Purchase Agreement.

(2) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(a) cash or check made payable to the Corporation; or

(b) a promissory note payable to the Corporation, but only to the extent approved by the Plan Administrator in accordance with Paragraph 13; or

(c) in shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(d) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable written instructions (a) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Exercise Notice (or Purchase Agreement) delivered to the Corporation in connection with the option exercise.

(3) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(4) Execute and deliver to the Corporation such written representations as may be requested by the Corporation in order for it to comply with the applicable requirements of Federal and state securities laws.

(5) Make appropriate arrangements with the Corporation for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the option exercise.

b. As soon as practical after the Exercise Date, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto. To the extent any such Option Shares are unvested, the certificates for those Option Shares shall be endorsed with an appropriate legend evidencing the Corporation's repurchase rights and may be held in escrow with the Corporation until such shares vest.

c. In no event may this option be exercised for any fractional shares.

10. Compliance with Laws and Regulations.

a. The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange or inter-dealer quotation system on which the Common Stock may be listed for trading at the time of such exercise and issuance.

b. The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

11. Successors and Assigns. Except to the extent otherwise provided in Paragraphs 3 and 5, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

12. Notices. Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation, attn: Secretary, at 509 Madison Avenue, 14th Floor, New York, New York 10022, or any other address provided in writing to Optionee. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. Financing. The Corporation may, in its absolute discretion and without any obligation to do so, permit Optionee to pay the Exercise Price for the purchased Option Shares by delivering a promissory note. The terms of any such promissory note (including the interest rate, the requirements for collateral and the terms of repayment) shall be established by the Plan Administrator in its sole discretion.

14. Construction. This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All

decisions of the Plan Administrator or the Board with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

15. Governing Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without resort to that State's conflict-of-laws rules.

16. Stockholder Approval.

a. The grant of this option is subject to approval of the Plan by the Corporation's stockholders within twelve (12) months after the adoption of the Plan by the Board. Notwithstanding any provision of this Agreement to the contrary, this option may not be exercised in whole or in part until such stockholder approval is obtained. In the event that such stockholder approval is not obtained, then this option shall terminate in its entirety and Optionee shall have no further rights to acquire any Option Shares hereunder.

b. If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of shares of Common Stock which may without stockholder approval be issued under the Plan, then this option shall be void with respect to such excess shares, unless stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock issuable under the Plan is obtained in accordance with the provisions of the Plan.

17. Additional Terms Applicable to an Incentive Option. In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason

other than death or Permanent Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an Employee by reason of Permanent Disability.

(b) This option shall not become exercisable in the calendar year in which granted if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option would otherwise first become exercisable in such calendar year would, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock and any other securities for which one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion shall become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar ($100,000) limitation of this Paragraph 18(b) would not be contravened, but such deferral shall in all events end immediately prior to the effective date of a Corporate Transaction in which this option is not to be assumed, whereupon the option shall become immediately exercisable as a Non-Statutory Option for the deferred portion of the Option Shares.

(c) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this

option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

18. Market Stand-Off. In connection with any public offering of the Corporation's securities, the Plan Administrator may require that Optionee be subject to a lock-up for such period following the public offering as may be required by the underwriter or underwriters of such public offering. During such period, Optionee agrees not to directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to individuals who agree to be similarly bound) any Option Shares during such period without the prior written consent of such underwriter or underwriters.

APPENDIX

The following definitions shall be in effect under the Agreement:

A. Agreement shall mean this Stock Option Agreement.

B. Board shall mean the Corporation's Board of Directors.

C. Cause shall have the meaning assigned to such term in the Employment Agreement.

D. Closing Date shall mean _____, 1998, the date of closing of the Merger.

E. Code shall mean the Internal Revenue Code of 1986, as amended.

F. Common Stock shall mean the Corporation's common stock.

G. Corporate Transaction shall mean either of the following stockholder-approved transactions (other than the Merger) to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

H. Corporation shall mean Discovery Laboratories, Inc., a Delaware corporation.

I. Disability shall have the meaning assigned to such term in the Employment Agreement. Disability shall be deemed to constitute Permanent Disability in the event that such Disability is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.

J. Employee shall mean an individual who is in the employ of the Corporation, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

K. Employment Agreement shall have the meaning ascribed to such term set forth in recital A to this Stock Option Agreement.

L. Exercise Date shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.

M. Exercise Price shall mean the exercise price per share as specified in the Grant Notice.

N. Expiration Date shall mean the date on which the option expires as specified in the Grant Notice.

O. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market or Nasdaq SmallCap Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers on such market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Board to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed on any Stock Exchange nor traded on the Nasdaq National Market or SmallCap Market, then the Fair Market Value shall be determined by the Board after taking into account such factors as the Board shall deem appropriate.

P. Grant Date shall mean the date of grant of the option as specified in the Grant Notice.

Q. Grant Notice shall mean the Notice of Grant of Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

R. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

S. Involuntary Termination shall mean the termination of Optionee's Service, during the term of the Employment Agreement or any successor Employment Agreement which occurs by reason of:

(i) Optionee's involuntary dismissal or discharge by the Corporation for reasons other than Cause, or

(ii) Optionee's voluntary resignation following (A) a change in Optionee's position with the Corporation (or Parent or Subsidiary employing Optionee) which materially reduces Optionee's level of responsibility, (B) a reduction in Optionee's level of compensation (including base salary, fringe benefits and participation in corporate-performance based bonus or incentive programs) by more than fifteen percent (15%) or (C) a relocation of Optionee's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected by the Corporation without Optionee's consent.

T. 1934 Act shall mean the Securities Exchange Act of 1934, as amended.

U. Merger shall mean the merger of the Corporation and Acute Therapeutics, Inc. ("ATI") pursuant to the Agreement and Plan of Merger dated as of March 5, 1998 among the Corporation, ATI Acquisition Corp. and ATI.

V. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

W. Option Shares shall mean the number of shares of Common Stock subject to the option.

X. Optionee shall mean the person to whom the option is granted as specified in the Grant Notice.

Y. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

Z. Plan shall mean the Corporation's 1998 Stock Incentive Plan.

AA. Plan Administrator shall mean either the Board or a committee appointed by the Board, to the extent the committee is at the time responsible for the administration of the Plan.

BB. Purchase Agreement shall mean the stock purchase agreement (in form and substance satisfactory to the Corporation) which must be executed at the time the option is exercised for unvested Option Shares and which will accordingly (i) grant the Corporation the right to repurchase, at the Exercise Price, any and all of those Option Shares in which Optionee is not otherwise vested at the time of his or her cessation of Service and (ii) preclude the sale, transfer or other disposition of any of the Option Shares purchased under such agreement while those Option Shares remain subject to the repurchase right.

CC. Service shall mean the provision of services to the Corporation pursuant to the Employment Agreement or otherwise as an Employee or non-employee member of the Board of Directors of, or a consultant or independent advisor to, the Corporation (or any Parent or Subsidiary).

DD. Stock Exchange shall mean the American Stock Exchange or the New York Stock Exchange.

EE. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

FF. Vesting Schedule shall mean the vesting schedule specified in the Grant Notice, as such vesting schedule is subject to acceleration in the event of an Involuntary Termination or Corporate Transaction.

EXHIBIT D

DISCOVERY LABORATORIES, INC.
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock, par value $0.001 per share, of Discovery Laboratories, Inc. (the "Corporation"):

Optionee: _____

Exercise Price: $[FMV as of the closing of the Merger]

Number of Option Shares: _____ shares

Expiration Date: [Tenth anniversary of the closing of the Merger]

Type of Option: [Incentive Stock Option - subject to $100,000 limit]

Date Exercisable: [Date of the closing of the Merger], subject to vesting as described below.

Vesting Schedule: The Option Shares shall initially be unvested and subject to repurchase by the Corporation at the Exercise Price paid per share. The Corporation's repurchase right shall lapse with respect to, and Optionee shall vest in, all of the Option Shares in the event that the market capitalization of the Corporation (determined by multiplying the average of the Fair Market Value per share of the Common Stock for each of 30 consecutive trading days by the average of the number of shares of Common Stock outstanding on each such day) exceeds $75 million. In no event shall any additional Option Shares vest after Optionee's cessation of service.

Optionee understands and agrees to be bound by the terms of the Option as set forth in the Stock Option Agreement attached hereto as Exhibit A. Optionee understands and agrees that the Option is granted subject to and in accordance with the terms of the Corporations's 1998 Stock Incentive Plan (the "Plan") attached hereto as Exhibit B.

No Employment or Service Contract. Nothing in this Notice shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any parent or subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service in accordance with applicable law or the Employment Agreement.

REPURCHASE RIGHTS. OPTIONEE HEREBY AGREES THAT ALL UNVESTED OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO A REPURCHASE RIGHT EXERCISABLE BY THE

CORPORATION AND ITS ASSIGNS. THE TERMS OF SUCH RIGHT SHALL BE SPECIFIED IN A STOCK PURCHASE AGREEMENT, IN FORM AND SUBSTANCE SATISFACTORY TO THE CORPORATION, EXECUTED BY OPTIONEE AT THE TIME OF THE OPTION EXERCISE.

Definitions. All capitalized terms used and not otherwise defined in this Notice shall have the meaning assigned to them in this Notice or in the Stock Option Agreement.

DATED:_____, 1998

DISCOVERY LABORATORIES, INC.

By:_____

Title:_____

_____
OPTIONEE

Address: _____

_____

Attachments:
Exhibit A - Stock Option Agreement
Exhibit B - 1998 Stock Incentive Plan

EXHIBIT A

DISCOVERY LABORATORIES, INC.

STOCK OPTION AGREEMENT

RECITALS

A. Optionee is to render valuable services to the Corporation, and this Agreement is executed in connection with the Corporation's grant of an option to Optionee under the Plan, as provided in the Employment Agreement dated as of , 1998 between the Corporation and Optionee (the "Employment Agreement").

B. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning assigned to them in the attached Appendix.

NOW, THEREFORE, it is hereby agreed as follows:

1. Grant of Option. The Corporation hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. Option Term. This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5, 6 or 17.

3. Limited Transferability. This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, if this option is designated a Non-Statutory Option in the Grant Notice, then this option may, in connection with Optionee's estate plan, be assigned in whole or in part during Optionee's lifetime to one or more members of Optionee's immediate family or to a trust established for the exclusive benefit of one or more such family members. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

4. Exercisability/Vesting.

(a) This option shall be immediately exercisable for any or all of the Option Shares, whether or not the Option Shares are vested in accordance with the Vesting Schedule and shall remain so exercisable until the Expiration Date or sooner termination of the option term under Paragraph 5, 6 or 17.

(b) Optionee shall, in accordance with the Vesting Schedule, vest in the Option Shares in one or more installments over his or her period of Service. Vesting in the Option Shares may be accelerated pursuant to the provisions of Paragraph 6. In no event, however, shall any additional Option Shares vest following Optionee's cessation of Service.

5. Cessation of Service. The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(i) Should Optionee cease to remain in Service for any reason (other than as specified in any of paragraphs (ii) through (v) below) while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the three (3)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(ii) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this Option. Such right shall lapse and this option shall cease to be outstanding upon the earlier of (A) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (B) the Expiration Date.

(iii) Should Optionee cease Service by reason of Disability while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the twelve (12)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(iv) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of vested option Shares for which the option is exercisable at the time of Optionee's cessation of Service. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any Option Shares for which the Option has not been exercised. To the extent Optionee is not vested in the Option Shares at the time of Optionee's cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

(v) Should Optionee's Service be terminated by the Corporation for Cause or by Optionee in breach of the Employment Agreement, then this option shall terminate immediately and cease to remain outstanding.

6. Corporate Transaction.

a. In the event of any Corporate Transaction, the Option Shares at the time subject to this option but not otherwise vested shall automatically vest in full so that this option shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the Option Shares as fully-vested shares and may be exercised for any or all of those vested shares. However, the Option Shares shall not vest on such an accelerated basis if and to the extent: (i) this option is assumed by the successor corporation (or parent thereof) in the Corporate Transaction and the Corporation's repurchase rights with respect to the unvested Option Shares are assigned to such successor corporation (or parent thereof) or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested Option Shares at the time of the Corporate Transaction (the excess of the Fair Market Value of those Option Shares over the Exercise Price payable for such shares) and provides for subsequent payout in accordance with the same Vesting Schedule applicable to those unvested Option Shares as set forth in the Grant Notice.

b. Immediately following the Corporate Transaction, this option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) in connection with the Corporate Transaction.

c. If this option is assumed in connection with a Corporate Transaction, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

d. This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. Adjustment in Option Shares. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

8. Stockholder Rights. The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record of the purchased shares.

9. Manner of Exercising Option.

a. In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(1) To the extent the option is exercised for vested Option Shares, deliver to the Secretary of the Corporation an executed notice of exercise in substantially the form of Exhibit I to this Agreement (the "Exercise Notice") in which there is specified the number of Option Shares which are to be purchased under the exercised option. To the extent the option is exercised for unvested Option Shares, deliver to the Corporation an executed Purchase Agreement.

(2) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(a) cash or check made payable to the Corporation; or

(b) a promissory note payable to the Corporation, but only to the extent approved by the Plan Administrator in accordance with Paragraph 13; or

(c) in shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(d) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable written instructions (a) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Exercise Notice (or Purchase Agreement) delivered to the Corporation in connection with the option exercise.

(3) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(4) Execute and deliver to the Corporation such written representations as may be requested by the Corporation in order for it to comply with the applicable requirements of Federal and state securities laws.

(5) Make appropriate arrangements with the Corporation for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the option exercise.

b. As soon as practical after the Exercise Date, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto. To the extent any such Option Shares are unvested, the certificates for those Option Shares shall be endorsed with an appropriate legend evidencing the Corporation's repurchase rights and may be held in escrow with the Corporation until such shares vest.

c. In no event may this option be exercised for any fractional shares.

10. Compliance with Laws and Regulations.

a. The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange or inter-dealer quotation system on which the Common Stock may be listed for trading at the time of such exercise and issuance.

b. The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

11. Successors and Assigns. Except to the extent otherwise provided in Paragraphs 3 and 5, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

12. Notices. Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation, attn: Secretary, at 509 Madison Avenue, 14th Floor, New York, New York 10022, or any other address provided in writing to Optionee. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the

Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. Financing. The Corporation may, in its absolute discretion and without any obligation to do so, permit Optionee to pay the Exercise Price for the purchased Option Shares by delivering a promissory note. The terms of any such promissory note (including the interest rate, the requirements for collateral and the terms of repayment) shall be established by the Plan Administrator in its sole discretion.

14. Construction. This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All decisions of the Plan Administrator or the Board with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

15. Governing Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without resort to that State's conflict-of-laws rules.

16. Stockholder Approval.

a. The grant of this option is subject to approval of the Plan by the Corporation's stockholders within twelve (12) months after the adoption of the Plan by the Board. Notwithstanding any provision of this Agreement to the contrary, this option may not be exercised in whole or in part until such stockholder approval is obtained. In the event that such stockholder approval is not obtained, then this option shall terminate in its entirety and Optionee shall have no further rights to acquire any Option Shares hereunder.

b. If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of shares of Common Stock which may without stockholder approval be issued under the Plan, then this option shall be void with respect to such excess shares, unless stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock issuable under the Plan is obtained in accordance with the provisions of the Plan.

17. Additional Terms Applicable to an Incentive Option. In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason other than death or Permanent Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an Employee by reason of Permanent Disability.

(b) This option shall not become exercisable in the calendar year in which granted if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option would otherwise first become exercisable in such

calendar year would, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock and any other securities for which one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion shall become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar ($100,000) limitation of this Paragraph 18(b) would not be contravened, but such deferral shall in all events end immediately prior to the effective date of a Corporate Transaction in which this option is not to be assumed, whereupon the option shall become immediately exercisable as a Non-Statutory Option for the deferred portion of the Option Shares.

(c) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

18. Market Stand-Off. In connection with any public offering of the Corporation's securities, the Plan Administrator may require that Optionee be subject to a lock-up for such period following the public offering as may be required by the underwriter or underwriters of such public offering. During such period, Optionee agrees not to directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to individuals who agree to be similarly bound) any Option Shares during such period without the prior written consent of such underwriter or underwriters.

APPENDIX

The following definitions shall be in effect under the Agreement:

.A. Agreement shall mean this Stock Option Agreement.

.B. Board shall mean the Corporation's Board of Directors.

.C. Cause shall have the meaning assigned to such term in the Employment Agreement.

.D. Closing Date shall mean _____, 1998, the date of closing of the Merger.

.E. Code shall mean the Internal Revenue Code of 1986, as amended.

.F. Common Stock shall mean the Corporation's common stock.

.G. Corporate Transaction shall mean either of the following stockholder-approved transactions (other than the Merger) to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

.H. Corporation shall mean Discovery Laboratories, Inc., a Delaware corporation.

.I. Disability shall have the meaning assigned to such term in the Employment Agreement. Disability shall be deemed to constitute Permanent Disability in the event that such Disability is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.

.J. Employee shall mean an individual who is in the employ of the Corporation, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

.K. Employment Agreement shall have the meaning ascribed to such term set forth in recital A to this Stock Option Agreement.

.L. Exercise Date shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.

.M. Exercise Price shall mean the exercise price per share as specified in the Grant Notice.

.N. Expiration Date shall mean the date on which the option expires as specified in the Grant Notice.

.O. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market or Nasdaq SmallCap Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers on such market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Board to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed on any Stock Exchange nor traded on the Nasdaq National Market or SmallCap Market, then the Fair Market Value shall be determined by the Board after taking into account such factors as the Board shall deem appropriate.

.P. Grant Date shall mean the date of grant of the option as specified in the Grant Notice.

.Q. Grant Notice shall mean the Notice of Grant of Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

.R. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

.S. 1934 Act shall mean the Securities Exchange Act of 1934, as amended.

.T. Merger shall mean the merger of the Corporation and Acute Therapeutics, Inc. ("ATI") pursuant to the Agreement and Plan of Merger dated as of March 5, 1998 among the Corporation, ATI Acquisition Corp. and ATI.

.U. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

.V. Option Shares shall mean the number of shares of Common Stock subject to the option.

.W. Optionee shall mean the person to whom the option is granted as specified in the Grant Notice.

.X. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the

Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

.Y. Plan shall mean the Corporation's 1998 Stock Incentive Plan.

.Z. Plan Administrator shall mean either the Board or a committee of Board members, to the extent the committee is at the time responsible for the administration of the Plan.

.AA. Purchase Agreement shall mean the stock purchase agreement (in form and substance satisfactory to the Corporation) which must be executed at the time the option is exercised for unvested Option Shares and which will accordingly (i) grant the Corporation the right to repurchase, at the Exercise Price, any and all of those Option Shares in which Optionee is not otherwise vested at the time of his or her cessation of Service and (ii) preclude the sale, transfer or other disposition of any of the Option Shares purchased under such agreement while those Option Shares remain subject to the repurchase right.

.BB. Service shall mean the provision of services to the Corporation pursuant to the Employment Agreement or otherwise as an Employee or non-employee member of the Board of Directors of, or a consultant or independent advisor to, the Corporation (or any Parent or Subsidiary).

.CC. Stock Exchange shall mean the American Stock Exchange or the New York Stock Exchange.

.DD. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

.EE. Vesting Schedule shall mean the vesting schedule specified in the Grant Notice, as such vesting schedule is subject to acceleration in the event of a Corporate Transaction.

EXHIBIT E

DISCOVERY LABORATORIES, INC.
NOTICE OF GRANT OF STOCK OPTION

Notice is hereby given of the following option grant (the "Option") to purchase shares of the Common Stock, par value $0.001 per share, of Discovery Laboratories, Inc. (the "Corporation"):

Optionee: _____

Grant Date: [Closing Date of the Merger]

Exercise Price: $[FMV as of the closing of the Merger]

Number of Option Shares: _____ shares

Expiration Date: [Tenth anniversary of the closing of the Merger]

Type of Option: [Incentive Stock Option - Subject to $100,000 limit]

Date Exercisable: [Date of the closing of the Merger], subject to vesting as described below.

Vesting Schedule: The Option Shares shall initially be unvested and subject to repurchase by the Corporation at the Exercise Price paid per share. The Corporation's repurchase right shall lapse with respect to, and Optionee shall vest in, all of the Option Shares in the event that the Corporation consummates a transaction having a total Value (as defined in the Stock Option Agreement) of at least $20 million and involving the development, clinical testing, regulatory approval, manufacturing and/or marketing of a portfolio compound of the Corporation jointly with a business entity not affiliated with the Corporation. In no event shall any additional Option Shares vest after Optionee's cessation of service.

Optionee understands and agrees to be bound by the terms of the Option as set forth in the Stock Option Agreement attached hereto as Exhibit A. Optionee understands and agrees that the Option is granted subject to and in accordance with the terms of the Corporations's 1998 Stock Incentive Plan (the "Plan") attached hereto as Exhibit B.

No Employment or Service Contract. Nothing in this Notice shall confer upon Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any parent or subsidiary employing or retaining Optionee) or of Optionee, which rights are hereby expressly reserved by each, to terminate Optionee's Service in accordance with applicable law or the Employment Agreement.

REPURCHASE RIGHTS. OPTIONEE HEREBY AGREES THAT ALL UNVESTED OPTION SHARES ACQUIRED UPON THE EXERCISE OF THE OPTION SHALL BE SUBJECT TO A REPURCHASE RIGHT EXERCISABLE BY THE CORPORATION AND ITS ASSIGNS. THE TERMS OF SUCH RIGHT SHALL BE SPECIFIED IN A STOCK PURCHASE AGREEMENT, IN FORM AND SUBSTANCE SATISFACTORY TO THE CORPORATION, EXECUTED BY OPTIONEE AT THE TIME OF THE OPTION EXERCISE.

Definitions. All capitalized terms used and not otherwise defined in this Notice shall have the meaning assigned to them in this Notice or in the Stock Option Agreement.

DATED: _____, 1998

DISCOVERY LABORATORIES, INC.

By: _____

Title: _____

_____

OPTIONEE

Address: _____

_____

Attachments:
Exhibit A - Stock Option Agreement
Exhibit B - 1998 Stock Incentive Plan

EXHIBIT A

DISCOVERY LABORATORIES, INC.

STOCK OPTION AGREEMENT

RECITALS

A. Optionee is to render valuable services to the Corporation, and this Agreement is executed in connection with the Corporation's grant of an option to Optionee under the Plan, as provided in the Employment Agreement dated as of , 1998 between the Corporation and Optionee (the "Employment Agreement").

B. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning assigned to them in the attached Appendix.

NOW, THEREFORE, it is hereby agreed as follows:

1. Grant of Option. The Corporation hereby grants to Optionee, as of the Grant Date, an option to purchase up to the number of Option Shares specified in the Grant Notice. The Option Shares shall be purchasable from time to time during the option term specified in Paragraph 2 at the Exercise Price.

2. Option Term. This option shall have a term of ten (10) years measured from the Grant Date and shall accordingly expire at the close of business on the Expiration Date, unless sooner terminated in accordance with Paragraph 5, 6 or 17.

3. Limited Transferability. This option shall be neither transferable nor assignable by Optionee other than by will or by the laws of descent and distribution following Optionee's death and may be exercised, during Optionee's lifetime, only by Optionee. However, if this option is designated a Non-Statutory Option in the Grant Notice, then this option may, in connection with Optionee's estate plan, be assigned in whole or in part during Optionee's lifetime to one or more members of Optionee's immediate family or to a trust established for the exclusive benefit of one or more such family members. The assigned portion shall be exercisable only by the person or persons who acquire a proprietary interest in the option pursuant to such assignment. The terms applicable to the assigned portion shall be the same as those in effect for this option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

4. Exercisability/Vesting.

(a) This option shall be immediately exercisable for any or all of the Option Shares, whether or not the Option Shares are vested in accordance with the Vesting Schedule and shall remain so exercisable until the Expiration Date or sooner termination of the option term under Paragraph 5, 6 or 17.

(b) Optionee shall, in accordance with the Vesting Schedule, vest in the Option Shares in one or more installments over his or her period of Service. Vesting in the Option Shares may be accelerated pursuant to the provisions of Paragraph 6. In no event, however, shall any additional Option Shares vest following Optionee's cessation of Service.

5. Cessation of Service. The option term specified in Paragraph 2 shall terminate (and this option shall cease to be outstanding) prior to the Expiration Date should any of the following provisions become applicable:

(i) Should Optionee cease to remain in Service for any reason (other than as specified in any of paragraphs (ii) through (vii) below) while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the three (3)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(ii) Should Optionee die while this option is outstanding, then the personal representative of Optionee's estate or the person or persons to whom the option is transferred pursuant to Optionee's will or in accordance with the laws of descent and distribution shall have the right to exercise this Option. Such right shall lapse and this option shall cease to be outstanding upon the earlier of (A) the expiration of the twelve (12)-month period measured from the date of Optionee's death or (B) the Expiration Date.

(iii) Should Optionee cease Service by reason of Disability while this option is outstanding, then this option shall remain exercisable until the earlier of (A) the expiration of the twelve (12)-month period measured from the date of such cessation of Service or (B) the Expiration Date.

(iv) During the limited period of post-Service exercisability, this option may not be exercised in the aggregate for more than the number of vested option Shares for which the option is exercisable at the time of Optionee's cessation of Service. Upon the expiration of such limited exercise period or (if earlier) upon the Expiration Date, this option shall terminate and cease to be outstanding for any Option Shares for which the Option has not been exercised. To the extent Optionee is not vested in the Option Shares at the time of Optionee's cessation of Service, this option shall immediately terminate and cease to be outstanding with respect to those shares.

(v) Should Optionee's Service be terminated by the Corporation for Cause or should Optionee terminate his or her Service in breach of the Employment Agreement, then this option shall terminate immediately and cease to remain outstanding.

6. Corporate Transaction.

a. In the event of any Corporate Transaction, the Option Shares at the time subject to this option but not otherwise vested shall automatically vest in full so that this option shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the Option Shares as fully-vested shares and may be exercised for any or all of those vested shares. However, the Option Shares shall not vest on such an accelerated basis if and to the extent: (i) this option is assumed by the successor corporation (or parent thereof) in the Corporate Transaction and the Corporation's repurchase rights with respect to the unvested Option Shares are assigned to such successor corporation (or parent thereof) or (ii) this option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested Option Shares at the time of the Corporate Transaction (the excess of the Fair Market Value of those Option Shares over the Exercise Price payable for such shares) and provides for subsequent payout in accordance with the same Vesting Schedule applicable to those unvested Option Shares as set forth in the Grant Notice.

b. Immediately following the Corporate Transaction, this option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof) in connection with the Corporate Transaction.

c. If this option is assumed in connection with a Corporate Transaction, then this option shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction, and appropriate adjustments shall also be made to the Exercise Price, provided the aggregate Exercise Price shall remain the same.

d. This Agreement shall not in any way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

7. Adjustment in Option Shares. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the total number and/or class of securities subject to this option and (ii) the Exercise Price in order to reflect such change and thereby preclude a dilution or enlargement of benefits hereunder.

8. Stockholder Rights. The holder of this option shall not have any stockholder rights with respect to the Option Shares until such person shall have exercised the option, paid the Exercise Price and become a holder of record of the purchased shares.

9. Manner of Exercising Option.

a. In order to exercise this option with respect to all or any part of the Option Shares for which this option is at the time exercisable, Optionee (or any other person or persons exercising the option) must take the following actions:

(1) To the extent the option is exercised for vested Option Shares, deliver to the Secretary of the Corporation an executed notice

of exercise in substantially the form of Exhibit I to this Agreement (the "Exercise Notice") in which there is specified the number of Option Shares which are to be purchased under the exercised option. To the extent the option is exercised for unvested Option Shares, deliver to the Corporation an executed Purchase Agreement.

(2) Pay the aggregate Exercise Price for the purchased shares in one or more of the following forms:

(a) cash or check made payable to the Corporation; or

(b) a promissory note payable to the Corporation, but only to the extent approved by the Plan Administrator in accordance with Paragraph 13; or

(c) in shares of Common Stock held by Optionee (or any other person or persons exercising the option) for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date; or

(d) to the extent the option is exercised for vested Option Shares, through a special sale and remittance procedure pursuant to which Optionee (or any other person or persons exercising the option) shall concurrently provide irrevocable written instructions (a) to a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent the sale and remittance procedure is utilized in connection with the option exercise, payment of the Exercise Price must accompany the Exercise Notice (or Purchase Agreement) delivered to the Corporation in connection with the option exercise.

(3) Furnish to the Corporation appropriate documentation that the person or persons exercising the option (if other than Optionee) have the right to exercise this option.

(4) Execute and deliver to the Corporation such written representations as may be requested by the Corporation in order for it to comply with the applicable requirements of Federal and state securities laws.

(5) Make appropriate arrangements with the Corporation for the satisfaction of all Federal, state and local income and employment tax withholding requirements applicable to the option exercise.

b. As soon as practical after the Exercise Date, the Corporation shall issue to or on behalf of Optionee (or any other person or persons exercising this option) a certificate for the purchased Option Shares, with the appropriate legends affixed thereto. To the extent any such Option Shares are unvested, the certificates for those Option Shares shall be endorsed with an appropriate legend evidencing the Corporation's repurchase rights and may be held in escrow with the Corporation until such shares vest.

c. In no event may this option be exercised for any fractional shares.

10. Compliance with Laws and Regulations.

a. The exercise of this option and the issuance of the Option Shares upon such exercise shall be subject to compliance by the Corporation and Optionee with all applicable requirements of law relating thereto and with all applicable regulations of any stock exchange or inter-dealer quotation system on which the Common Stock may be listed for trading at the time of such exercise and issuance.

b. The inability of the Corporation to obtain approval from any regulatory body having authority deemed by the Corporation to be necessary to the lawful issuance and sale of any Common Stock pursuant to this option shall relieve the Corporation of any liability with respect to the non-issuance or sale of the Common Stock as to which such approval shall not have been obtained. The Corporation, however, shall use its best efforts to obtain all such approvals.

11. Successors and Assigns. Except to the extent otherwise provided in Paragraphs 3 and 5, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the Corporation and its successors and assigns and Optionee, Optionee's assigns and the legal representatives, heirs and legatees of Optionee's estate.

12. Notices. Any notice required to be given or delivered to the Corporation under the terms of this Agreement shall be in writing and addressed to the Corporation, attn: Secretary, at 509 Madison Avenue, 14th Floor, New York, New York 10022, or any other address provided in writing to Optionee. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated below Optionee's signature line on the Grant Notice. All notices shall be deemed effective upon personal delivery or upon deposit in the U.S. mail, postage prepaid and properly addressed to the party to be notified.

13. Financing. The Corporation may, in its absolute discretion and without any obligation to do so, permit Optionee to pay the Exercise Price for the purchased Option Shares by delivering a promissory note. The terms of any such promissory note (including the interest rate, the requirements for collateral and the terms of repayment) shall be established by the Plan Administrator in its sole discretion.

14. Construction. This Agreement and the option evidenced hereby are made and granted pursuant to the Plan and are in all respects limited by and subject to the terms of the Plan. All decisions of the Plan Administrator or the Board with respect to any question or issue arising under the Plan or this Agreement shall be conclusive and binding on all persons having an interest in this option.

15. Governing Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without resort to that State's conflict-of-laws rules.

16. Stockholder Approval.

a. The grant of this option is subject to approval of the Plan by the Corporation's stockholders within twelve (12) months after the adoption of the Plan by the Board. Notwithstanding any provision of this Agreement to the contrary, this option may not be exercised in whole or in part until such stockholder approval is obtained. In the event that such stockholder approval is not obtained, then this option shall terminate in its entirety and Optionee shall have no further rights to acquire any Option Shares hereunder.

b. If the Option Shares covered by this Agreement exceed, as of the Grant Date, the number of shares of Common Stock which may without stockholder approval be issued under the Plan, then this option shall be void with respect to such excess shares, unless stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock issuable under the Plan is obtained in accordance with the provisions of the Plan.

17. Additional Terms Applicable to an Incentive Option. In the event this option is designated an Incentive Option in the Grant Notice, the following terms and conditions shall also apply to the grant:

(a) This option shall cease to qualify for favorable tax treatment as an Incentive Option if (and to the extent) this option is exercised for one or more Option Shares: (i) more than three (3) months after the date Optionee ceases to be an Employee for any reason other than death or Permanent Disability or (ii) more than twelve (12) months after the date Optionee ceases to be an Employee by reason of Permanent Disability.

(b) This option shall not become exercisable in the calendar year in which granted if (and to the extent) the aggregate Fair Market Value (determined at the Grant Date) of the Common Stock for which this option would otherwise first become exercisable in such calendar year would, when added to the aggregate value (determined as of the respective date or dates of grant) of the Common Stock and any other securities for which one or more other Incentive Options granted to Optionee prior to the Grant Date (whether under the Plan or any other option plan of the Corporation or any Parent or Subsidiary) first become exercisable during the same calendar year, exceed One Hundred Thousand Dollars ($100,000) in the aggregate. To the extent the exercisability of this option is deferred by reason of the foregoing limitation, the deferred portion shall become exercisable in the first calendar year or years thereafter in which the One Hundred Thousand Dollar ($100,000) limitation of this Paragraph 18(b) would not be contravened,

but such deferral shall in all events end immediately prior to the effective date of a Corporate Transaction in which this option is not to be assumed, whereupon the option shall become immediately exercisable as a Non-Statutory Option for the deferred portion of the Option Shares.

(c) Should Optionee hold, in addition to this option, one or more other options to purchase Common Stock which become exercisable for the first time in the same calendar year as this option, then the foregoing limitations on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

18. Market Stand-Off. In connection with any public offering of the Corporation's securities, the Plan Administrator may require that Optionee be subject to a lock-up for such period following the public offering as may be required by the underwriter or underwriters of such public offering. During such period, Optionee agrees not to directly or indirectly sell, offer to sell, contract to sell (including, without limitation, any short sale), grant any option to purchase or otherwise transfer or dispose of (other than to individuals who agree to be similarly bound) any Option Shares during such period without the prior written consent of such underwriter or underwriters.

APPENDIX

The following definitions shall be in effect under the Agreement:

.A. Agreement shall mean this Stock Option Agreement.

.B. Board shall mean the Corporation's Board of Directors.

.C. Cause shall have the meaning assigned to such term in the Employment Agreement.

.D. Closing Date shall mean _____, 1998, the date of closing of the Merger.

.E. Code shall mean the Internal Revenue Code of 1986, as amended.

.F. Common Stock shall mean the Corporation's common stock.

.G. Corporate Transaction shall mean either of the following stockholder-approved transactions (other than the Merger) to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

.H. Corporation shall mean Discovery Laboratories, Inc., a Delaware corporation.

.I. Disability shall have the meaning assigned to such term in the Employment Agreement. Disability shall be deemed to constitute Permanent Disability in the event that such Disability is expected to result in death or has lasted or can be expected to last for a continuous period of twelve (12) months or more.

.J. Employee shall mean an individual who is in the employ of the Corporation, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

.K. Employment Agreement shall have the meaning ascribed to such term set forth in recital A to this Stock Option Agreement.

.L. Exercise Date shall mean the date on which the option shall have been exercised in accordance with Paragraph 9 of the Agreement.

.M. Exercise Price shall mean the exercise price per share as specified in the Grant Notice.

.N. Expiration Date shall mean the date on which the option expires as specified in the Grant Notice.

.O. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market or Nasdaq SmallCap Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as the price is reported by the National Association of Securities Dealers on such market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Board to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed on any Stock Exchange nor traded on the Nasdaq National Market or SmallCap Market, then the Fair Market Value shall be determined by the Board after taking into account such factors as the Board shall deem appropriate.

.P. Grant Date shall mean the date of grant of the option as specified in the Grant Notice.

.Q. Grant Notice shall mean the Notice of Grant of Stock Option accompanying the Agreement, pursuant to which Optionee has been informed of the basic terms of the option evidenced hereby.

.R. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

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.T. Merger shall mean the merger of the Corporation and Acute Therapeutics, Inc. ("ATI") pursuant to the Agreement and Plan of Merger dated as of March 5, 1998 among the Corporation, ATI Acquisition Corp., Inc. and ATI.

.U. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

.V. Option Shares shall mean the number of shares of Common Stock subject to the option.

.W. Optionee shall mean the person to whom the option is granted as specified in the Grant Notice.

.X. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the

Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

.Y. Plan shall mean the Corporation's 1998 Stock Incentive Plan.

.Z. Plan Administrator shall mean either the Board or a committee of Board members, to the extent the committee is at the time responsible for the administration of the Plan.

.AA. Purchase Agreement shall mean the stock purchase agreement (in form and substance satisfactory to the Corporation) which must be executed at the time the option is exercised for unvested Option Shares and which will accordingly (i) grant the Corporation the right to repurchase, at the Exercise Price, any and all of those Option Shares in which Optionee is not otherwise vested at the time of his or her cessation of Service and (ii) preclude the sale, transfer or other disposition of any of the Option Shares purchased under such agreement while those Option Shares remain subject to the repurchase right.

.BB. Service shall mean the provision of services to the Corporation pursuant to the Employment Agreement or otherwise as an Employee or non-employee member of the Board of Directors of, or a consultant or independent advisor to, the Corporation (or any Parent or Subsidiary).

.CC. Stock Exchange shall mean the American Stock Exchange or the New York Stock Exchange.

.DD. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

.EE. Vesting Schedule shall mean the vesting schedule specified in the Grant Notice, as such vesting schedule is subject to acceleration in the event of a Corporate Transaction.

.FF. Value shall mean, with respect to any agreement to which the Corporation is a party, the total payments, including without limitation, contingent payments prior to or at receipt of marketing approval for the compound involved in such agreement, including without limitation upfront fees, milestone payments and research and development and other contractual commitments.

EXHIBIT F

FORM OF REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT is made as of the ___ day of _____, 1998, by and among DISCOVERY LABORATORIES, INC., a Delaware corporation, (the "Company"), JOHNSON & JOHNSON DEVELOPMENT CORPORATION, a New Jersey Corporation ("J&J") and THE SCRIPPS RESEARCH INSTITUTE, a California not-for-profit organization ("Scripps") (J&J and Scripps are herein collectively referred to as the "Stockholders").

RECITALS

WHEREAS, Acute Therapeutics, Inc. ("ATI") and Scripps are parties to the Scripps Stock Purchase Agreement dated as of October 28, 1996 (the "Scripps Agreement"), pursuant to which Scripps acquired 40,000 shares of common stock, $0.001 par value per share of ATI (the "ATI Common Stock");

WHEREAS, J&J, its affiliate, Ortho Pharmaceutical Corporation and ATI are parties to the Inventory Transfer/Stock Purchase Agreement dated as of October 28, 1996 (the "Inventory Transfer Agreement"), pursuant to which ATI issued to J&J 2,200 shares of its Non-Voting Series B Preferred Stock, $0.001 par value per share (the "ATI Series B Preferred Stock") and 40,000 shares of ATI Common Stock;

WHEREAS, ATI, Scripps and J&J are parties to a Registration Rights Agreement dated as of October 28, 1996 (the "ATI Registration Rights Agreement") pursuant to which Scripps and J&J were granted certain registration rights;

WHEREAS, the Company and ATI are parties to an agreement dated March __, 1998, whereby a newly-formed subsidiary of the Company will merge with and into ATI and ATI will become a wholly-owned subsidiary of the Company (the "Merger Agreement");

WHEREAS, pursuant to the Merger Agreement, each of the issued and outstanding shares of ATI Common Stock shall be automatically converted into 3.91 shares of Common Stock of the Company, $0.001 par value per share ("the Common Stock");

WHEREAS, the Company and J&J are parties to the Stock Exchange Agreement of even date herewith pursuant to which J&J will exchange its ATI Series B Preferred Stock for 2,039 shares of Series C Preferred Stock, $0.001 par value per share, of the Company ("Series C Preferred Stock") and pursuant to which the Company will issue J&J shares of Common Stock (the "Dividend Shares") in lieu of the accrued but unpaid dividend accrued through the date of the Merger on its shares of ATI Series B Preferred Stock (the "Stock Exchange Agreement");

WHEREAS, the Stockholders and the Company hereby agree that this Registration Rights Agreement (the "Agreement") shall govern the rights of the Stockholders to cause the Company to register the shares of Common Stock held by the Stockholders;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Registration Rights. The Company covenants and agrees as follows:

1.1 Definitions. For purposes of this Section 1:

(a) The term "Act" means the Securities Act of 1933, as amended.

(b) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.8 hereof.

(c) The term "1934 Act" shall mean the Securities Exchange Act of 1934, as amended.

(d) The term "register", "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(e) The term "Registrable Securities" means (i) the Common Stock issued by the Company pursuant to the Merger Agreement in exchange for the shares of ATI Common Stock originally issued to Scripps pursuant to the Scripps Purchase Agreement, (ii) the Common Stock issued by the Company pursuant to the Merger Agreement in exchange for the shares of ATI Common Stock originally issued to J&J pursuant to the Inventory Transfer Agreement, (iii) any Common Stock issued upon conversion or redemption of the Series C Preferred Stock, (iv) the Dividend Shares and (v) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of the shares referenced in (i)-(iv) above, that cannot be publicly resold by the holder thereof without registration under the Act or sold in a single transaction exempt from the registration and prospectus delivery requirement of the Act pursuant to Rule 144 thereunder, it being understood, for the purposes of this Agreement, that Registrable Securities shall cease to be Registrable Securities when (1) a registration statement covering such Registrable Securities has been declared effective and they have been disposed of pursuant to such effective registration statement, (2) they are transferred on the open market pursuant to any available exemption under the Act, (3) they have been otherwise transferred and the Company has delivered new certificates or other evidences of ownership for them not subject to any stop transfer order or other restriction on transfer and not bearing any legend restricting transfer in the absence of an effective registration or an exemption from the registration requirements of the Act, (4) they have been sold, assigned, pledged, hypothecated or otherwise disposed of by the Holder in a transaction in which the Holder's rights under this Agreement are not assigned or assignable, or (5) the rights of the Holder under Section 1.2 have terminated pursuant to Section 1.9.

(f) The number of shares of "Registrable Securities then outstanding" shall be determined by the number of shares of Common Stock outstanding which are Registrable Securities.

(g) The term "SEC" shall mean the Securities and Exchange Commission.

1.2 Company Registration.

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders) any of its stock or other securities under the Act in connection with the public offering of such securities solely for cash (other than a registration relating solely to the sale of securities to participants in a Company stock plan, a registration on any form which does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities which are also being registered), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 2.5, the Company shall cause to be registered under the Act all of the Registrable Securities that each such Holder has requested to be registered.

(b) Notwithstanding any other provision of this Section 1.2, if the managing underwriter of an underwritten distribution advises in writing the Company and the Holders of the Registrable Securities requesting participation in such registration that in its good faith judgment the number of shares of Registrable Securities and the other securities requested to be registered under this Section 1.2 exceeds the number of shares of Registrable Securities and other securities which can be sold in such offering, then (i) the number of shares of Registrable Securities and other securities so requested to be included in the offering shall be reduced to that number of shares which in the good faith judgment of the managing underwriter can be sold in such offering (except for shares to be issued by the Company, which shall have priority over the Registrable Securities), and (ii) such reduced number of shares shall be allocated among all participating Holders of Registrable Securities and holders of other securities in proportion, as nearly as practicable, to the respective number of shares of Registrable Securities and other securities held by such Holders at the time of filing the registration statement; provided, however, that a minimum of thirty percent (30%) of the shares to be underwritten shall be allocated, on a pro rata basis, to the Holders requesting inclusion in such offering (the "selling stockholders"). For purposes of clause (ii) above concerning apportionment, for any selling stockholder which is a holder of Registrable Securities and which is a partnership or corporation, the affiliates (as defined in the rules and regulations promulgated under the Act), partners, retired partners and stockholders of such holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder", and any pro-rata reduction with respect to such "selling stockholder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "selling stockholder", as defined in this sentence.

1.3 Obligations of the Company. Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or until the distribution contemplated in the Registration Statement has been completed; provided, however, that (i) such 120-day period shall be extended for a period of time equal to the period the Holder refrains from selling any securities included in such registration at the request of an underwriter of Common Stock (or other securities) of the Company; and (ii) in the case of any registration of Registrable

Securities on Form S-3 which are intended to be offered on a continuous or delayed basis, such 120-day period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold, provided that Rule 415, or any successor rule under the Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Act governing the obligation to file a post-effective amendment permit, in lieu of filing a post-effective amendment which (I) includes any prospectus required by Section 10(a)(3) of the Act or (II) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (I) and (II) above to be contained in periodic reports filed pursuant to Section 13 or 15(d) of the 1934 Act in the registration statement.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Act.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Company are then listed.

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(h) Notify the participating Holders at any time when a prospectus relating to any Registrable Securities covered by such registration statement is required to be delivered under the Act, of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing and promptly file such amendments and supplements as may be necessary so that, as thereafter delivered to such Holders of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing and use its best efforts to cause each such amendment and supplement to become effective.

(i) Furnish on the closing date of an underwritten public offering (i) an opinion, dated such date, of the counsel representing the Company, for purposes of such registration, in form and substance as is customarily given by company counsel to the underwriters in an underwritten public offering, addressed to the underwriters, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

1.4 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

1.5 Expenses of Company Registration. The Company shall bear and pay all expenses incurred in connection with any registration, filing or qualification of Registrable Securities with respect to the registrations pursuant to Section 1.2 for each Holder (which right may be assigned as provided in Section 1.8), including (without limitation) all federal and state registration, filing, qualification fees, printers and accounting fees relating or apportionable thereto and reasonable fees and disbursements of one counsel for the participating Holders together, but excluding underwriting discounts and commissions relating to Registrable Securities.

1.6 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.7 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, and each officer, director, employee and agent thereof against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Act, or the 1934 Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities law or any rule or regulation promulgated under the Act, or the 1934 Act or any state securities law; and the Company will pay to each such Holder, underwriter or controlling person, and each officer, director, employee and agent thereof as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 1.7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability, or action to the extent that it arises out of or is

based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter or controlling person.

(b) To the extent permitted by law, each selling Holder (severally and not jointly) will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages, or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, or the 1934 Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this subsection 1.7(a), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 1.7(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided, that, in no event shall any indemnity under this subsection 1.10(b) exceed the gross proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.7 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.7, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.7, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.7.

(d) If the indemnification provided for in this Section 1.7 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage, or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to

information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.7 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.8 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities, provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.9 Termination of Registration Rights. No Holder shall be entitled to exercise any right provided for in this Section 1 after the fifth anniversary of the date of this Agreement.

1.10 Reports Under 1934 Act. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell Registrable Securities to the public without registration, the Company agrees to:

(a) make and keep available public information, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company nuder the Act and the 1934 Act; and

(c) furnish to a Holder owning any Registrable Securities upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), the Act and the 1934 Act (at any time after the Company has become subject to the reporting requirements of the 1934 Act), (ii) a copy of the most recent annual or quarterly report of the company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably required in availing any Holder of Registrable Securities of any rule or regulation of the SEC which permits the selling of any such Registrable Securities without registration or pursuant to such form (at any time after the company has become subject to the reporting requirements of the 1934 Act).

1.11 Granting of Registration Rights. The Company shall not, without the prior written consent of the Holders of at least 50.1% of the Registrable Securities then outstanding, grant any

rights to any persons to register any shares of capital stock or other securities of the Company that would limit the Holders' proportional rights under Section 1.2(b). The grant of registration rights to any person that would entitle such person to participate on a pro rata basis in an offering under Section 1.2(b) shall not be deemed a limitation to the Holders' proportional rights under Section 1.2(b), pursuant to this Section 1.11; provided that in no circumstance will fewer than ten percent (10%) of the shares to be underwritten pursuant to Section 1.2(b) be allocated to the Holders, regardless of any subsequent registration rights granted by the Company.

2. Miscellaneous.

2.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

2.2 Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

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

2.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

2.5 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or upon deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address indicated for such party on the signature page hereof, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties.

2.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

2.7 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of a majority of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities then outstanding, each future holder of all such Registrable Securities, and the Company.

2.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

2.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

2.10 Entire Agreement; Amendment; Waiver; No Further Rights. This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof. The Stockholders hereby agree that they have no further rights under the ATI Registration Rights Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DISCOVERY LABORATORIES, INC.

By: _____
Robert J. Capetola, Ph.D.
President

Address: _____
_____

Stockholders:

JOHNSON & JOHNSON DEVELOPMENT CORPORATION

By: _____

Address: _____
_____

THE SCRIPPS RESEARCH INSTITUTE

By: _____

Address: _____
_____

EXHIBIT G

INVESTOR AGREEMENT dated as of _____, 1998 between the undersigned (the "Securityholder") and Discovery Laboratories, Inc. ("Discovery")

Recitals

Discovery, ATI Acquisition Corp. ("Sub") and Acute Therapeutics, Inc. ("ATI") have entered into an Agreement and Plan of Merger dated as of March 5, 1998 (the "Merger Agreement") pursuant to which Sub will merge with and into ATI (the "Merger") on the terms and conditions specified therein. As a result of the Merger, the Securityholder will receive shares of the Common Stock, par value $0.001 per share, of Discovery (the "Discovery Stock"), which Discovery Stock will be received in exchange for shares of the Common Stock, par value $0.001 per share, of ATI, or upon exercise of options exercisable prior to the Merger for such shares, owned by the Securityholder. The Securityholder is entering into this Agreement with Discovery as a material inducement for Discovery to enter into the Merger Agreement, and the Securityholder understands that Discovery will rely upon this Agreement in entering into the Merger Agreement and in consummating the transactions contemplated thereby.

SECTION 1. Representations and Warranties of the Securityholder. The Securityholder hereby represents and warrants to Discovery and covenants with Discovery as follows:

a. The Securityholder has received and carefully reviewed a copy of the [consent solicitation document distributed to ATI securityholders] in connection with the Merger Agreement (the "Disclosure Statement") and Discovery's Annual Report on Form 10-KSB for the year ended December 31, 1997 (including without limitation the section thereof entitled "Important Considerations Regarding Forward-Looking Statements"), has been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of Discovery concerning the terms and conditions of the transactions contemplated by the Merger Agreement (the "Merger") and has received any additional information regarding Discovery which the Securityholder has requested.

b. The Securityholder's consent to the Merger was not obtained by means of any form of general solicitation or general advertising, and in connection therewith the Securityholder did not: (A) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio whether closed circuit, or generally available; or (B) attend any seminar meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising.

c. The Securityholder is an accredited investor within the meaning of Rule 501 under the Securities Act of 1933, as amended (the "Securities Act"), and the Securityholder, if an entity, was not formed for the purpose of receiving the Discovery Stock. The Securityholder, either by reason of the Securityholder's business or financial experience or the business or financial experience of the Securityholder's purchaser representative (within the meaning of Rule 501 under the Securities Act), which purchaser representative, if any, is unaffiliated with and is not compensated by Discovery or any affiliate of Discovery, directly or indirectly, has the capacity to protect the Securityholder's interests in connection with the Merger.

d. The Securityholder recognizes that the acquisition of the securities to be distributed to the Securityholder in the Merger (the "Shares") by virtue of the Securityholder's consent to the Merger involves a high degree of risk in that (i) an investment in Discovery is highly speculative and (ii) the Securityholder could sustain the loss of the Securityholder's entire investment.

e. The Securityholder hereby acknowledges that the issuance of the Discovery Stock to the Securityholder has not been registered under the Securities Act and is intended to be exempt from the registration requirements of Section 5 of the Securities Act pursuant to Sections 4(2) of the Securities Act and Regulation D promulgated thereunder. The Securityholder agrees that the Securityholder will not sell or otherwise transfer the Discovery Stock received by the Securityholder unless (i) such sale or transfer is registered under the Securities Act or (ii) in the opinion of counsel reasonably acceptable to Discovery, such sale or transfer is otherwise exempt from registration under the Securities Act.

f. The Securityholder understands that Discovery is under no obligation to register the sale or other transfer of the Discovery Stock under the Securities Act or, except as provided in Section 3 below, to take any other action necessary in order to make compliance with an exemption from such registration available.

SECTION 2. Securities Act Legends; Stop Transfer Instructions. The Securityholder agrees that each certificate representing the Shares shall bear a legend substantially similar to the following:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED ABSENT SUCH REGISTRATION UNLESS EVIDENCE SATISFACTORY TO COUNSEL FOR THE COMPANY THAT AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE HAS BEEN DELIVERED TO THE COMPANY.

and that such certificates may also have such additional legends, if any, as may be required in order to comply with the "blue sky" laws of any jurisdiction. The Securityholder further agrees to the issuance by Discovery to its transfer agent of stop transfer instructions with respect to any sale or other transfer of the Discovery Stock by the Securityholder absent registration under the Securities Act or the establishment by the Securityholder of an exemption therefrom in accordance with this Agreement.

3. Rule 144 Undertaking. For so long as and to the extent necessary to permit the Securityholder to sell the Discovery Stock pursuant to Rule 144 under the Securities Act, Discovery shall use reasonable efforts to file, on a timely basis, all reports and data required to be filed with the Securities and Exchange commission by Discovery pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Discovery has filed all repots required to be so filed by it during the preceding 12 months.

4. Miscellaneous. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement constitutes the entire agreement among the parties hereto with respect to its

subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to conflicts of law principles). All representations and warranties made herein by the Securityholder shall survive the execution and delivery of this Agreement.

SECURITYHOLDER:

_____
Name:

DISCOVERY LABORATORIES, INC.

By _____
Name:
Title:

EXHIBIT H

[FORM OF LOCK-UP]

_____, 1998

Discovery Laboratories, Inc.
509 Madison Avenue, 14th Floor
New York, New York 10022

Ladies and Gentlemen:

This letter agreement is in connection with the Agreement and Plan of Merger dated as of March 5, 1998 (the "Merger Agreement") by and among Discovery Laboratories, Inc., a Delaware corporation (the "Company"), ATI Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of the Company ("Acquisition Sub"), and Acute Therapeutics, Inc., a Delaware corporation ("Acute") pursuant to which, subject to the terms and conditions of the Merger Agreement, the undersigned may receive securities of the Company (the "Merger Securities").

In consideration of the foregoing and in order to induce you to consummate the merger of Acquisition Sub with and into Acute pursuant to the Merger Agreement (the "Merger"), the undersigned hereby irrevocably agrees that it will not on or before November 25, 1998, directly or indirectly, sell, offer, contract to sell, transfer the economic risk of ownership in, make any short sale, pledge or otherwise dispose of any shares of the Company's Common Stock, or any securities convertible into or exchangeable or exercisable for or any other rights to purchase or acquire the Company's Common Stock, in each case which are attributable to the Merger Securities, without the prior written consent of the Company.

Notwithstanding the foregoing, if the undersigned is an individual, he or she may transfer any shares of Common Stock or securities convertible into or exchangeable or exercisable for the Company's Common Stock, in each case which are attributable to the Merger Securities, either during his or her lifetime or on death by will or intestacy to his or her immediate family or to a trust the beneficiaries of which are exclusively the undersigned and/or a member or members of his or her immediate family; provided, however, that prior to any such transfer each transferee shall execute an agreement, satisfactory to the Company, pursuant to which each transferee shall agree to receive and hold such shares of Common Stock, or securities convertible into or exchangeable or exercisable for the Common Stock, subject to the provisions hereof, and there shall be no further transfer except in accordance with the provisions hereof. For the purposes of this paragraph, "immediate family" shall mean lineal descendant, father, mother, brother or sister of the transferor.

The undersigned understands that the agreements of the undersigned are irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns. The undersigned agrees and consents to the entry of stop transfer instructions with the Company's transfer agent against the transfer of the Company's Common Stock or other securities of the Company received by the undersigned pursuant to the Merger Agreement except in compliance with this agreement and further agrees that any stock certificates of the Company, and any other document evidencing ownership of securities of the Company, issued to the undersigned

pursuant to the Merger Agreement shall bear restrictive legends prohibiting transfers except in accordance with the terms of this letter.

This agreement shall be governed by and construed in accordance with the laws of the State of Delaware as applied to agreements entered into and performed by Delaware residents and entirely to be performed within Delaware.

Very truly yours,

Dated: _____

_____
Signature

_____
Printed Name and Title

Annex B

EXHIBIT I
[to Annex A]

DISCOVERY LABORATORIES, INC
1998 STOCK INCENTIVE PLAN

ARTICLE ONE

GENERAL PROVISIONS

I. PURPOSE OF THE PLAN

This 1998 Stock Incentive Plan (the "Plan") is intended to promote the interests of Discovery Laboratories, Inc., a Delaware corporation, by providing eligible persons with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation as an incentive for them to remain in the service of the Corporation.

The Plan shall serve as the successor to the Corporation's 1995 Stock Option Plan (the "Predecessor Plan"), and no further option grants shall be made under the Predecessor Plan after the date on which the Plan is approved by the Corporation's stockholders (the "Stockholder Approval Date"). All options outstanding under the Predecessor Plan on the Stockholder Approval Date shall be incorporated into the Plan at that time and shall be treated as outstanding options under the Plan. However, each outstanding option so incorporated shall continue to be governed solely by the terms of the documents evidencing such option, and no provision of the Plan shall be deemed to affect or otherwise modify the rights or obligations of the holders of such incorporated options with respect to their acquisition of shares of Common Stock.

Capitalized terms shall have the meanings assigned to such terms in the attached Appendix.

II. STRUCTURE OF THE PLAN

A. The Plan shall be divided into three separate equity programs:

(i) the Discretionary Option Grant Program under which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock,

(ii) the Stock Issuance Program under which eligible persons may, at the discretion of the Plan Administrator, be issued shares of Common Stock directly, either through the immediate purchase of such shares or as a bonus for services rendered the Corporation (or any Parent or Subsidiary), and

(iii) the Automatic Option Grant Program under which eligible non-employee Board members shall automatically receive option grants at periodic intervals to purchase shares of Common Stock.

B. The provisions of Articles One and Five shall apply to all equity programs under the Plan and shall govern the interests of all persons under the Plan.

III. ADMINISTRATION OF THE PLAN

A. The Primary Committee shall have sole and exclusive authority to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders. Administration of the Discretionary Option Grant and Stock Issuance Programs with respect to all other persons eligible to participate in those programs may, at the Board's discretion, be vested in the Primary Committee or a Secondary Committee, or the Board may retain the power to administer those programs with respect to all such persons. The members of the Secondary Committee may be Board members who are Employees eligible to receive discretionary option grants or direct stock issuances under the Plan or any other stock option, stock appreciation, stock bonus or other stock plan of the Corporation (or any Parent or Subsidiary).

B. Members of the Primary Committee or any Secondary Committee shall serve for such period of time as the Board may determine and may be removed by the Board at any time. The Board may also at any time terminate the functions of any Secondary Committee and reassume all powers and authority previously delegated to such committee.

C. Each Plan Administrator shall, within the scope of its administrative functions under the Plan, have full power and authority (subject to the provisions of the Plan) to establish such rules and regulations as it may deem appropriate for proper administration of the Discretionary Option Grant and Stock Issuance Programs and to make such determinations under, and issue such interpretations of, the provisions of such programs and any outstanding options or stock issuances thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator within the scope of its administrative functions under the Plan shall be final and binding on all parties who have an interest in the Discretionary Option Grant and Stock Issuance Programs under its jurisdiction or any option or stock issuance thereunder.

D. Service on the Primary Committee or the Secondary Committee shall constitute service as a Board member, and members of each such committee shall accordingly be entitled to full indemnification and reimbursement as Board members for their service on such committee. No member of the Primary Committee or the Secondary Committee shall be liable for any act or omission made in good faith with respect to the Plan or any option grants or stock issuances under the Plan.

IV. ELIGIBILITY

A. The persons eligible to participate in the Discretionary Option Grant and Stock Issuance Programs are as follows:

(i) Employees,

(ii) non-employee members of the Board or the board of directors of any Parent or Subsidiary, and

(iii) consultants and other independent advisors who provide services to the Corporation (or any Parent or Subsidiary).

B. Each Plan Administrator shall, within the scope of its administrative jurisdiction under the Plan, have full authority to determine, (i) with respect to the option grants under the Discretionary Option Grant Program, which eligible persons are to receive option grants, the time or times when such option grants are to be made, the number of shares to be covered by each such grant, the status of the granted option as either an Incentive Option or a Non-Statutory Option, the time or times when each option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which the option is to remain outstanding and (ii) with respect to stock issuances under the Stock Issuance Program, which eligible persons are to receive stock issuances, the time or times when such issuances are to be made, the number of shares to be issued to each Participant, the vesting schedule (if any) applicable to the issued shares and the consideration for such shares.

C. The Plan Administrator shall have the absolute discretion either to grant options in accordance with the Discretionary Option Grant Program or to effect stock issuances in accordance with the Stock Issuance Program.

D. Only non-employee members of the Board [who are not 10% Stockholders] shall be eligible to participate in the Automatic Option Grant Program.

V. STOCK SUBJECT TO THE PLAN

A. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Corporation on the open market. The maximum number of shares of Common Stock initially reserved for issuance over the term of the Plan shall not exceed [ ] shares. Such authorized share reserve is comprised of (i) the number of shares which remain available for issuance, as of the Stockholder Approval Date, under the Predecessor Plan as last approved by the Corporation's stockholders, comprised of the shares subject to the outstanding options to be incorporated into the Plan as of the Stockholder Approval Date and the additional shares which would otherwise be available for future grant under the Predecessor Plan (estimated to be 395,800 shares in the aggregate as of March 1, 1998), plus (ii) an additional increase of [ ] shares authorized by the Board on [ ], 1998, subject to approval by the Corporation's stockholders at the 1998 Annual Meeting.

B. No one person participating in the Plan may receive options, separately exercisable stock appreciation rights and direct stock issuances for more than [250,000] shares of Common Stock in the aggregate per calendar year, beginning with the 1998 calendar year.

C. Shares of Common Stock subject to outstanding options (including options incorporated into this Plan from the Predecessor Plan) shall be available for subsequent issuance under the Plan to the extent those options expire or terminate for any reason prior to exercise in full. Unvested shares issued under the Plan and subsequently cancelled or repurchased by the Corporation, at the original issue price paid per share, pursuant to the Corporation's repurchase

rights under the Plan shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent option grants or direct stock issuances under the Plan. However, should the exercise price of an option under the Plan be paid with shares of Common Stock or should shares of Common Stock otherwise issuable under the Plan be withheld by the Corporation in satisfaction of the withholding taxes incurred in connection with the exercise of an option or the vesting of a stock issuance under the Plan, then the number of shares of Common Stock available for issuance under the Plan shall be reduced by the gross number of shares for which the option is exercised or which vest under the stock issuance, and not by the net number of shares of Common Stock issued to the holder of such option or stock issuance.

D. If any change is made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of securities for which any one person may be granted stock options, separately exercisable stock appreciation rights and direct stock issuances under this Plan per calendar year, (iii) the number and/or class of securities for which grants are subsequently to be made under the Automatic Option Grant Program to new and continuing non-employee Board members, (iv) the number and/or class of securities and the exercise price per share in effect under each outstanding option under the Plan and (v) the number and/or class of securities and price per share in effect under each outstanding option incorporated into this Plan from the Predecessor Plan. Such adjustments to the outstanding options are to be effected in a manner which shall preclude the enlargement or dilution of rights and benefits under such options. The adjustments determined by the Plan Administrator shall be final, binding and conclusive.

ARTICLE TWO

DISCRETIONARY OPTION GRANT PROGRAM

I. OPTION TERMS

Each option shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below. Each document evidencing an Incentive Option shall, in addition, be subject to the provisions of the Plan applicable to such options.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall, subject to the provisions of Section I of Article Five and the documents evidencing the option, be payable in one or more of the forms specified below:

(i) cash or check made payable to the Corporation,

(ii) shares of Common Stock held for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(iii) to the extent the option is exercised for vested shares, through a special sale and remittance procedure pursuant to which the Optionee shall concurrently provide irrevocable written instructions to (a) a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Exercise and Term of Options. Each option shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the option. However, no option shall have a term in excess of ten (10) years measured from the option grant date.

C. Effect of Termination of Service.

1. The following provisions shall govern the exercise of any options held by the Optionee at the time of cessation of Service or death:

(i) Should the Optionee cease to remain in Service for any reason other than death, Disability or Misconduct, then the Optionee shall have a period of three (3) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(ii) Should the Optionee's Service terminate by reason of Disability, then the Optionee shall have a period of twelve (12) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(iii) If the Optionee dies while holding an outstanding option, then the personal representative of his or her estate or the person or persons to whom the option is transferred pursuant to the Optionee's will or the laws of inheritance shall have a twelve (12)-month period following the date of the Optionee's death to exercise such option.

(iv) Under no circumstances, however, shall any such option be exercisable after the specified expiration of the option term.

(v) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date of the Optionee's cessation of Service plus any additional Option Shares for which vesting is, pursuant to the terms of the applicable option agreement, to accelerate at the time of such cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee's cessation of Service, terminate and cease to be outstanding with respect to any and all option shares for which the option is not otherwise at the time exercisable or in which the Optionee is not otherwise at that time vested (after taking into account any vesting acceleration provisions tied to the Optionee's cessation of Service).

(vi) Should the Optionee's Service be terminated for Misconduct, then all outstanding options held by the Optionee shall terminate immediately and cease to remain outstanding.

2. The Plan Administrator shall have complete discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:

(i) extend the period of time for which the option is to remain exercisable following the Optionee's cessation of Service from the limited exercise period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested shares of Common Stock for which such option is exercisable at the time of the Optionee's cessation of Service but also with respect to one or more additional installments in which the Optionee would have vested had the Optionee continued in Service.

D. Stockholder Rights. The holder of an option shall have no stockholder rights with respect to the shares subject to the option until such person shall have exercised the option, paid the exercise price and become a holder of record of the purchased shares.

E. Repurchase Rights. The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock. Should the Optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, any or all of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right.

F. Limited Transferability of Options. During the lifetime of the Optionee, Incentive Options shall be exercisable only by the Optionee and shall not be assignable or transferable other than by will or by the laws of descent and distribution following the Optionee's death. However, a Non-Statutory Option may, in connection with the Optionee's estate plan, be assigned in whole or in part during the Optionee's lifetime to one or more members of the Optionee's immediate family or to a trust established exclusively for one or more such family members. The assigned portion may only be exercised by the person or persons who acquire a proprietary interest in the option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

II. INCENTIVE OPTIONS

The terms specified below shall be applicable to all Incentive Options. Except as modified by the provisions of this Section II, all the provisions of Articles One, Two and Five shall be applicable to Incentive Options. Options which are specifically designated as Non-Statutory Options when issued under the Plan shall not be subject to the terms of this Section II.

A. Eligibility. Incentive Options may only be granted to Employees.

B. Dollar Limitation. The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any Employee under the Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one calendar year shall not exceed the sum of One Hundred Thousand Dollars ($100,000). To the extent the Employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

C. 10% Stockholder. If any Employee to whom an Incentive Option is granted is a 10% Stockholder, then the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the option grant date, and the option term shall not exceed five (5) years measured from the option grant date.

III. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. In the event of any Corporate Transaction, each outstanding option shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable with respect to the total number of shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, an outstanding option shall not so accelerate if and to the extent: (i) such option is, in connection with the Corporate Transaction, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), (ii) such option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested option shares at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to those option shares or (iii) the acceleration of such option is subject to other limitations imposed by the Plan Administrator at the time of the option grant. The determination of option comparability under clause (i) above shall be made by the Plan Administrator, and its determination shall be final, binding and conclusive.

B. All outstanding repurchase rights shall also terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent: (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.

C. The Plan Administrator shall have the discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of one or more outstanding options upon the occurrence of a Corporate Transaction, whether or not those options are to be assumed or replaced in the Corporate Transaction.

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments to reflect such Corporate Transaction shall also be made to (i) the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same, (ii) the maximum number and/or class of securities available for issuance over the remaining term of the Plan and (iii) the maximum number and/or class of securities for which any one person may be granted stock options, separately exercisable stock appreciation rights and direct stock issuances under the Plan per calendar year.

E. Notwithstanding Section III.A. of this Article Two, the Plan Administrator shall have the discretionary authority, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of one or more outstanding options under the Discretionary Option Grant Program upon the occurrence of a Corporate Transaction, whether or not those options are to be assumed or replaced in the Corporate Transaction. In addition, the Plan Administrator may provide that one or more of the Corporation's outstanding repurchase rights with respect to shares held by the Optionee at the time of such Corporate Transaction shall immediately terminate, and the shares subject to those terminated repurchase rights shall accordingly vest in full, even in the event the options are to be assumed.

F. The Plan Administrator shall have full power and authority exercisable, either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of one or more outstanding options under the Discretionary Option Grant Program in the event the Optionee's Service terminates by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which those options are assumed or replaced and do not otherwise accelerate. Any options so accelerated shall remain exercisable for fully-vested shares until the earlier of (i) the expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Involuntary Termination. In addition, the Plan Administrator may provide that one or more of the Corporation's outstanding repurchase rights with respect to shares held by the Optionee at the time of such Involuntary Termination shall immediately terminate, and the shares subject to those terminated repurchase rights shall accordingly vest in full.

G. The Plan Administrator shall have full power and authority, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of one or more outstanding options under the Discretionary Option Grant Program upon (i) a Change in Control or (ii) the termination of the Optionee's Service by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of such Change in Control. Each option so accelerated shall remain exercisable for fully-vested shares until the earlier of (i) the expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Optionee's cessation of Service. In addition, the Plan Administrator may provide that one or more of the Corporation's outstanding repurchase rights with respect to shares held by the Optionee at the time

of such Change in Control or Involuntary Termination shall immediately terminate, and the shares subject to those terminated repurchase rights shall accordingly vest in full.

H. The portion of any Incentive Option accelerated in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Statutory Option under the Federal tax laws.

I. The outstanding options shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. CANCELLATION AND REGRANT OF OPTIONS

The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Discretionary Option Grant Program (including outstanding options incorporated from the Predecessor Plan) and to grant in substitution therefor new options covering the same or different number of shares of Common Stock but with an exercise price per share based on the Fair Market Value per share of Common Stock on the new grant date.

V. STOCK APPRECIATION RIGHTS

A. The Plan Administrator shall have full power and authority to grant to selected Optionees tandem stock appreciation rights and/or limited stock appreciation rights.

B. The following terms shall govern the grant and exercise of tandem stock appreciation rights:

(i) One or more Optionees may be granted the right, exercisable upon such terms as the Plan Administrator may establish, to elect between the exercise of the underlying option for shares of Common Stock and the surrender of that option in exchange for a distribution from the Corporation in an amount equal to the excess of (a) the Fair Market Value (on the option surrender date) of the number of shares in which the Optionee is at the time vested under the surrendered option (or surrendered portion thereof) over (b) the aggregate exercise price payable for such shares.

(ii) No such option surrender shall be effective unless it is approved by the Plan Administrator, either at the time of the actual option surrender or at any earlier time. If the surrender is so approved, then the distribution to which the Optionee shall be entitled may be made in shares of Common Stock valued at Fair Market Value on the option surrender date, in cash, or partly in shares and partly in cash, as the Plan Administrator shall in its sole discretion deem appropriate.

(iii) If the surrender of an option is not approved by the Plan Administrator, then the Optionee shall retain whatever rights the Optionee had under the surrendered option (or surrendered portion thereof) on the option surrender date and may exercise such rights at any time prior to the later of (a) five (5) business days after the receipt of the rejection notice or (b) the last day on which the option is otherwise exercisable in accordance with the terms of the documents evidencing such option, but in no event may such rights be exercised more than ten (10) years after the option grant date.

C. The following terms shall govern the grant and exercise of limited stock appreciation rights:

(i) One or more Section 16 Insiders may be granted limited stock appreciation rights with respect to their outstanding options.

(ii) Upon the occurrence of a Hostile Take-Over, each individual holding one or more options with such a limited stock appreciation right shall have the unconditional right (exercisable for a thirty (30)-day period following such Hostile Take-Over) to surrender each such option to the Corporation, to the extent the option is at the time exercisable for vested shares of Common Stock. In return for the surrendered option, the Optionee shall receive a cash distribution from the Corporation in an amount equal to the excess of (A) the Take-Over Price of the shares of Common Stock which are at the time vested under each surrendered option (or surrendered portion thereof) over (B) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the option surrender date.

(iii) Neither the approval of the Plan Administrator nor the consent of the Board shall be required in connection with such option surrender and cash distribution.

(iv) The balance of the option (if any) shall remain outstanding and exercisable in accordance with the documents evidencing such option.

ARTICLE THREE

STOCK ISSUANCE PROGRAM

I. STOCK ISSUANCE TERMS

Shares of Common Stock may be issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below.

A. Purchase Price.

1. The purchase price per share shall be fixed by the Plan Administrator, but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the issuance date.

2. Subject to the provisions of Section I of Article Five, shares of Common Stock may be issued under the Stock Issuance Program for any of the following items of consideration which the Plan Administrator may deem appropriate in each individual instance:

(i) cash or check made payable to the Corporation, or

(ii) past services rendered to the Corporation (or any Parent or Subsidiary).

B. Vesting Provisions.

1. Shares of Common Stock issued under the Stock Issuance Program may, in the discretion of the Plan Administrator, be fully and immediately vested upon issuance or may vest in one or more installments over the Participant's period of Service or upon attainment of specified performance objectives.

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to the Participant's unvested shares of Common Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant's unvested shares of Common Stock and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.

3. The Participant shall have full stockholder rights with respect to any shares of Common Stock issued to the Participant under the Stock Issuance Program, whether or not the Participant's interest in those shares is vested. Accordingly, the Participant shall have the right to vote such shares and to receive any regular cash dividends paid on such shares.

4. Should the Participant cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Corporation for cancellation, and the Participant shall have no further stockholder rights with respect to those shares. To the extent the surrendered shares were previously issued to the Participant for consideration paid in cash or cash equivalent (including the Participant's purchase-money indebtedness), the Corporation shall repay to the Participant the cash consideration paid for the surrendered shares and shall cancel the unpaid principal balance of any outstanding purchase-money note of the Participant attributable to the surrendered shares.

5. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock which would otherwise occur upon the cessation of the Participant's Service or the non-attainment of the performance objectives applicable to those shares. Such waiver shall result in the immediate vesting of the Participant's interest in the shares as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. All of the Corporation's outstanding repurchase rights under the Stock Issuance Program shall terminate automatically, and all the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed in the Stock Issuance Agreement.

B. The Plan Administrator shall have the discretion, exercisable either at the time the unvested shares are issued or at any time while the Corporation's repurchase right remains outstanding, to provide for the automatic termination of one or more of those outstanding rights and the immediate vesting of the shares of Common Stock subject to such rights upon the occurrence of a Corporate Transaction.

C. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation's repurchase rights remain outstanding under the Stock Issuance Program, to provide that those rights shall automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest, in the event the Participant's Service should terminate by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which those repurchase rights are assigned to the successor corporation (or parent thereof).

D. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation's repurchase rights remain outstanding under the Stock Issuance Program, to provide that those rights shall

automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest upon (i) a Change in Control or (ii) the termination of the Participant's Service by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of such Change in Control.

III. SHARE ESCROW/LEGENDS

Unvested shares may, in the Plan Administrator's discretion, be held in escrow by the Corporation until the Participant's interest in such shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested shares.

ARTICLE FOUR

AUTOMATIC OPTION GRANT PROGRAM

I. OPTION TERMS

A. Grant Dates. Option grants shall be made on the dates specified below:

1. Each individual who is first elected or appointed as a non-employee Board member at any time after the Plan Effective Date shall automatically be granted, on the date of such initial election or appointment, a Non-Statutory Option to purchase 20,000 shares of Common Stock, provided that individual has not previously been a director of or in the employ of the Corporation or any Parent or Subsidiary .

2. On the date of the 1998 Annual Meeting (the Stockholder Approval Date) and on the date of each Annual Stockholders Meeting held after such date, each individual who is to continue to serve as an Eligible Director, whether or not that individual is standing for re-election to the Board at that particular Annual Meeting, shall automatically be granted a Non-Statutory Option to purchase 10,000 shares of Common Stock, provided that with respect to each Annual Stockholders Meetings held after the 1998 Annual Meeting, such individual has served as a non-employee Board member for at least six (6) months. There shall be no limit on the number of such 10,000-share option grants any one Eligible Director may receive over his or her period of Board service, and non-employee Board members who have previously been in the employ of the Corporation (or any Parent or Subsidiary) shall be eligible to receive one or more such annual option grants over their period of continued Board service.

B. Exercise Price.

1. The exercise price per share shall be equal to sixty percent (60%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall be payable in one or more of the alternative forms authorized under the Discretionary Option Grant Program. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

C. Option Term. Each option shall have a term of ten (10) years measured from the option grant date.

D. Exercise and Vesting of Options. Each option shall be immediately exercisable for any or all of the option shares. However, any shares purchased under the option shall be subject to repurchase by the Corporation, at the exercise price paid per share, upon the Optionee's cessation of Board service prior to vesting in those shares. Each option grant shall vest, and the Corporation's repurchase right shall lapse, in a series of four (4) successive equal annual installments upon the Optionee's completion of each year of Board service over the four (4)-year

period commencing six (6) months following the option grant date, with the first such installment to vest eighteen (18) month after the option grant date.

E. Termination of Board Service. The following provisions shall govern the exercise of any options held by the Optionee at the time the Optionee ceases to serve as a Board member:

(i) The Optionee (or, in the event of the Optionee's death, the personal representative of the Optionee's estate or the person or persons to whom the option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution) shall have a twelve (12)-month period following the date of such cessation of Board service in which to exercise each such option.

(ii) During the twelve (12)-month post-service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares of Common Stock for which the option is exercisable at the time of the Optionee's cessation of Board service.

(iii) Should the Optionee cease to serve as a Board member by reason of death or Permanent Disability, then all shares at the time subject to the option shall immediately vest so that such option may, during the twelve (12)-month exercise period following such cessation of Board service, be exercised for all or any portion of those shares as fully-vested shares of Common Stock.

(iv) In no event shall the option remain exercisable after the expiration of the option term. Upon the expiration of the twelve (12)-month post-service exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee's cessation of Board service for any reason other than death or Permanent Disability, terminate and cease to be outstanding to the extent the option is not otherwise at that time exercisable for vested shares.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL/HOSTILE TAKE-OVER

A. In the event of any Corporate Transaction, the shares of Common Stock at the time subject to each outstanding option but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Immediately following the consummation of the Corporate Transaction, each automatic option grant shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

B. In connection with any Change in Control, the shares of Common Stock at the time subject to each outstanding option but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of the Change in Control, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Each such option shall remain exercisable for such fully-vested option shares until the expiration or sooner termination of the option term or the surrender of the option in connection with a Hostile Take-Over.

C. Upon the occurrence of a Hostile Take-Over, the Optionee shall have a thirty (30)-day period in which to surrender to the Corporation each of his or her outstanding automatic option grants. The Optionee shall in return be entitled to a cash distribution from the Corporation in an amount equal to the excess of (i) the Take-Over Price of the shares of Common Stock at the time subject to each surrendered option (whether or not the Optionee is otherwise at the time vested in those shares) over (ii) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the surrender of the option to the Corporation. No approval or consent of the Board or any Plan Administrator shall be required in connection with such option surrender and cash distribution.

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same.

E. The grant of options under the Automatic Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

III. REMAINING TERMS

The remaining terms of each option granted under the Automatic Option Grant Program shall be the same as the terms in effect for option grants made under the Discretionary Option Grant Program.

ARTICLE FIVE

MISCELLANEOUS

I. FINANCING

The Plan Administrator may permit any Optionee or Participant to pay the option exercise price under the Discretionary Option Grant Program or the purchase price of shares issued under the Stock Issuance Program by delivering a full-recourse, interest bearing promissory note payable in one or more installments. The terms of any such promissory note (including the interest rate and the terms of repayment) shall be established by the Plan Administrator in its sole discretion. In no event may the maximum credit available to the Optionee or Participant exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee or the Participant in connection with the option exercise or share purchase.

II. TAX WITHHOLDING

A. The Corporation's obligation to deliver shares of Common Stock upon the exercise of options or the issuance or vesting of such shares under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

B. The Plan Administrator may, in its discretion, provide any or all holders of Non-Statutory Options or unvested shares of Common Stock under the Plan (other than the options granted or the shares issued under the Automatic Option Grant Program) with the right to use shares of Common Stock in satisfaction of all or part of the Taxes incurred by such holders in connection with the exercise of their options or the vesting of their shares. Such right may be provided to any such holder in either or both of the following formats:

Stock Withholding: The election to have the Corporation withhold, from the shares of Common Stock otherwise issuable upon the exercise of such Non-Statutory Option or the vesting of such shares, a portion of those shares with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.

Stock Delivery: The election to deliver to the Corporation, at the time the Non-Statutory Option is exercised or the shares vest, one or more shares of Common Stock previously acquired by such holder (other than in connection with the option exercise or share vesting triggering the Taxes) with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.

III. EFFECTIVE DATE AND TERM OF THE PLAN

A. The Plan shall become effective immediately upon the Plan Effective Date. Options may be granted under the Discretionary Option Grant or Automatic Option Grant Program at any time on or after the Plan Effective Date. However, no options granted under the Plan may be exercised, and no shares shall be issued under the Plan, until the Stockholder Approval Date. If the Stockholder Approval Date does not occur within twelve (12) months after the Plan Effective Date, then all options previously granted under this Plan shall terminate and cease to be outstanding, and no further options shall be granted and no shares shall be issued under the Plan.

B. One or more provisions of the Plan, including (without limitation) the option/vesting acceleration provisions of Article Two relating to Corporate Transactions and Changes in Control, may, in the Plan Administrator's discretion, be extended to one or more options incorporated from the Predecessor Plan on the Stockholder Approval Date which do not otherwise contain such provisions.

C. The Plan shall terminate upon the earliest of (i) March 24, 2008 (ii) the date on which all shares available for issuance under the Plan shall have been issued as fully-vested shares or (iii) the termination of all outstanding options in connection with a Corporate Transaction. Upon such plan termination, all outstanding option grants and unvested stock issuances shall thereafter continue to have force and effect in accordance with the provisions of the documents evidencing such grants or issuances.

IV. AMENDMENT OF THE PLAN

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects. However, no such amendment or modification shall adversely affect the rights and obligations with respect to stock options or unvested stock issuances at the time outstanding under the Plan unless the Optionee or the Participant consents to such amendment or modification. In addition, certain amendments may require stockholder approval pursuant to applicable laws or regulations.

B. Options to purchase shares of Common Stock may be granted under the Discretionary Option Grant Programs and shares of Common Stock may be issued under the Stock Issuance Program that are in each instance in excess of the number of shares then available for issuance under the Plan, provided any excess shares actually issued under those programs shall be held in escrow until there is obtained stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan. If such stockholder approval is not obtained within twelve (12) months after the date the first such excess issuances are made, then (i) any unexercised options granted on the basis of such excess shares shall terminate and cease to be outstanding and (ii) the Corporation shall promptly refund to the Optionees and the Participants the exercise or purchase price paid for any excess shares issued under the Plan and held in escrow, together with interest (at the applicable Short Term Federal Rate) for the period the shares were held in escrow, and such shares shall thereupon be automatically cancelled and cease to be outstanding.

V. USE OF PROCEEDS

Any cash proceeds received by the Corporation from the sale of shares of Common Stock under the Plan shall be used for general corporate purposes.

VI. REGULATORY APPROVALS

A. The implementation of the Plan, the granting of any stock option under the Plan and the issuance of any shares of Common Stock (i) upon the exercise of any granted option or (ii) under the Stock Issuance Program shall be subject to the Corporation's procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the stock options granted under it and the shares of Common Stock issued pursuant to it.

B. No shares of Common Stock or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Federal and state securities laws, including the filing and effectiveness of the Form S-8 registration statement for the shares of Common Stock issuable under the Plan, and all applicable listing requirements of any stock exchange (or the Nasdaq National Market, if applicable) on which Common Stock is then listed for trading.

VII. NO EMPLOYMENT/SERVICE RIGHTS

Nothing in the Plan shall confer upon the Optionee or the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining such person) or of the Optionee or the Participant, which rights are hereby expressly reserved by each, to terminate such person's Service at any time for any reason, with or without cause.

APPENDIX

The following definitions shall be in effect under the Plan:

A. Automatic Option Grant Program shall mean the automatic option grant program in effect under the Plan.

B. Board shall mean the Corporation's Board of Directors.

C. Change in Control shall mean a change in ownership or control of the Corporation effected through either of the following transactions:

(i) the acquisition, directly or indirectly by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation), of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities pursuant to a tender or exchange offer made directly to the Corporation's stockholders which the Board does not recommend such stockholders to accept, or

(ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.

D. Code shall mean the Internal Revenue Code of 1986, as amended.

E. Common Stock shall mean the Corporation's common stock.

F. Corporate Transaction shall mean either of the following stockholder-approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

G. Corporation shall mean Discovery Laboratories, Inc., a Delaware corporation, and its successors.

H. Discretionary Option Grant Program shall mean the discretionary option grant program in effect under the Plan.

I. Eligible Director shall mean a non-employee Board member who is not a 10% Stockholder.

J. Employee shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

K. Exercise Date shall mean the date on which the Corporation shall have received written notice of the option exercise.

L. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq SmallCap Market or Nasdaq National Market, then the Fair Market Value shall be deemed equal to the closing selling price per share of Common Stock on the date in question, as such price is reported on such market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be deemed equal to the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

M. Hostile Take-Over shall mean the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation) of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation's outstanding securities

pursuant to a tender or exchange offer made directly to the Corporation's stockholders which the Board does not recommend such stockholders to accept.

N. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

O. Involuntary Termination shall mean the termination of the Service of any individual which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Corporation for reasons other than Misconduct, or

(ii) Optionee's voluntary resignation following (A) a change in Optionee's position with the Corporation (or Parent or Subsidiary employing Optionee) which materially reduces Optionee's duties and responsibilities or the level of management to which Optionee reports, (B) a reduction in Optionee's level of compensation (including base salary, fringe benefits and target bonus under any corporate performance-based bonus or incentive programs) by more than fifteen percent (15%) or (C) a relocation of Optionee's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected by the Corporation without Optionee's consent.

P. Misconduct shall mean the commission of any act of fraud, embezzlement or dishonesty by the Optionee or Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of any Optionee, Participant or other person in the Service of the Corporation (or any Parent or Subsidiary).

Q. 1934 Act shall mean the Securities Exchange Act of 1934, as amended.

R. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

S. Optionee shall mean any person to whom an option is granted under the Discretionary Option Grant or Automatic Option Grant Program.

T. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

U. Participant shall mean any person who is issued shares of Common Stock under the Stock Issuance Program.

V. Permanent Disability or Permanently Disabled shall mean the inability of the Optionee or the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more. However, solely for purposes of the Automatic Option Grant Program, Permanent Disability or Permanently Disabled shall mean the inability of the non-employee Board member to perform his or her usual duties as a Board member by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more.

W. Plan shall mean the Corporation's 1998 Stock Incentive Plan, as set forth in this document.

X. Plan Administrator shall mean the particular entity, whether the Primary Committee, the Board or the Secondary Committee, which is authorized to administer the Discretionary Option Grant and Stock Issuance Programs with respect to one or more classes of eligible persons, to the extent such entity is carrying out its administrative functions under those programs with respect to the persons under its jurisdiction.

Y. Plan Effective Date shall mean [_____], 1998, the date on which the Plan was adopted by the Board.

Z. Predecessor Plan shall mean the Corporation's 1995 Stock Option Plan in effect immediately prior to the Plan Effective Date hereunder.

AA. Primary Committee shall mean the committee of two (2) or more non-employee Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders.

BB. Secondary Committee shall mean a committee of one (1) or more Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to eligible persons other than Section 16 Insiders.

CC. Section 16 Insider shall mean an officer or director of the Corporation subject to the short-swing profit liabilities of Section 16 of the 1934 Act.

DD. Service shall mean the performance of services for the Corporation (or any Parent or Subsidiary) by a person in the capacity of an Employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the documents evidencing the option grant or stock issuance.

EE. Stock Exchange shall mean either the American Stock Exchange or the New York Stock Exchange.

FF. Stockholder Approval Date shall mean the date on which the Plan is approved by the Corporation's stockholders.

GG. Stock Issuance Agreement shall mean the agreement entered into by the Corporation and the Participant at the time of issuance of shares of Common Stock under the Stock Issuance Program.

HH. Stock Issuance Program shall mean the stock issuance program in effect under the Plan.

II. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

JJ. Take-Over Price shall mean the greater of (i) the Fair Market Value per share of Common Stock on the date the option is surrendered to the Corporation in connection with a Hostile Take-Over or (ii) the highest reported price per share of Common Stock paid by the tender offeror in effecting such Hostile Take-Over. However, if the surrendered option is an Incentive Option, the Take-Over Price shall not exceed the clause (i) price per share.

KK. Taxes shall mean the Federal, state and local income and employment tax liabilities incurred by the holder of Non-Statutory Options or unvested shares of Common Stock in connection with the exercise of those options or the vesting of those shares.

LL. 10% Stockholder shall mean the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation (or any Parent or Subsidiary).

EXHIBIT 3.1

RESTATED CERTIFICATE OF INCORPORATION

OF

DISCOVERY LABORATORIES, INC.

The Corporation was originally incorporated on November 6, 1992 under the name "Ansan, Inc."

FIRST: The name of the corporation (hereinafter called the "Corporation") is Discovery Laboratories, Inc.

SECOND: The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: A. Authorization.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 25,000,000 consisting of 20,000,000 shares of common stock, par value $.001 per share (the "Common Stock"), and 5,000,000 shares of preferred stock, par value $.001 per share (the "Preferred Stock").

The Board of Directors may divide the Preferred Stock into any number of series, fix the designation and number of shares of each such series, and determine or change the designation, relative rights, preferences, and limitations of any series of Preferred Stock. The Board of Directors (within the limits and restrictions of any resolutions adopted by it originally fixing the number of any shares of any series of Preferred Stock) may increase or decrease the number of shares initially fixed for any series, but no such decrease shall reduce the number below the number of shares then outstanding and shares duly reserved for issuance.

B. Series B Convertible Preferred Stock.

1. Designation and Amount. There shall be a series of preferred stock designated as "Series B Convertible Preferred Stock" and the number of shares constituting such series shall be 2,420,282. Such series is referred to herein as the "Series B Convertible Preferred Stock". Such number of shares may be increased or decreased by resolution of the Board of Directors of the Corporation; provided, however, that no decrease shall reduce the number of shares of Series B Convertible Preferred Stock to less than the number of shares then issued and outstanding.

2. Dividends. Subject to the prior and superior rights of the holders of any shares of any series or class of capital stock ranking prior and superior to the shares of Series B Convertible Preferred Stock with respect to dividends and distributions, the holders of shares of Series B Convertible Preferred Stock, shall be entitled to receive dividends and distributions, when, as and if declared by the Board of Directors out of funds legally available for such purpose. If the Corporation declares a dividend or distribution on the Common Stock, of the Corporation, the holders of shares of Series B Convertible Preferred Stock shall be entitled to receive for each share of Series B Convertible Preferred Stock a dividend or distribution in the amount of the dividend or distribution that would be received by a holder of the Common Stock into which such share of Series B Convertible Preferred Stock is convertible on the record date for such dividend or distribution. If the Corporation declares a dividend or distribution on any other class or series of preferred stock, the holders of shares of Series B Convertible Preferred Stock shall be entitled to receive a dividend or distribution in an amount per share in proportion to the dividend or distribution declared on a share of such other class or series based on the liquidation preference of a share of the Series B Convertible Preferred Stock relative to that of a share of such other class or series, unless the holders of at least 66.67% of the outstanding shares of Series B Convertible Preferred Stock consent otherwise. In any such case, the Corporation shall declare a dividend or distribution on the Series B Convertible Preferred Stock at the same time that it declares a dividend or distribution on the Common Stock or such other series of preferred stock and shall establish the same record date for the dividend or distribution on the Series B Convertible Preferred Stock as is established for such dividend or distribution on the Common Stock or such other series of preferred stock. Each such dividend or distribution will be payable to holders of record of the Series B Convertible Preferred Stock as they appeared on the records of the Corporation at the close of business on the record date declared for such dividend or distribution, as shall be fixed by the Board of Directors. Any dividend or distribution payable to the holders of the Series B Preferred Stock pursuant to this Article Fourth, Section B.2 shall be paid to such holders at the same time as the dividend or distribution on the Common Stock by which it is measured or paid. If the Corporation declares or pays a dividend or distribution on the Series B Convertible Preferred Stock as a result of the declaration or payment of a dividend or distribution on the Common Stock or any other series of preferred stock as described above, the holders of the Series B Convertible Preferred Stock shall not be entitled to any additional dividend or distribution solely because such first dividend or distribution also required the declaration or payment of a dividend or distribution on any other series of preferred stock. Any reference to "dividend" or "distribution"

contained in this Article Fourth, Section B.2 shall not be deemed to include any dividend or distribution made in connection with or in lieu of any Liquidation Event (as defined below).

3. Liquidation Preference. In the event of a (i) liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a sale or other disposition of all or substantially all of the assets of the Corporation or (iii) any consolidation, merger, combination, reorganization or other transaction in which the Corporation is not the surviving entity or the shares of Common Stock constituting in excess of 50% of the voting power of the Corporation are exchanged for or changed into other stock or securities, cash and/or any other property (a "Merger Transaction") (subparagraphs (i),(ii) and (iii) being collectively referred to as a "Liquidation Event"), after payment or provision for payment of debts and other liabilities of the Corporation, the holders of the Series B Convertible Preferred Stock then outstanding shall be

entitled to be paid out of the assets of the Corporation available for distribution to its shareholders, whether such assets are capital, surplus, or earnings, before any payment or declaration and setting apart for payment of any amount shall be made in respect of the stock junior to the Series B Convertible Preferred Stock, an amount equal to $13.50 per share plus an amount equal to all declared and unpaid dividends thereon; provided, however, in the case of a Merger Transaction, such $13.50 per share may be paid in cash and/or securities (valued at the closing price (as defined in Article Fourth, Section B.5) of such security) of the entity surviving such Merger Transaction. If upon any Liquidation Event, whether voluntary or involuntary, the assets to be distributed to the holders of the Series B Convertible Preferred Stock shall be insufficient to permit the payment to such shareholders of the full preferential amounts aforesaid, then all of the assets of the Corporation to be distributed shall be so distributed ratably to the holders of the Series B Convertible Preferred Stock on the basis of the number of shares of Series B Convertible Preferred Stock held. A consolidation or merger of the Corporation with or into another corporation, other than in a Merger Transaction, shall not be considered a liquidation, dissolution or winding up of the Corporation or a sale or other disposition of all or substantially all of the assets of the Corporation and accordingly the Corporation shall make appropriate provision to ensure that the terms of this Article Fourth survive any such transaction. All shares of Series B Convertible Preferred Stock shall rank as to payment upon the occurrence of any Liquidation Event senior to the Common Stock as provided herein and, unless the terms of such series shall provide otherwise, senior to all other series of the Corporation's preferred stock.

4. Conversion.

(a) Right of Conversion. The shares of Series B Convertible Preferred Stock shall be convertible, in whole or in part, at the option of the holder thereof and upon notice to the Corporation as set forth in paragraph (b) below, into fully paid and nonassessable shares of Common Stock and such other securities and property as hereinafter provided. The shares of Series B Convertible Preferred Stock shall be convertible initially at the rate of 1.556628 shares of Common Stock for each full share of Series B Convertible Preferred Stock and shall be subject to adjustment as provided herein. The initial conversion price per share of Common Stock is $6.4242 and shall be subject to adjustment as provided herein. For purposes of this resolution, the "conversion rate" applicable to a share of Series B Convertible Preferred Stock shall be the number of shares of Common Stock and number or amount of any other securities and property as hereinafter provided into which a share of Series B Convertible Preferred Stock is then convertible and shall be determined by dividing the then existing conversion price into $10.00.

The conversion price (subject to adjustments pursuant to the provisions of paragraph (c) below) in effect immediately prior to the date (the "Reset Date") that is 12 months after the first date on which shares of the Common Stock issued by the Corporation to the former stockholders of the former Delaware corporation known as "Discovery Laboratories, Inc." in connection with the consummation of a merger of such former corporation with and into the Corporation on or about the date of filing of this certificate are traded on the NASDAQ SmallCap Market or the NASDAQ National Market (collectively referred to as "NASDAQ") or on any other national securities exchange or on the NASD Electronic Bulletin Board, shall be

adjusted and reset effective as of the Reset Date if the average closing bid price of the Common Stock for the 30 consecutive trading days immediately preceding the Reset Date (the "12-Month Trade Price") is less than 135% of the then applicable conversion price (a "Reset Event"). Upon the occurrence of a Reset Event, the conversion price shall be reduced to be equal to the greater of (A) the 12-Month Trade Price divided by 1.35 and (B) 50% of the then applicable conversion price. If there is any change in the conversion price as a result of the preceding sentence, then the conversion rate shall be changed accordingly, and shall be determined by dividing the new conversion price into $10.00. The Corporation shall prepare a certificate signed by the principal financial officer of the Corporation setting forth the conversion rate as of the Reset Date, showing in reasonable detail the facts upon which such conversion rate is based, and such certificate shall be forthwith filed with the transfer agent of the Series B Convertible Preferred Stock. Notwithstanding the provisions of subparagraph (vi) of paragraph (c) below, a notice stating that the conversion rate has been adjusted pursuant to this paragraph, or that no adjustment is necessary, and setting forth the conversion rate in effect as of the Reset Date shall be mailed as promptly as practicable after the Reset Date by the Corporation to all record holders of the Series B Convertible Preferred Stock at their last addresses as they shall appear in the stock transfer books of the Corporation.

The "closing bid price" for each trading day shall be the reported closing bid price of the Common Stock on NASDAQ or, if the Common Stock is not quoted on NASDAQ, on the principal national securities exchange on which the Common Stock is listed or admitted to trading (based on the aggregate dollar value or all securities listed or admitted to trading), or if not listed or admitted to trading on any national securities exchange or quoted on NASDAQ, the closing bid price in the over-the-counter market as furnished by any NASD member firm selected from time to time by the Corporation for that purpose, or, if such prices are not available, the fair market value set by, or in a manner established by, the Board of Directors of the Corporation in good faith. "Trading day" shall mean a day on which NASDAQ or the national securities exchange used to determine the closing bid price is open for the transaction of business or the reporting of trades or, if the closing bid price is not so determined, a day on which NASDAQ is open for the transaction of business.

(b) Conversion Procedures. Any holder of shares of Series B Convertible Preferred Stock desiring to convert such shares into Common Stock shall surrender the certificate or certificates evidencing such shares of Series B Convertible Preferred Stock at the office of the transfer agent for the Series B Convertible Preferred Stock, which certificate or certificates, if the Corporation shall so require, shall be duly endorsed to the Corporation or in blank, or accompanied by proper instruments of transfer to the Corporation or in blank, accompanied by irrevocable written notice to the Corporation that the holder elects so to convert such shares of Series B Convertible Preferred Stock and specifying the name or names (with address) in which a certificate or certificates evidencing shares of Common Stock are to be issued. The Corporation need not deem a notice of conversion to be received unless the holder complies with all the provisions hereof. The Corporation will instruct the transfer agent (which may be the Corporation) to make a notation of the date that a notice of conversion is received, which date shall be deemed to be the date of receipt for purposes hereof.

The Corporation shall, as soon as practicable after such deposit of certificates evidencing shares of Series B Convertible Preferred Stock accompanied by the written notice and compliance with any other conditions herein contained, deliver at such office of such transfer agent to the person for whose account such Shares of Series B Convertible Preferred Stock were so surrendered, or to the nominee or nominees of such person, certificates evidencing the number of full shares of Common Stock to which such person shall be entitled as aforesaid, together with a cash adjustment of any fraction of a share as hereinafter provided. Subject to the following provisions of this paragraph, such conversion shall be deemed to have been made as of the date of such surrender of the shares of Series B Convertible Preferred Stock to be converted, and the person or persons entitled to receive the Common Stock deliverable upon conversion of such Series B Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such Common Stock on such date; provided, however, that the Corporation shall not be required to convert any shares of Series B Convertible Preferred Stock while the stock transfer books of the Corporation are closed for any purpose, but the surrender of Series B Convertible Preferred Stock for conversion during any period while such books are so closed shall become effective for conversion immediately upon the reopening of such books as if the surrender had been made on the date of such reopening, and the conversion shall be at the conversion rate in effect on such date. No adjustments in respect of any dividends on shares surrendered for conversion or any dividend on the Common Stock issued upon conversion shall be made upon the conversion of any shares of Series B Convertible Preferred Stock.

All notices of conversions shall be irrevocable; provided, however, that if the Corporation has sent notice of an event pursuant to Sections B.4(f) or (g) of this Article Fourth, a holder of Series B Convertible Preferred Stock may, at its election, provide in its notice of conversion that the conversion of its shares of Series B Convertible Preferred Stock shall be contingent upon the occurrence of the record date or effectiveness of such event (as specified by such holder), provided that such notice of conversion is received by the Corporation prior to such record date or effective date, as the case may be.

(c) Certain Adjustments of Conversion Rate. In addition to adjustment pursuant to paragraph (a) above, the conversion rate (and the corresponding conversion price) shall be subject to adjustment from time to time as follows:

(i) In case the Corporation shall (A) pay a dividend in Common Stock or make a distribution in Common Stock, (B) subdivide its outstanding Common Stock, (C) combine its outstanding Common Stock into a smaller number of shares of Common Stock or (D) issue by reclassification of its Common Stock other securities of the Corporation, then in each such case the conversion rate in effect immediately prior thereto shall be adjusted so that the holder of any shares of Series B Convertible Preferred Stock thereafter surrendered for conversion shall be entitled to receive the kind and number of shares of Common Stock or other securities of the Corporation which such holder would have owned or would have been entitled to receive immediately after the happening of any of the events described above had such shares of Series B Convertible Preferred Stock been converted immediately prior to the happening of such event or any record date with respect thereto. Any adjustment made pursuant to this subparagraph (i) shall become effective immediately after the effective date of such event retroactive to the record date, if any, for such event.

(ii) In case the Corporation shall issue rights, options, warrants or convertible securities to all or substantially all holders of its Common Stock, without any charge to such holders, entitling them to subscribe for or purchase Common Stock at a price per share which is lower at the record date mentioned below than both (A) the then effective conversion price and (B) the closing bid price (as defined in Section B.4 of this Article Fourth) for the trading day immediately prior to such record date (the "Current Market Price"), then the conversion rate shall be determined by multiplying the conversion rate theretofore in effect by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding immediately prior to the issuance of such rights, options, warrants or convertible securities plus the number of additional shares of Common Stock offered for subscription or purchase, and of which the denominator shall be the number of shares of Common Stock outstanding immediately prior to the issuance of such rights, options, warrants or convertible securities plus the number of shares which the aggregate offering price of the total number of shares offered would purchase at such Current Market Price. Such adjustment shall be made whenever such rights, options, warrants or convertible securities are issued, and shall become effective immediately and retroactive to the record date for the determination of stockholders entitled to receive such rights, options, warrants or convertible securities. Notwithstanding any of the foregoing, no adjustment shall be made pursuant to the provisions of this subsection (ii), if such adjustment would result in a decrease of the conversion rate.

(iii) In case the Corporation shall distribute to all or substantially all holders of its Common Stock evidences of its indebtedness or assets (excluding cash dividends or distributions out of earnings) or rights, options, warrants or convertible securities containing the right to subscribe for or purchase Common Stock (excluding those referred to in subparagraph (ii) above), then in each case the conversion rate shall be determined by multiplying the conversion rate theretofore in effect by a fraction, of which the numerator shall be the then fair value as determined in good faith by the Corporation's Board of Directors on the date of such distribution, and of which the denominator shall be such fair value on such date minus the then fair value (as so determined) of the portion of the assets or evidences of indebtedness so distributed or of such subscription rights, options, warrants or convertible securities applicable to one share. Such adjustment shall be made whenever any such distribution is made and shall become effective on the date of distribution retroactive to the record date for the determination of stockholders entitled to receive such distribution.

(iv) Upon the expiration of any rights, options, warrants or conversion privileges, if such shall not have been exercised, the conversion rate shall, upon such expiration, be readjusted and shall thereafter be such as it would have been had it been originally adjusted (or had the original adjustment not been required, as the case may be) on the basis of (A) the fact that Common Stock, if any, actually issued or sold upon the exercise of such rights, options, warrants or conversion privileges, and (B) the fact that such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise plus the consideration, if any, actually received by the Corporation for the issuance, sale or grant of all such rights, options, warrants or conversion privileges whether or not exercised.

(v) No adjustment in the conversion rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate; provided, however,

that the Corporation may make any such adjustment at its election; and provided, further, that any adjustments which by reason of this subparagraph (v) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article Fourth, Section B.4 shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

(vi) Whenever the conversion rate is adjusted as provided in any provision of this Article Fourth, Section B.4:

(A) the Corporation shall compute (or may retain a firm of independent public accountants of recognized national standing (which may be any such firm regularly employed by the Corporation) to compute) the adjusted conversion rate in accordance with this Article Fourth, Section B.4 and shall prepare a certificate signed by the principal financial officer of the Corporation (or cause any such independent public accountants to execute a certificate) setting forth the adjusted conversion rate and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the transfer agent of the Series B Convertible Preferred Stock; and

(B) a notice stating that the conversion rate has been adjusted and setting forth the adjusted conversion rate shall forthwith be required, and as soon as practicable after it is required, such notice shall be mailed by the Corporation to all record holders of Series B Convertible Preferred Stock at their last addresses as they shall appear in the stock transfer books of the Corporation.

(vii) In the event that at any time, as a result of any adjustment made pursuant to this Article Fourth, Section B.4, the holder of any shares of Series B Convertible Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of Common Stock or to receive any other securities, the number of such other shares or securities so receivable upon conversion of any share of Series B Convertible Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained in this Article Fourth, Section B.4 with respect to the Common Stock.

(d) No Fractional Shares. No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series B Convertible Preferred Stock. If more than one certificate evidencing shares of Series B Convertible Preferred Stock shall be surrendered for one certificate evidencing shares of Series B Convertible Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B Convertible Preferred Stock so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any shares of Series B Convertible Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to the same fraction of the market price per share of

Common Stock (which shall be the closing price as defined in Article Fourth, Section B.5) at the close of business on the day of conversion.

(e) Reservation of Shares; Transfer Taxes, Etc. The Corporation shall at all times reserve and keep available, out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series B Convertible Preferred Stock, such number of shares of its Common Stock free of preemptive rights as shall from time to time be sufficient to effect the conversion of all shares of Series B Convertible Preferred Stock from time to time outstanding. The Corporation shall use its best efforts from time to time, in accordance with the laws of the State of Delaware, to increase the authorized number of shares of Common Stock if at any time the number of shares of Common Stock not outstanding shall not be sufficient to permit the conversion of all the then-outstanding shares of Series B Convertible Preferred Stock.

The Corporation shall pay any and all issue or other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of the Series B Convertible Preferred Stock. The Corporation shall not, however, be required to pay any tax which may be payable in respect to any transfer involved in the issue or delivery of Common Stock (or other securities or assets) in a name other than that in which the shares of Series B Convertible Preferred Stock so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

Notwithstanding anything to the contrary herein, before taking any action that would cause an adjustment reducing the conversion rate or before any such adjustment is made as a result of a Reset Event, in either event, such that the effective conversion price (for all purposes an amount equal to $10.00 divided by the conversion rate as in effect at such time) would be below the then par value of the Common Stock, the Corporation shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at the conversion rate as so adjusted.

(f) Prior Notice of Certain Events. In case:

(i) the Corporation shall declare any dividend (or any other distribution) on its Common Stock; or

(ii) the Corporation shall authorize the granting to the holders of Common stock of rights or warrants to subscribe for or purchase any shares of stock of any class or of any other rights or warrants; or

(iii) of any reclassification of Common Stock (other than a subdivision or combination of the outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Corporation is a party and for which approval of any stockholders of the Corporation shall be required, or of the sale or transfer of all or substantially all of the assets of the Corporation or of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or other property; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation or other Liquidation Event:

then the Corporation shall cause to be filed with the transfer agent for the Series B Convertible Preferred Stock, and shall cause to be mailed to the holders of record of the Series B Convertible Preferred Stock, at their last addresses as they shall appear upon the stock transfer books of the Corporation, at least 20 days prior to the applicable record date hereinafter specified, a notice stating (x) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution or granting of rights or warrants or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined and a description of the cash, securities or other property to be received by such holders upon such dividend, distribution or granting of rights or warrants or (y) the date on which such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such exchange, dissolution, liquidation, winding up or other Liquidation Event and the consideration, including securities or other property, to be received by such holders upon such exchange; provided, however, that no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the corporate action required to be specified in such notice.

(g) Other Changes in Conversion Rate. The Corporation from time to time may increase the conversion rate by any amount for any period of time if the period is at least 20 days and if the increase is irrevocable during the period. Whenever the conversion rate is so increase, the Corporation shall mail to holders of record of the Series B Convertible Preferred Stock a notice of the increase at least 15 days before the date the increased conversion rate takes effect, and such notice shall state the increased conversion rate and the period it will be in effect.

The Corporation may make such increases in the conversion rate, in addition to those required or allowed by this Article Fourth, Section B.4, as shall be determined by it, as evidenced by a resolution of the Board of Directors, to be advisable in order to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any even treated as such for income tax purposes.

(h) Ambiguities/Errors. The Board of Directors of the Corporation shall have the power to resolve any ambiguity or correct any error in the provisions relating to the convertibility of the Series B Convertible Preferred Stock, and its actions in so doing shall be final and conclusive.

5. Mandatory Conversion. At any time on or after the Reset Date, the Corporation, at its option, may cause the Series B Convertible Preferred Stock to be converted in whole, or in part, on a pro rata basis, into fully paid and nonassessable shares of Common Stock and such other securities and property as herein provided if the closing price of the Common Stock shall have exceeded 150% of the then applicable conversion price for at least 20 trading days in any 30 consecutive trading day period. Any shares of Series B Convertible Preferred Stock so

converted shall be treated as having been surrendered by the holder thereof for conversion pursuant to Section 4 on the date of such mandatory conversion (unless previously converted at the option of the holder).

Not more than 60 nor less than 20 days prior to the date of any such mandatory conversion, notice by first class mail, postage prepaid, shall be given to the holders of record of the Series B Convertible Preferred Stock to be converted, addressed to such holders at their last addresses as shown on the stock transfer books of the Corporation. Each such notice shall specify that date fixed for conversion, the place or places for surrender of shares of Series B Convertible Preferred Stock, and the then effective conversion rate pursuant to Section B.4 of Article Fouth.

The "closing price" for each trading day shall be the reported last sales price regular way or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices regular way, in either case on the NASDAQ or, if the Common Stock is not quoted on NASDAQ, on the principal national securities exchange on which the Common Stock is listed or admitted to trading (based on the aggregate dollar value of all securities listed or admitted to trading) or, if not listed or admitted to trading on any national securities exchange or quoted on NASDAQ, the average of the closing bid and asked prices in the over-the-counter market as furnished by any NASD member firm selected from time to time by the Corporation for that purpose, or, if such prices are not available, the fair market value set by, or in a manner established by, the Board of Directors of the Corporation in good faith. "Trading day" shall have the meaning given in Section B.4 of this Article Fourth.

Any notice which is mailed as herein provided shall be conclusively presumed to have been duly given by the Corporation on the date deposited in the mail, whether or not the holder of the Series B Convertible Preferred Stock receives such notice; and failure properly to give such notice by mail, or any defect in such notice, to the holders of the shares to be converted shall not affect the validity of the proceedings for the conversion of any other shares of Series B Convertible Preferred Stock. On or after the date fixed for conversion as stated in such notice, each holder of shares called to be converted shall surrender the certificate evidencing such shares to the Corporation at the place designated in such notice for conversion. Notwithstanding that the certificates evidencing any shares properly called for conversion shall not have been surrendered, the shares shall no longer be deemed outstanding and all rights whatsoever with respect to the shares so called for conversion (except that right of the holders to convert such shares upon surrender of their certificates therefor) shall terminate.

6. Voting Rights

(a) General. Except as otherwise provided herein, in the Certificate of Incorporation or the By-laws, the holders of shares of Series B Convertible Preferred Stock, the holders of shares of Common Stock and the holders of any other class or series of shares entitled to vote with the Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation. In any such vote, each share of Series B Convertible Preferred Stock shall entitle the holder thereof to cast the number of votes equal to the number of votes which could be cast in such vote by a holder of the Common Stock into which such share

of Series B Convertible Preferred Stock is convertible on the record date for such vote, or if no record date has been established, on the date such vote is taken. Any shares of Series B Convertible Preferred Stock held by the Corporation or any entity controlled by the Corporation shall not have voting rights hereunder and shall not be counted in determining the presence of a quorum.

(b) Class Voting Rights. In addition to any vote specified in paragraph (a) of this Article Fourth, Section B.6, so long as 50% of the shares of Series B Convertible Preferred Stock (including those shares of Series B Convertible Preferred Stock issued or issuable upon the exercise of the warrants of the Corporation issued to Paramount Capital, Inc. or its transferees) shall be outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least 66.67% of all outstanding Series B Convertible Preferred Stock voting separately as a class, (i) amend, alter or repeal any provision of the Certificate of Incorporation, as amended, or the Bylaws of the Corporation so as adversely to affect the relative rights, preferences, qualifications, limitations or restrictions of the Series B Convertible Preferred Stock, (ii) declare any dividend or distribution on the Common Stock or any other class or series of preferred stock or authorize the repurchase of any securities of the Corporation or (iii) authorize or issue, or increase the authorized amount of, any additional class or series of stock, or any security convertible into stock of such class or series, (A) ranking prior to, or on a parity with, the Series B Convertible Preferred Stock upon liquidation, dissolution or winding up of the Corporation or a sale of all or substantially all of the assets of the Corporation or (B) providing for the payment of any dividends or distributions. A class vote on the part of the Series B Convertible Preferred Stock shall, without limitation, specifically not be deemed to be required (except as otherwise required by law or resolution of the Corporation's Board of Directors) in connection with: (a) the authorization, issuance or increase in the authorized amount of Common Stock or of any shares of any other class or series of stock ranking junior to the Series B Convertible Preferred Stock in respect of distributions upon liquidation, dissolution or winding up of the Corporation; (b) the authorization, issuance or increase in the amount of the Series B Convertible Preferred Stock or any bonds, mortgage, debentures or other obligations of the Corporation (other than bonds, mortgages, debentures or other obligations convertible into or exchangeable for or having option rights to purchase any shares of stock of the Corporation, the authorization, issuance or increase in amount of which would require the consent of the holders of the Series B Convertible Preferred Stock); or (c) any consolidation or merger of the Corporation with or into another corporation in which the Corporation is not the surviving entity, a sale or transfer of all or part of the Corporation's assets for cash, securities or other property, or a compulsory share exchange.

7. Outstanding Shares. For purposes of this Article Fourth, all shares of Series B Convertible Preferred Stock shall be deemed outstanding except (i) from the date, or the deemed date, of surrender of certificates evidencing shares of Series B Convertible Preferred Stock, all shares of Series B Convertible Preferred Stock converted into Common Stock, (ii) from the date of registration of transfer, all shares of Series B Convertible Preferred Stock held of record by the Corporation or any subsidiary of the Corporation and (iii) any and all shares of Series B Convertible Preferred Stock held in escrow prior to delivery of such stock by the Corporation to the initial beneficial owners thereof.

8. Status of Acquired Shares. Shares of Series B Convertible Preferred Stock received upon conversion pursuant to Section B.4 or Section B.5 of this Article Fourth or otherwise acquired by the Corporation will be restored to the status of authorized but unissued shares of Preferred Stock, without designation as to class, and may thereafter be issued, but not as shares of Series B Convertible Preferred Stock.

9. Preemptive Rights. The Series B Convertible Preferred Stock is not entitled to any preemptive or subscription rights in respect of any securities of the Corporation.

10. No Amendment or Impairment. The Corporation shall not amend its Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series B Preferred Stock against impairment.

11. Severability of Provisions. Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

FIFTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors shall have the power, both before and after receipt of any payment for any of the Corporation's capital stock, to adopt, amend, repeal or otherwise after the Bylaws of the Corporation without any action on the part of the stockholders; provided, however, that the grant of such power to the Board of Directors shall not divest the stockholders of nor limit their power to adopt, amend, repeal or otherwise alter the Bylaws.

SIXTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

SEVENTH: The Corporation reserves the rights to adopt, repeal, rescind or amend in any respect any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

EIGHTH: A director of the Corporation shall, to the fullest extent permitted by the Delaware General Corporation Law as it now exists or as it may hereafter be amended, not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article EIGHTH, nor the adoption of any

provision of this Certificate of Incorporation inconsistent with this Article EIGHTH, shall eliminate or reduce the effect of this Article EIGHTH in respect of any matter occurring or any cause of action, suit or claim that, but for this Article EIGHTH, would accrue or arise prior to such amendment, repeal or adoption of an inconsistent provision.

NINTH: This Restated Certificate of incorporation was duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Corporation's Certificate of Incorporation as heretofore amended and supplemented, and there is no discrepancy between the provisions of such Certificate of Incorporation and this Restated Certificate of Incorporation.

IN WITNESS WHEREOF, Discovery Laboratories, Inc. has caused this Certificate of Amendment to be signed this 25th day of March, 1998.

DISCOVERY LABORATORIES, INC.

By: /s/ James S. Kuo

Name: James S. Kuo, M.D.
Title: Chief Executive Officer

PARTICIPATION AND REGISTRATION AGREEMENT

This Participation and Co-Registration Agreement, dated March 20, 1996, effective as of March 20, 1996, by and among RAQ, LLC., having a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 ("RAQ"), Triad Pharmaceuticals, Inc., having a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 and Dr. Thomas Kennedy, a resident of the State of Virginia ("Kennedy").

WITNESSETH:

WHEREAS, Triad Pharmaceuticals, Inc., a Delaware corporation ("Corporation"), has entered into a Stock Purchase Agreement dated as of March 20, 1996 with Kennedy contemporaneous herewith (the "Agreement");

WHEREAS, RAQ is a shareholder of the Corporation; and

WHEREAS, Kennedy, as a condition precedent to entering into the Agreement, Kennedy is requiring that the Corporation and RAQ execute and deliver this Participation and Co-Registration Agreement in favor of Kennedy.

NOW, THEREFORE in consideration of the foregoing, the parties agree as follows:

1. PARTICIPATION RIGHTS

RAQ agrees that:

A. If RAQ is seeking to transfer a number of shares of capital stock of the Corporation (the "Transferring Shareholder") other than through a registered broker-deaker in a public market transaction, for which there is an effective registration under the Securities Act of 1933 or pursuant to rule 144, Kennedy may elect to include shares of his stock in the sale to the proposed transferee, at such price and upon such terms as have been given to the Transferring Shareholder by the transferee. The number of shares of Kennedy's stock that Kennedy shall be entitled to have included in such sale will be equal to the number of such shares of Common Stock times a ratio, the numerator of which is the number of shares of Common Stock being transferred by the Transferring Shareholder on a Fully Diluted Basis and the denominator of which is the total number of shares of Common Stock owned by the Transferring Stockholder as of the date of the Transfer Notice on a Fully Diluted Basis. Kennedy must make this election within ten (10) days of receiving the notice from the Transferring Shareholder of the Transferring Shareholder's intent to transfer by giving written notice, such notice stating the number of shares being transferred, the purchase price and other material terms of the transfer to the Transferring Stockholder of such election to participate in the sale, stating in such notice the number of shares desired to be sold. If no such notice is given within such ten (10) day period,

Kennedy shall be deemed to have chosen not to participate. This provision shall immediately and permanently terminate upon Kennedy's ability to sell his shares either pursuant to Rule 144 of the Securities Act of 1933 or pursuant to an effective registration statement under the Securities Act of 1933.

2. REDEMPTION RIGHTS The Corporation agrees that:

A. If at any time the Corporation elects to transfer all or substantially all of the assets of the Corporation, (other than (i) in a reorganization qualifying under Section 368 of the Internal Revenue Code of 1986, as amended in which the shareholders of the Corporation immediately preceding the reorganization continue to own 50% or more of voting power of the surviving entity and or (ii) in a transaction in which the Corporation plans to distribute all of the consideration or proceeds to the shareholders of the Corporation) then unless the the Corporation shall notify Kennedy in writing at least twenty (20) days before the consummation of such transfer. Upon receipt of such notice, Kennedy shall have the right to require the Corporation to redeem all, but not less than all, of Kennedy's shares of stock of the Corporation by giving written notice thereof (the "Redemption Notice") to the Corporation within fifteen (15) days of his receipt of the Corporation's notice of its intent to transfer such assets. Immediately following its receipt of the Redemption Notice, the Corporation shall redeem all of Kennedy's shares at a price equal to an amount determined by an appraisal of the value of the Corporation by an appraiser to be mutually agreed upon. If the Corporation or Kennedy are unable to agree on an appraiser, then the Corporation and Kennedy shall within 10 days each choose an appraiser and the value of the Corporation shall be the arithmetic mean of the values determined by each appraiser. If the parties agree on an appraiser, the cost of appraisal shall be divided between them equally. If two appraisers are chosen, the Corporation and Kennedy shall pay the costs of the appraiser each has chosen. The running of all time periods provided herein shall be tolled until such appraisal is completed and delivered to the Corporation and Kennedy. This provision shall immediately and permanently terminate after the Corporation is a reporting company under the Securities Exchange Act of 1934.

B. Should Kennedy elect to have the Corporation redeem his shares pursuant to this section, Kennedy shall, on or before the date of such share redemption, deliver to the Corporation during regular business hours, at

the principal office of the Corporation, the certificate or certificates for the number of shares of stock to be redeemed, duly endorsed or assigned in blank or to the Corporation (if required by it). On the date of such redemption, the Corporation shall deliver to Kennedy a certified or cashier's check in respect of the aggregate price for the number of shares so redeemed or at the Corporation's option publicly traded securities of equivalent fair market value.

3. REGISTRATION RIGHTS

The Corporation agrees that:

A. If at any time or from time to time the Corporation proposes to register any of its equity securities under the Securities Act of 1933 (the "Act") in connection with a primary or secondary public offering of such securities solely for cash on a form that would also permit the registration of the shares of capital stock of the Corporation purchased by Kennedy pursuant to a certain Stock Subscription Agreement between Kennedy and the Corporation dated March 20, 1996 (including, without limitation, any shares of capital stock of the Corporation which Kennedy may purchase pursuant to the anti-dilution provisions thereof and any securities of the Corporation issued as a dividend or other distribution with respect to, or in exchange or in replacement of any shares of the Corporation held by Kennedy), the Corporation shall, each such time, promptly give Kennedy written notice of such determination. Upon the written request of Kennedy given within fifteen (15) days after mailing of any such notice by the Corporation, the Corporation shall use its best efforts to cause to be registered under the Act all shares of capital stock of the Corporation held by Kennedy that Kennedy has requested be registered. This right shall terminate upon Kennedy's ability to resell in whole or in part his shares under Rule 144 of the Securities Act of 1933, as amended. The Corporation shall bear all registration and qualification fees and expenses (excluding underwriters' discounts and commissions), including any additional costs and disbursements of counsel for the Corporation that result from the inclusion of securities held by Kennedy in such registration.

B. Notwithstanding the preceding paragraph, in connection with any offering involving an underwriting of shares of the Corporation's Common Stock, the Corporation shall not be required to include any of Kennedy's shares in such underwriting unless Kennedy accepts the terms of the underwriting as agreed upon between the Corporation and the underwriters selected by the Corporation (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Corporation. If the total amount of securities, including the shares of Kennedy, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Corporation that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Corporation shall be required to include in the offering only that number of such securities, including the shares requested by Kennedy, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders).

C. To the extent permitted by law, the Corporation will indemnify and hold harmless Kennedy upon his requesting or joining in a registration, any underwriter (as defined in the Act) for it, and each person, if any, who controls such underwriter within the meaning of the Act or the Securities Exchange Act of 1934 (the "1934 Act") against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the Act, the 1934 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on any untrue or alleged untrue statement of any such material fact contained in such registration statement by the Corporation (but not Kennedy requesting or joining in the registration), including any preliminary prospectus or final prospectus, or any amendments or supplements thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading or arise out of any violation by the Corporation of any rule or regulation promulgated under the Act or the 1934 Act applicable to the Corporation and relating to action or inaction required of the Corporation in connection with any such registration; and will reimburse Kennedy, such underwriter, or such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however that the indemnity agreement contained in this paragraph shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Corporation (which consent shall not be unreasonably withheld) nor shall the Corporation be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in connection with such registration statement, preliminary prospectus, final prospectus, or amendments or supplements thereto, in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by Kennedy or any such underwriter or controlling person.

D. In order to provide for just and equitable contribution to joint liability under the Act in any case in which either (i) Kennedy exercising his rights under this Agreement makes a claim for indemnification pursuant to this paragraph but it is judicially determined (by the entry of a final judgement or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this paragraph provides for indemnification in such case, or (ii) contribution under the Act may be required on the part of Kennedy in circumstances for which indemnification is provided under this paragraph; then, and in each such case, the Corporation and Kennedy will contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion so Kennedy is responsible for the portion represented by the percentage that the public offering price of his shares of capital stock of the Corporation offered by the registration statement bears to the public offering price of

all securities offered by such registration statement, and the Corporation is responsible for the remaining portion; provided, however, that, in any such case, (A) Kennedy will not be required to contribute any amount in excess of the public offering price of all the shares of capital stock of the Corporation offered by it pursuant to such registration statement; and (B) no person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) will be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

E. Notwithstanding the foregoing, this section 3 shall not apply to any registration of the common stock underlying the Series A Convertible Preferred Stock issued pursuant to an offering from June 17, 1996 to August 15, 1996 (including any extension of such offering for up to 120 days) or to any registration of a stock option plan or shares utilizing Form S-8 or equivalent form.

4. MISCELLANEOUS PROVISIONS

A. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

B. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

C. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

D. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

E. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of

this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

F. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

G. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

H. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

I. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

Triad Pharmaceuticals, Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to Kennedy, to

Thomas Kennedy, M.D.
213 Grand Drive
Richmond, VA 23229

(iii) If to RAQ at the address set forth in the first paragraph of this Agreement.

The address of a party, for the purposes of this Section, may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

IN WITNESS WHEREOF, the parties have hereto have set their respective hands and seals all on the day and year first above set forth.

RAQ, LLC.:

/s/ Lindsay A. Rosenwald, M.D.
- ---------------------------------
By: Lindsay A. Rosenwald, M.D.
Chief Executive

TRIAD PHARMACEUTICALS, INC.

/s/ Steve H. Kanzer
- ---------------------------------
By: Steve H. Kanzer
President

THOMAS KENNEDY, M.D.:

/s/ Thomas Kennedy, M.D.
- ---------------------------------
By: Thomas Kennedy, M.D.

PARTICIPATION AND REGISTRATION AGREEMENT

This Participation and Co-Registration Agreement, dated March 20, 1996, effective as of March 20, 1996, by and among RAQ, LLC., having a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 ("RAQ"), Triad Pharmaceuticals, Inc., having a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 and Dr. John Hoidal, a resident of the State of Utah ("Hoidal").

W I T N E S S E T H:

WHEREAS, Triad Pharmaceuticals, Inc., a Delaware corporation ("Corporation"), has entered into a Stock Purchase Agreement dated as of March 20, 1996 with Hoidal contemporaneous herewith (the "Agreement");

WHEREAS, RAQ is a shareholder of the Corporation; and

WHEREAS, Hoidal, as a condition precedent to entering into the Agreement, Hoidal is requiring that the Corporation and RAQ execute and deliver this Participation and Co-Registration Agreement in favor of Hoidal.

NOW, THEREFORE in consideration of the foregoing, the parties agree as follows:

1. PARTICIPATION RIGHTS RAQ agrees that:

A. If RAQ is seeking to transfer a number of shares of capital stock of the Corporation (the "Transferring Shareholder") other than through a registered broker-dealer in a public market transaction, for which there is an effective registration under the Securities Act of 1933 or pursuant to rule 144, Hoidal may elect to include shares of his stock in the sale to the proposed transferee, at such price and upon such terms as have been given to the Transferring Shareholder by the transferee. The number of shares of Hoidal's stock that Hoidal shall be entitled to have included in such sale will be equal to the number of such shares of Common Stock times a ratio, the numerator of which is the number of shares of Common Stock being transferred by the Transferring Shareholder on a Fully Diluted Basis and the denominator of which is the total number of shares of Common Stock owned by the Transferring Stockholder as of the date of the Transfer Notice on a Fully Diluted Basis. Hoidal must make this election within ten (10) days of receiving the notice from the Transferring Shareholder of the Transferring Shareholder's intent to transfer by giving written notice, such notice stating the number of shares being transferred, the purchase price and other material terms of the transfer to the Transferring Stockholder of such election to participate in the sale, stating in such notice the number of shares desired to be sold. If no such notice is given within such ten (10) day period, Hoidal shall be deemed to

have chosen not to participate. This provision shall immediately and permanently terminate upon Hoidal's ability to sell his shares either pursuant to Rule 144 of the Securities Act of 1933 or pursuant to an effective registration statement under the Securities Act of 1933.

2. REDEMPTION RIGHTS

The Corporation agrees that:

A. If at any time the Corporation elects to transfer all or substantially all of the assets of the Corporation, (other than (i) in a reorganization qualifying under Section 368 of the Internal Revenue Code of 1986, as amended in which the shareholders of the Corporation immediately preceding the reorganization continue to own 50% or more of voting power of the surviving entity and or (ii) in a transaction in which the Corporation plans to distrubute all of the consideration or proceeds to the shareholders of the Corporation) then unless the the Corporation shall notify Hoidal in writing at least twenty (20) days before the consummation of such transfer. Upon receipt of such notice, Hoidal shall have the right to require the Corporation to redeem all, but not less than all, of Hoidal's shares of stock of the Corporation by giving written notice thereof (the "Redemption Notice") to the Corporation within fifteen (15) days of his receipt of the Corporation's notice of its intent to transfer such assets. Immediately following its receipt of the Redemption Notice, the Corporation shall redeem all of Hoidal's shares at a price equal to an amount determined by an appraisal of the value of the Corporation by an appraiser to be mutually agreed upon. If the Corporation or Hoidal are unable to agree on an appraiser, then the Corporation and Hoidal shall within 10 days each choose an appraiser and the value of the Corporation shall be the arithmetic mean of the values determined by each appraiser. If the parties agree on an appraiser, the cost of appraisal shall be divided between them equally. If two appraisers are chosen, the Corporation and Hoidal shall pay the costs of the appraiser each has chosen. The running of all time periods provided herein shall be tolled until such appraisal is completed and delivered to the Corporation and Hoidal. This provision shall immediately and permanently terminate after the Corporation is a reporting company under the Securities Exchange Act of 1934.

B. Should Hoidal elect to have the Corporation redeem his shares pursuant to this section, Hoidal shall, on or before the date of such share redemption, deliver to the Corporation during regular business hours, at the principal office of the Corporation, the certificate or certificates

for the number of shares of stock to be redeemed, duly endorsed or assigned in blank or to the Corporation (if required by it). On the date of such redemption, the Corporation shall deliver to Hoidal a certified or cashier's check in respect of the aggregate price for the number of shares so redeemed or at the Corporation's option publicly traded securities of equivalent fair market value.

3. REGISTRATION RIGHTS

The Corporation agrees that:

A. If at any time or from time to time the Corporation proposes to register any of its equity securities under the Securities Act of 1933 (the "Act") in connection with a primary or secondary public offering of such securities solely for cash on a form that would also permit the registration of the shares of capital stock of the Corporation purchased by Hoidal pursuant to a certain Stock Subscription Agreement between Hoidal and the Corporation dated March 20, 1996 (including, without limitation, any shares of capital stock of the Corporation which Hoidal may purchase pursuant to the anti-dilution provisions thereof and any securities of the Corporation issued as a dividend or other distribution with respect to, or in exchange or in replacement of any shares of the Corporation held by Hoidal), the Corporation shall, each such time, promptly give Hoidal written notice of such determination. Upon the written request of Hoidal given within fifteen (15) days after mailing of any such notice by the Corporation, the Corporation shall use its best efforts to cause to be registered under the Act all shares of capital stock of the Corporation held by Hoidal that Hoidal has requested be registered. This right shall terminate upon Hoidal's ability to resell in whole or in part his shares under Rule 144 of the Securities Act of 1933, as amended. The Corporation shall bear all registration and qualification fees and expenses (excluding underwriters' discounts and commissions), including any additional costs and disbursements of counsel for the Corporation that result from the inclusion of securities held by Hoidal in such registration.

B. Notwithstanding the preceding paragraph, in connection with any offering involving an underwriting of shares of the Corporation's Common Stock, the Corporation shall not be required to include any of Hoidal's shares in such underwriting unless Hoidal accepts the terms of the underwriting as agreed upon between the Corporation and the underwriters selected by the Corporation (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Corporation. If the total amount of securities, including the shares of Hoidal, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Corporation that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Corporation shall be required to include in the offering only that number of such securities, including the shares requested by Hoidal, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders).

C. To the extent permitted by law, the Corporation will indemnify and hold harmless Hoidal upon his requesting or joining in a registration, any underwriter (as defined in the Act) for it, and each person, if any, who controls such underwriter within the meaning of the Act or the Securities Exchange Act of 1934 (the "1934 Act") against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the Act, the 1934 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on any untrue or alleged untrue statement of any such material fact contained in such registration statement by the Corporation (but not Hoidal requesting or joining in the registration), including any preliminary prospectus or final prospectus, or any amendments or supplements thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading or arise out of any violation by the Corporation of any rule or regulation promulgated under the Act or the 1934 Act applicable to the Corporation and relating to action or inaction required of the Corporation in connection with any such registration; and will reimburse Hoidal, such underwriter, or such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however that the indemnity agreement contained in this paragraph shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Corporation (which consent shall not be unreasonably withheld) nor shall the Corporation be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in connection with such registration statement, preliminary prospectus, final prospectus, or amendments or supplements thereto, in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by Hoidal or any such underwriter or controlling person.

D. In order to provide for just and equitable contribution to joint liability under the Act in any case in which either (i) Hoidal exercising his rights under this Agreement makes a claim for indemnification pursuant to this paragraph but it is judicially determined (by the entry of a final judgement or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this paragraph provides for indemnification in such case, or (ii) contribution under the Act may be required on the part of Hoidal in circumstances for which indemnification is provided under this paragraph; then, and in each such case, the Corporation and Hoidal will contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion so Hoidal is responsible for the portion represented by the percentage that the public offering price of his shares of capital stock of the Corporation offered by the registration statement bears to the public offering price of all securities offered by

such registration statement, and the Corporation is responsible for the remaining portion; provided, however, that, in any such case, (A) Hoidal will not be required to contribute any amount in excess of the public offering price of all the shares of capital stock of the Corporation offered by it pursuant to such registration statement; and (B) no person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) will be entitled to contribution from any person or entity who was not guilty of such fraudulent misrepresentation.

E. Notwithstanding the foregoing, this section 3 shall not apply to any registration of the common stock underlying the Series A Convertible Preferred Stock issued pursuant to an offering from June 17, 1996 to August 15, 1996 (including any extension of such offering for up to 120 days) or to any registration of a stock option plan or shares utilizing Form S-8 or equivalent form.

4. MISCELLANEOUS PROVISIONS

A. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

B. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

C. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

D. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

E. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall

not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

F. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

G. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

H. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

I. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

Triad Pharmaceuticals, Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to Hoidal, to

John Hoidal, M.D.
4534 Zarahemla Drive
Salt Lake City, Utah 84124

(iii) If to RAQ at the address set forth in the first paragraph of this Agreement.

The address of a party, for the purposes of this Section, may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

IN WITNESS WHEREOF, the parties have hereto have set their respective hands and seals all on the day and year first above set forth.

RAQ, LLC.:

/s/ Lindsay A. Rosenwald
- ----------
By: Lindsay A. Rosenwald, M.D.
Chief Executive

TRIAD PHARMACEUTICALS, INC.

/s/ Steve H. Kanzer
- ----------
By: Steve H. Kanzer
President

JOHN HOIDAL, M.D.:

/s/ John Hoidal
- ----------
By: John Hoidal, M.D.

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT ("Agreement") is entered into as of March 20, 1996, by and between the undersigned (the "Purchaser") and Triad Pharmaceuticals, Inc., a Delaware corporation with a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 (the "Corporation").

RECITALS

A. WHEREAS, the Corporation desires to sell shares of common stock, par value $.001 per share, of the Corporation (which class of shares is referred to herein as "Common Stock") to Purchaser, and Purchaser desires to purchase these shares, upon the terms and conditions herein specified; and

B. WHEREAS, Purchaser is willing to subject the Stock (as defined herein) to the restrictions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. Issuance and Acquisition of Stock.

(a) Immediately after the execution of this Agreement by the parties, the Corporation shall issue to the Purchaser, and the Purchaser shall acquire from the Corporation, the number of shares of Common Stock listed beside the Purchaser's name on the signature hereto (the "Stock") for the total purchase price listed below the Purchaser's name on the signature page hereto (the "Purchase Price").

(b) Upon the execution of this Agreement, the Purchaser shall make payment for the Stock by delivering to the Corporation a check payable to the Corporation in the amount of the Purchase Price. Within ninety days after the execution of this Agreement by the parties and receipt by the Corporation of the Purchase Price, the Corporation shall deliver to the Purchaser a certificate or certificates evidencing the Stock, registered in the name of the Purchaser and concurrently therewith.

2. Violation Of Transfer Provisions, The Corporation shall not be required (i) to transfer on its books any shares of Stock which shall have been sold, transferred, assigned or pledged in violation of any of the provisions of this Agreement or (ii) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so sold, transferred, assigned or pledged.

3. Rights as Shareholder. Except as otherwise provided herein, the Purchaser shall, during the term of this Agreement, exercise all rights and privileges of a shareholder of the Corporation with respect to the Stock.

4. Securities Laws. The Purchaser represents and warrants to and covenants with the Corporation as follows:

(a) The Stock will be acquired by the Purchaser with the Purchaser's own funds for investment purposes and for the Purchaser's own account, not as a nominee or agent for any other person, firm or corporation, and not with a view to the sale or distribution of all or any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the Stock. The Purchaser does not have any contract, undertaking, agreement or arrangement with any person, firm or corporation to sell, transfer or grant any participation to any person, firm or corporation with respect to any or all of the Stock.

(b) The Purchaser understands that the Stock will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and that the Stock is being issued and sold to the Purchaser based upon an exemption from registration predicated in part on the accuracy and completeness of the Purchaser's representations and warranties appearing herein.

(c) The Purchaser agrees that in no event will the Purchaser sell, transfer, assign or pledge all or any part of the Stock or any interest therein, unless and until (i) the Purchaser shall have notified the Corporation of the proposed disposition and shall have furnished the Corporation with a statement of the circumstances surrounding the proposed disposition, and (ii) the Purchaser shall have furnished the Corporation with an opinion of counsel satisfactory in form and content to the Corporation to the effect that (A) such disposition will not require registration of the Stock under the Securities Act or compliance with applicable state securities laws, or (B) appropriate action necessary for compliance with the Securities Act and applicable state securities laws has been taken, or (iii) the Corporation shall have waived, expressly and in writing, its right under clauses (i) and (ii) of this subsection, and (iv) the proposed transferee of the Stock shall have provided the Corporation with a written agreement or undertaking by which such transferee agrees to be bound by all terms, conditions

and limitations of this Agreement applicable to such transferee's transferor as if such transferee were a party hereto. The requirement of subparagraph (iv) shall not apply to any transfer (A) pursuant to an offering registered under the Securities Act, (B) pursuant to Rule 144 under the Securities Act or (C) effected in a market transaction otherwise exempt from registration under the Securities Act.

(d) The Purchaser is able to fend for itself in connection with the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Corporation, as the ability to bear the economic risks of its investment for an indefinite period of time and can afford a complete loss of its investment, has had the opportunity prior to the Purchaser's purchase of the Stock to ask questions of and receive answers from representatives of the Corporation concerning the finances, operations and business of the Corporation. The Purchaser is not relying upon any statement, promise or assurance of any investor in the Corporation (or any representative of any such investor) in arriving at the Purchaser's decision to purchase the Stock, and has not otherwise been induced to purchase the Stock by any such investor (or any representative of any such investor), and the Purchaser has decided to purchase the Stock based upon the Purchaser's own analysis of the merits and risks of investing in the Corporation without the intervention or assistance of any other person, firm or corporation.

(e) The Purchaser understands and acknowledges that the Purchaser will not be permitted to sell, transfer, assign or pledge the Stock until it is registered under the Securities Act or an exemption from the registration and prospectus delivery requirements of the Securities Act is available to the Purchaser, and that there is no assurance that such an exemption from registration will ever be available or that the Purchaser will ever be able to sell any of the Stock.

(f) All certificates representing the Stock and, until such time as the Stock is sold in an offering which is registered under the Securities Act or the Corporation shall have received an opinion of counsel satisfactory in form and content to the Corporation that such registration is not required in connection with a resale (or subsequent resale) of the Stock, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

(i) THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED FOR SALE, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE ENCUMBERED OR DISPOSED OF (A "TRANS-

FER") UNLESS SUCH TRANSFER COMPLIES WITH THE PROVISIONS OF A SUBSCRIPTION AGREEMENT BETWEEN THE REGISTERED HOLDER AND THE CORPORATION (THE "AGREEMENT") (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND WHICH WILL BE FURNISHED BY THE CORPORATION TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE). THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. ACCORDINGLY, NO TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE AGREEMENT AND (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AMENDMENT THERETO UNDER THE ACT OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND UNDER ANY APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

(ii) Any legend required to be placed thereon by any applicable state securities law.

(iii) A legend to the effect that such shares of stock are subject to a Stock Subscription Agreement between the Purchaser and the Corporation that limits the transferability of the shares under certain conditions and applies to any transferee of such shares.

(g) The Corporation shall not be obligated to transfer any of the Stock if counsel for the Corporation determines that any applicable registration requirement under the Securities Act or any other applicable requirement of federal or state law has not been met.

5. General Provisions.

(a) No Assignments. The Purchaser shall not transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the Corporation, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

MicroBio Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to the Purchaser, to the address set forth on the signature page of this Agreement.

The address of a party, for the purposes of this Section 6(b)(ii), may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Standoff Agreement. The Purchaser agrees that, in connection with each underwritten public offering registered under the Securities Act of shares of Common Stock or other equity securities of the Corporation by or on behalf of the Corporation, the Purchaser shall not sell or transfer, or offer to sell or transfer, any shares of Common Stock or other equity securities of the Corporation for such period as the managing underwriter of such offering determines is necessary to effect the underwritten public offering.

(d) Choice of Law: Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Successors. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

(g) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(h) Modification, Amendment and Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

(i) Further Assurances. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(j) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(k) Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(l) Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others whenever and wherever the context so requires. Additionally, unless the context requires otherwise, "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, or caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

TRIAD PHARMACEUTICALS, INC.

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer
Title: President and Chief Executive Officer

PURCHASER:

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer

Address: c/o Paramount Capital Investments, LLC
375 Park Avenue, Suite 1501
New York, N.Y. 10152

Tax#: _____

NUMBER OF SHARES
OF COMMON STOCK
SUBSCRIBED FOR: 485,000

PURCHASE PRICE: $485.00

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT ("Agreement") is entered into as of August 15, 1995, by and between the undersigned (the "Purchaser") and MicroBio Inc., a Delaware corporation with a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 (the "Corporation").

RECITALS

A. WHEREAS, the Corporation desires to sell shares of common stock, par value $.001 per share, of the Corporation (which class of shares is referred to herein as "Common Stock") to Purchaser, and Purchaser desires to purchase these shares, upon the terms and conditions herein specified; and

B. WHEREAS, Purchaser is willing to subject the Stock (as defined herein) to the restrictions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. Issuance and Acquisition of Stock.

(a) Immediately after the execution of this Agreement by the parties, the Corporation shall issue to the Purchaser, and the Purchaser shall acquire from the Corporation, the number of shares of Common Stock listed beside the Purchaser's name on the signature hereto (the "Stock") for the total purchase price listed below the Purchaser's name on the signature page hereto (the "Purchase Price").

(b) Upon the execution of this Agreement, the Purchaser shall make payment for the Stock by delivering to the Corporation a check payable to the Corporation in the amount of the Purchase Price. Within ninety days after the execution of this Agreement by the parties and receipt by the Corporation of the Purchase Price, the Corporation shall deliver to the Purchaser a certificate or certificates evidencing the Stock, registered in the name of the Purchaser and concurrently therewith.

2. Violation Of Transfer Provisions. The Corporation shall not be required (i) to transfer on its books any shares of Stock which shall have been sold, transferred, assigned or pledged in violation of any of the provisions of this Agreement or (ii) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so sold, transferred, assigned or pledged.

3. Rights as Shareholder. Except as otherwise provided herein, the Purchaser shall, during the term of this Agreement, exercise all rights and privileges of a shareholder of the Corporation with respect to the Stock.

4. Securities Laws. The Purchaser represents and warrants to and covenants with the Corporation as follows:

(a) The Stock will be acquired by the Purchaser with the Purchaser's own funds for investment purposes and for the Purchaser's own account, not as a nominee or agent for any other person, firm or corporation, and not with a view to the sale or distribution of all or any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the Stock. The Purchaser does not have any contract, undertaking, agreement or arrangement with any person, firm or corporation to sell, transfer or grant any participation to any person, firm or corporation with respect to any or all of the Stock.

(b) The Purchaser understands that the Stock will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and that the Stock is being issued and sold to the Purchaser based upon an exemption from registration predicated in part on the accuracy and completeness of the Purchaser's representations and warranties appearing herein.

(c) The Purchaser agrees that in no event will the Purchaser sell, transfer, assign or pledge all or any part of the Stock or any interest therein, unless and until (i) the Purchaser shall have notified the Corporation of the proposed disposition and shall have furnished the Corporation with a statement of the circumstances surrounding the proposed disposition, and (ii) the Purchaser shall have furnished the Corporation with an opinion of counsel satisfactory in form and content to the Corporation to the effect that (A) such disposition will not require registration of the Stock under the Securities Act or compliance with applicable state securities laws, or (B) appropriate action necessary for compliance with the Securities Act and applicable state securities laws has been taken, or (iii) the Corporation shall have waived, expressly and in writing, its right under clauses (i) and (ii) of this subsection, and (iv) the proposed transferee of the Stock shall have provided the Corporation with a written agreement or undertaking by which such transferee agrees to be bound by all terms, conditions

and limitations of this Agreement applicable to such transferee's transferor as if such transferee were a party hereto. The requirement of subparagraph (iv) shall not apply to any transfer (A) pursuant to an offering registered under the Securities Act, (B) pursuant to Rule 144 under the Securities Act or (C) effected in a market transaction otherwise exempt from registration under the Securities Act.

(d) The Purchaser is able to fend for itself in connection with the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Corporation, as the ability to bear the economic risks of its investment for an indefinite period of time and can afford a complete loss of its investment, has had the opportunity prior to the Purchaser's purchase of the Stock to ask questions of and receive answers from representatives of the Corporation concerning the finances, operations and business of the Corporation. The Purchaser is not relying upon any statement, promise or assurance of any investor in the Corporation (or any representative of any such investor) in arriving at the Purchaser's decision to purchase the Stock, and has not otherwise been induced to purchase the Stock by any such investor (or any representative of any such investor), and the Purchaser has decided to purchase the Stock based upon the Purchaser's own analysis of the merits and risks of investing in the Corporation without the intervention or assistance of any other person, firm or corporation.

(e) The Purchaser understands and acknowledges that the Purchaser will not be permitted to sell, transfer, assign or pledge the Stock until it is registered under the Securities Act or an exemption from the registration and prospectus delivery requirements of the Securities Act is available to the Purchaser, and that there is no assurance that such an exemption from registration will ever be available or that the Purchaser will ever be able to sell any of the Stock.

(f) All certificates representing the Stock and, until such time as the Stock is sold in an offering which is registered under the Securities Act or the Corporation shall have received an opinion of counsel satisfactory in form and content to the Corporation that such registration is not required in connection with a resale (or subsequent resale) of the Stock, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

(i) THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED FOR SALE, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE ENCUMBERED OR DISPOSED OF (A "TRANS-

FER") UNLESS SUCH TRANSFER COMPLIES WITH THE PROVISIONS OF A SUBSCRIPTION AGREEMENT BETWEEN THE REGISTERED HOLDER AND THE CORPORATION (THE "AGREEMENT") (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND WHICH WILL BE FURNISHED BY THE CORPORATION TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE). THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. ACCORDINGLY, NO TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE AGREEMENT AND (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AMENDMENT THERETO UNDER THE ACT OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND UNDER ANY APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

(ii) Any legend required to be placed thereon by any applicable state securities law.

(iii) A legend to the effect that such shares of stock are subject to a Stock Subscription Agreement between the Purchaser and the Corporation that limits the transferability of the shares under certain conditions and applies to any transferee of such shares.

(g) The Corporation shall not be obligated to transfer any of the Stock if counsel for the Corporation determines that any applicable registration requirement under the Securities Act or any other applicable requirement of federal or state law has not been met.

5. General Provisions.

(a) No Assignments. The Purchaser shall not transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the Corporation, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

MicroBio Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to the Purchaser, to the address set forth on the signature page of this Agreement.

The address of a party, for the purposes of this Section 6(b)(ii), may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Standoff Agreement. The Purchaser agrees that, in connection with each underwritten public offering registered under the Securities Act of shares of Common Stock or other equity securities of the Corporation by or on behalf of the Corporation, the Purchaser shall not sell or transfer, or offer to sell or transfer, any shares of Common Stock or other equity securities of the Corporation for such period as the managing underwriter of such offering determines is necessary to effect the underwritten public offering.

(d) Choice of Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Successors. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

(g) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(h) Modification, Amendment and Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

(i) Further Assurances. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(j) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(k) Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(l) Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others whenever and wherever the context so requires. Additionally, unless the context requires otherwise, "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, or caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

MICROBIO INC.

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer
Title: President and Chief Executive Officer

PURCHASER:

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer

Address: 951 Oceanfront
Long Beach, NY 11561

Tax#: ###-##-####

NUMBER OF SHARES
OF COMMON STOCK
SUBSCRIBED FOR: 388,500

PURCHASE PRICE: $388.50

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT ("Agreement") is entered into as of March 20, 1996, by and between the undersigned (the "Purchaser") and Triad Pharmaceuticals, Inc., a Delaware corporation with a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 (the "Corporation").

RECITALS

A. WHEREAS, the Corporation desires to sell shares of common stock, par value $.001 per share, of the Corporation (which class of shares is referred to herein as "Common Stock") to Purchaser, and Purchaser desires to purchase these shares, upon the terms and conditions herein specified; and

B. WHEREAS, Purchaser is willing to subject the Stock (as defined herein) to the restrictions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. Issuance and Acquisition of Stock.

(a) Immediately after the execution of this Agreement by the parties, the Corporation shall issue to the Purchaser, and the Purchaser shall acquire from the Corporation, the number of shares of Common Stock listed beside the Purchaser's name on the signature hereto (the "Stock") for the total purchase price listed below the Purchaser's name on the signature page hereto (the "Purchase Price").

(b) Upon the execution of this Agreement, the Purchaser shall make payment for the Stock by delivering to the Corporation a check payable to the Corporation in the amount of the Purchase Price. Within ninety days after the execution of this Agreement by the parties and receipt by the Corporation of the Purchase Price, the Corporation shall deliver to the Purchaser a certificate or certificates evidencing the Stock, registered in the name of the Purchaser and concurrently therewith.

2. Violation Of Transfer Provisions. The Corporation shall not be required (i) to transfer on its books any shares of Stock which shall have been sold, transferred, assigned or pledged in violation of any of the provisions of this Agreement or (ii) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so sold, transferred, assigned or pledged.

3. Rights as Shareholder. Except as otherwise provided herein, the Purchaser shall, during the term of this Agreement, exercise all rights and privileges of a shareholder of the Corporation with respect to the Stock.

4. Securities Laws. The Purchaser represents and warrants to and covenants with the Corporation as follows:

(a) The Stock will be acquired by the Purchaser with the Purchaser's own funds for investment purposes and for the Purchaser's own account, not as a nominee or agent for any other person, firm or corporation, and not with a view to the sale or distribution of all or any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the Stock. The Purchaser does not have any contract, undertaking, agreement or arrangement with any person, firm or corporation to sell, transfer or grant any participation to any person, firm or corporation with respect to any or all of the Stock.

(b) The Purchaser understands that the Stock will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and that the Stock is being issued and sold to the Purchaser based upon an exemption from registration predicated in part on the accuracy and completeness of the Purchaser's representations and warranties appearing herein.

(c) The Purchaser agrees that in no event will the Purchaser sell, transfer, assign or pledge all or any part of the Stock or any interest therein, unless and until (i) the Purchaser shall have notified the Corporation of the proposed disposition and shall have furnished the Corporation with a statement of the circumstances surrounding the proposed disposition, and (ii) the Purchaser shall have furnished the Corporation with an opinion of counsel satisfactory in form and content to the Corporation to the effect that (A) such disposition will not require registration of the Stock under the Securities Act or compliance with applicable state securities laws, or (B) appropriate action necessary for compliance with the Securities Act and applicable state securities laws has been taken, or (iii) the Corporation shall have waived, expressly and in writing, its right under clauses (i) and (ii) of this subsection, and (iv) the proposed transferee of the Stock shall have provided the Corporation with a written agreement or undertaking by which such transferee agrees to be bound by all terms, conditions

and limitations of this Agreement applicable to such transferee's transferor as if such transferee were a party hereto. The requirement of subparagraph (iv) shall not apply to any transfer (A) pursuant to an offering registered under the Securities Act, (B) pursuant to Rule 144 under the Securities Act or (C) effected in a market transaction otherwise exempt from registration under the Securities Act.

(d) The Purchaser is able to fend for itself in connection with the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Corporation, as the ability to bear the economic risks of its investment for an indefinite period of time and can afford a complete loss of its investment, has had the opportunity prior to the Purchaser's purchase of the Stock to ask questions of and receive answers from representatives of the Corporation concerning the finances, operations and business of the Corporation. The Purchaser is not relying upon any statement, promise or assurance of any investor in the Corporation (or any representative of any such investor) in arriving at the Purchaser's decision to purchase the Stock, and has not otherwise been induced to purchase the Stock by any such investor (or any representative of any such investor), and the Purchaser has decided to purchase the Stock based upon the Purchaser's own analysis of the merits and risks of investing in the Corporation without the intervention or assistance of any other person, firm or corporation.

(e) The Purchaser understands and acknowledges that the Purchaser will not be permitted to sell, transfer, assign or pledge the Stock until it is registered under the Securities Act or an exemption from the registration and prospectus delivery requirements of the Securities Act is available to the Purchaser, and that there is no assurance that such an exemption from registration will ever be available or that the Purchaser will ever be able to sell any of the Stock.

(f) All certificates representing the Stock and, until such time as the Stock is sold in an offering which is registered under the Securities Act or the Corporation shall have received an opinion of counsel satisfactory in form and content to the Corporation that such registration is not required in connection with a resale (or subsequent resale) of the Stock, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

(i) THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED FOR SALE, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE ENCUMBERED OR DISPOSED OF (A "TRANS-

FER") UNLESS SUCH TRANSFER COMPLIES WITH THE PROVISIONS OF A SUBSCRIPTION AGREEMENT BETWEEN THE REGISTERED HOLDER AND THE CORPORATION (THE "AGREEMENT") (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND WHICH WILL BE FURNISHED BY THE CORPORATION TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE). THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. ACCORDINGLY, NO TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE AGREEMENT AND (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AMENDMENT THERETO UNDER THE ACT OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND UNDER ANY APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

(ii) Any legend required to be placed thereon by any applicable state securities law.

(iii) A legend to the effect that such shares of stock are subject to a Stock Subscription Agreement between the Purchaser and the Corporation that limits the transferability of the shares under certain conditions and applies to any transferee of such shares.

(g) The Corporation shall not be obligated to transfer any of the Stock if counsel for the Corporation determines that any applicable registration requirement under the Securities Act or any other applicable requirement of federal or state law has not been met.

5. General Provisions.

(a) No Assignments. The Purchaser shall not transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the Corporation, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

MicroBio Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to the Purchaser, to the address set forth on the signature page of this Agreement.

The address of a party, for the purposes of this Section 6(b)(ii), may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Standoff Agreement. The Purchaser agrees that, in connection with each underwritten public offering registered under the Securities Act of shares of Common Stock or other equity securities of the Corporation by or on behalf of the Corporation, the Purchaser shall not sell or transfer, or offer to sell or transfer, any shares of Common Stock or other equity securities of the Corporation for such period as the managing underwriter of such offering determines is necessary to effect the underwritten public offering.

(d) Choice of Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Successors. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

(g) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(h) Modification, Amendment and Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

(i) Further Assurances. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(j) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(k) Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(l) Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others whenever and wherever the context so requires. Additionally, unless the context requires otherwise, "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, or caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

TRIAD PHARMACEUTICALS, INC.

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer
Title: President and Chief Executive Officer

PURCHASER:

By: /s/ E. J. Myrianthopoulos

Name: Evan Myrianthopoulos

Address: c/o Paramount Capital Investments, LLC
375 Park Avenue, Suite 1501
New York, N.Y. 10152

Tax#: _____

NUMBER OF SHARES
OF COMMON STOCK
SUBSCRIBED FOR: 247,000

PURCHASE PRICE: $247.00

STOCK SUBSCRIPTION AGREEMENT

THIS STOCK SUBSCRIPTION AGREEMENT ("Agreement") is entered into as of August 15, 1995, by and between the undersigned (the "Purchaser") and MicroBio Inc., a Delaware corporation with a place of business at 375 Park Avenue, Suite 1501, New York, New York 10152 (the "Corporation").

RECITALS

A. WHEREAS, the Corporation desires to sell shares of common stock, par value $.001 per share, of the Corporation (which class of shares is referred to herein as "Common Stock") to Purchaser, and Purchaser desires to purchase these shares, upon the terms and conditions herein specified; and

B. WHEREAS, Purchaser is willing to subject the Stock (as defined herein) to the restrictions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the parties hereby agree as follows:

1. Issuance and Acquisition of Stock.

(a) Immediately after the execution of this Agreement by the parties, the Corporation shall issue to the Purchaser, and the Purchaser shall acquire from the Corporation, the number of shares of Common Stock listed beside the Purchaser's name on the signature hereto (the "Stock") for the total purchase price listed below the Purchaser's name on the signature page hereto (the "Purchase Price").

(b) Upon the execution of this Agreement, the Purchaser shall make payment for the Stock by delivering to the Corporation a check payable to the Corporation in the amount of the Purchase Price. Within ninety days after the execution of this Agreement by the parties and receipt by the Corporation of the Purchase Price, the Corporation shall deliver to the Purchaser a certificate or certificates evidencing the Stock, registered in the name of the Purchaser and concurrently therewith.

2. Violation Of Transfer Provisions. The Corporation shall not be required (i) to transfer on its books any shares of Stock which shall have been sold, transferred, assigned or pledged in violation of any of the provisions of this Agreement or (ii) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so sold, transferred, assigned or pledged.

3. Rights as Shareholder. Except as otherwise provided herein, the Purchaser shall, during the term of this Agreement, exercise all rights and privileges of a shareholder of the Corporation with respect to the Stock.

4. Securities Laws. The Purchaser represents and warrants to and covenants with the Corporation as follows:

(a) The Stock will be acquired by the Purchaser with the Purchaser's own funds for investment purposes and for the Purchaser's own account, not as a nominee or agent for any other person, firm or corporation, and not with a view to the sale or distribution of all or any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing, any or all of the Stock. The Purchaser does not have any contract, undertaking, agreement or arrangement with any person, firm or corporation to sell, transfer or grant any participation to any person, firm or corporation with respect to any or all of the Stock.

(b) The Purchaser understands that the Stock will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), and that the Stock is being issued and sold to the Purchaser based upon an exemption from registration predicated in part on the accuracy and completeness of the Purchaser's representations and warranties appearing herein.

(c) The Purchaser agrees that in no event will the Purchaser sell, transfer, assign or pledge all or any part of the Stock or any interest therein, unless and until (i) the Purchaser shall have notified the Corporation of the proposed disposition and shall have furnished the Corporation with a statement of the circumstances surrounding the proposed disposition, and (ii) the Purchaser shall have furnished the Corporation with an opinion of counsel satisfactory in form and content to the Corporation to the effect that (A) such disposition will not require registration of the Stock under the Securities Act or compliance with applicable state securities laws, or (B) appropriate action necessary for compliance with the Securities Act and applicable state securities laws has been taken, or (iii) the Corporation shall have waived, expressly and in writing, its right under clauses (i) and (ii) of this subsection, and (iv) the proposed transferee of the Stock shall have provided the Corporation with a written agreement or undertaking by which such transferee agrees to be bound by all terms, conditions

and limitations of this Agreement applicable to such transferee's transferor as if such transferee were a party hereto. The requirement of subparagraph (iv) shall not apply to any transfer (A) pursuant to an offering registered under the Securities Act, (B) pursuant to Rule 144 under the Securities Act or (C) effected in a market transaction otherwise exempt from registration under the Securities Act.

(d) The Purchaser is able to fend for itself in connection with the transactions contemplated by this Agreement, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Corporation, as the ability to bear the economic risks of its investment for an indefinite period of time and can afford a complete loss of its investment, has had the opportunity prior to the Purchaser's purchase of the Stock to ask questions of and receive answers from representatives of the Corporation concerning the finances, operations and business of the Corporation. The Purchaser is not relying upon any statement, promise or assurance of any investor in the Corporation (or any representative of any such investor) in arriving at the Purchaser's decision to purchase the Stock, and has not otherwise been induced to purchase the Stock by any such investor (or any representative of any such investor), and the Purchaser has decided to purchase the Stock based upon the Purchaser's own analysis of the merits and risks of investing in the Corporation without the intervention or assistance of any other person, firm or corporation.

(e) The Purchaser understands and acknowledges that the Purchaser will not be permitted to sell, transfer, assign or pledge the Stock until it is registered under the Securities Act or an exemption from the registration and prospectus delivery requirements of the Securities Act is available to the Purchaser, and that there is no assurance that such an exemption from registration will ever be available or that the Purchaser will ever be able to sell any of the Stock.

(f) All certificates representing the Stock and, until such time as the Stock is sold in an offering which is registered under the Securities Act or the Corporation shall have received an opinion of counsel satisfactory in form and content to the Corporation that such registration is not required in connection with a resale (or subsequent resale) of the Stock, all certificates issued in transfer thereof or substitution therefor, shall, where applicable, have endorsed thereon the following (or substantially equivalent) legends:

(i) THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE OFFERED FOR SALE, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE ENCUMBERED OR DISPOSED OF (A "TRANS-

FER") UNLESS SUCH TRANSFER COMPLIES WITH THE PROVISIONS OF A SUBSCRIPTION AGREEMENT BETWEEN THE REGISTERED HOLDER AND THE CORPORATION (THE "AGREEMENT") (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND WHICH WILL BE FURNISHED BY THE CORPORATION TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE). THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. ACCORDINGLY, NO TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE AGREEMENT AND (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AMENDMENT THERETO UNDER THE ACT OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND UNDER ANY APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

(ii) Any legend required to be placed thereon by any applicable state securities law.

(iii) A legend to the effect that such shares of stock are subject to a Stock Subscription Agreement between the Purchaser and the Corporation that limits the transferability of the shares under certain conditions and applies to any transferee of such shares.

(g) The Corporation shall not be obligated to transfer any of the Stock if counsel for the Corporation determines that any applicable registration requirement under the Securities Act or any other applicable requirement of federal or state law has not been met.

5. General Provisions.

(a) No Assignments. The Purchaser shall not transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement without the prior written consent of the Corporation, and any attempt to so transfer, assign or encumber shall be void.

(b) Notices. All notices and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficiently given (i) if personally delivered, (ii) if sent by telex or facsimile, provided that "answer-back" confirmation is received by the sender or (iii) upon receipt, if sent by registered or certified mail, postage paid return receipt requested in any case addressed as follows:

(i) If to the Corporation, to

MicroBio Inc.
375 Park Avenue
Suite 1501
New York, New York 10152
Attn: Steve H. Kanzer, Esq.

(ii) If to the Purchaser, to the address set forth on the signature page of this Agreement.

The address of a party, for the purposes of this Section 6(b)(ii), may be changed by giving written notice to the other party of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the addresses as provided herein shall be deemed to continue in effect for all purposes hereunder.

(c) Standoff Agreement. The Purchaser agrees that, in connection with each underwritten public offering registered under the Securities Act of shares of Common Stock or other equity securities of the Corporation by or on behalf of the Corporation, the Purchaser shall not sell or transfer, or offer to sell or transfer, any shares of Common Stock or other equity securities of the Corporation for such period as the managing underwriter of such offering determines is necessary to effect the underwritten public offering.

(d) Choice of Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws (without giving effect to the conflicts of law principles) of the State of Delaware.

(e) Severability. The parties hereto agree that the terms and provisions in this Agreement are reasonable and shall be binding and enforceable in accordance with the terms hereof and, in any event, that the terms and provisions of this Agreement shall be enforced to the fullest extent permissible under law. In the event that any term or provision of this Agreement shall for any reason be adjudged to be unenforceable or invalid, then such unenforceable or invalid term or provision shall not affect the enforceability or validity of the remaining terms and provisions of this Agreement, and the parties hereto hereby agree to replace such unenforceable or invalid term or provision with an enforceable and valid arrangement which, in its economic effect, shall be as close as possible to the unenforceable or invalid term or provision.

(f) Successors. All references in this Agreement to the Corporation shall include any and all successors in interest to the Corporation whether by merger, consolidation, sale of all or substantially all assets or otherwise, and this Agreement shall inure to the benefit of the successors and assigns of the Corporation and, subject to the terms herein set forth, shall be binding upon the Purchaser, its successors and permitted assigns.

(g) Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(h) Modification, Amendment and Waiver. No modification, amendment or waiver of any provision of this Agreement shall be effective against the Corporation unless the same shall be in a written instrument signed by an officer of the Corporation on its behalf and such instrument is approved by its Board of Directors. The failure at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

(i) Further Assurances. The parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

(j) Integration. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

(k) Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

(l) Gender and Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural, shall be deemed to include the others whenever and wherever the context so requires. Additionally, unless the context requires otherwise, "or" is not exclusive.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, or caused this Agreement to be duly executed by their respective officers, partners or other representatives, thereunto duly authorized, all as of the day and year first above written.

MICROBIO INC.

By: /s/ Steve H. Kanzer

Name: Steve H. Kanzer
Title: President and Chief Executive Officer

PURCHASER:

By: /s/ E. J. Myrianthopoulos

Name: Evan Myrianthopoulos

Address: 5 Mill Pond Lane
Lattingtown, NY 11560

Tax#: ###-##-####

NUMBER OF SHARES
OF COMMON STOCK
SUBSCRIBED FOR: 3,000

PURCHASE PRICE: $3.00

LICENSE AGREEMENT

This License Agreement (hereinafter referred to as the "License Agreement"), effective as of the 25th day of November, 1997 is made by and between Bar-Ilan Research and Development Company Ltd., a company duly organized and existing under the laws of the State of Israel and having a principal place of business at Bar-Ilan University, P0 Box 1530, Ramat Gan 52115, Israel ("BAR-ILAN"), and Ansan Pharmaceuticals, Inc., a corporation duly organized and existing under the laws of the State of Delaware and having a principal place of business at 400 Oyster Point Boulevard, Suite 435, South San Francisco, California 94080, USA ("ANSAN").

WHEREAS, BAR-ILAN is entering this License Agreement on its own behalf, and as representative and trustee for Bar-Ilan University (the "University") and MOR-Research Applications Ltd. ("MOR"), and represents that it has been authorized by the University and MOR to make the representations and undertakings contained herein; and

WHEREAS, BAR-ILAN has the right to grant licenses under the Patent Rights (as later defined) and whereas ANSAN desires to obtain a license upon the terms and conditions hereinafter set forth; and

WHEREAS, ANSAN has represented to BAR-ILAN, to induce BAR-ILAN to enter into this License Agreement, that it shall commit itself to a thorough, vigorous and diligent program of exploiting the Patent Rights and know-how of BAR-ILAN, so that public utilization shall result therefrom; and

WHEREAS, BAR-ILAN and ANSAN have entered into a previous license agreement, effective as of the 31st day of October, 1992; and

WHEREAS, BAR-ILAN and ANSAN mutually agree to terminate that previous license agreement and replace it with this new License Agreement and a parallel license agreement between BAR-ILAN and Titan Pharmaceuticals, Inc., a corporation duly organized and existing under the laws of the State of Delaware and having a principal place of business at 400 Oyster Point Boulevard, Suite 505, South San Francisco, California 94080, USA ("TITAN").

NOW, THEREFORE, it is agreed as follows:

ARTICLE I - DEFINITIONS

For the purposes of this License Agreement, the following words and phrases shall have the following meanings:

1.1. "AFFILIATE" shall mean any company or entity, the voting control of which is at least fifty percent (50%), directly or indirectly, owned or controlled by ANSAN or which, directly or indirectly, owns or controls at least fifty percent (50%) of ANSAN or which is under common control with ANSAN. "AFFILIATE" shall also mean any entity in fact effectively controlled by or under common control with ANSAN.

1.2. "Patent Rights" shall mean:

1.2.1. Israeli Patent Applications Nos. 83389 and 87072, filed July 30, 1987 and July 11, 1988, respectively; and any applications claiming priority or benefit directly or indirectly from either or both of them, including any continuations, continuations-in-part, and divisionals thereof; and any patents issuing from any of the foregoing, including any reissues, reexaminations, and extensions thereof; as set forth in Appendix I, Paragraph 1 (the "Basic Patents"); and

1.2.2. US Patent Application No. 08/206,690, filed March 7, 1994; and any applications claiming priority or benefit directly or indirectly therefrom, including any continuations, continuations-in-part, and divisionals thereof; and any patents issuing from any of the foregoing; including any reissues, reexaminations, and extensions thereof; as set forth in Appendix I, Paragraph 2 (the "Hemoglobinopathies Patents").

1.3. "Licensed Product(s)" shall mean:

1.3.1. Any product which is covered in whole or in part by a valid and unexpired claim contained in the Patent Rights in the country in which the product is made, used, leased, or sold;

1.3.2. Any product which is manufactured by using a process which is covered in whole or in part by a valid and unexpired claim contained in the Patent Rights in the country in which the process is used;

1.3.3. Any product which is used according to a method which is covered in whole or in part by a valid and unexpired claim contained in the Patent Rights in the country in which the method is used.

1.4. "Licensed Process(es)" shall mean any process or method, which is covered, in whole or in part, by a valid and unexpired claim contained in the Patent Rights in the country in which the process or method is used.

1.5. "ANSAN Field" shall mean: (a) with respect to butylidene dibutyrate (sometimes referred to as "AN-10"), all indications and routes of administration except non-topical applications for oncologic disorders; and (b) with respect to all other products within the Patent Rights, (i) the treatment of (beta)-hemoglobinopathies ((beta)-globin disorders) and (ii) topical applications other than oncologic disorders. The term "oncologic disorders" shall not include chemotherapy- or radiotherapy-induced alopecia.

1.6. "Net Sales" shall mean ANSAN's or an AFFILIATE's billings for Licensed Products and Licensed Processes, less the sum of the following:

(a) discounts allowed in amounts customary in the trade;

(b) sales, tariffs, duties, and/or use taxes directly imposed on and with reference to particular sales;

(c) outbound transportation prepaid or allowed;

(d) amounts allowed or credited on returns; and

(e) bad debt deductions actually written off during the period.

No deductions shall be made for commissions paid to individuals whether they be independent sales agencies or regularly employed by ANSAN or an AFFILIATE and on their

payroll. Licensed Products and Licensed Processes shall be considered "sold" when billed out or invoiced.

ARTICLE 2 - GRANT

2.1. BAR-ILAN hereby grants to ANSAN a worldwide license to practice under the Patent Rights, and to make, have made, use, lease, and/or sell the Licensed Products in the ANSAN Field and to practice the Licensed Processes in the ANSAN Field, said license being perpetual unless sooner terminated as hereinafter provided and subject to the payment of royalties as hereinafter provided, and said license to include the right to sublicense in the ANSAN Field and to be exclusive to ANSAN in the ANSAN Field.

2.2. ANSAN agrees that any sublicenses granted by it shall provide for the same obligations as those obligations imposed only by this License Agreement.

2.3. ANSAN agrees to forward to BAR-ILAN annually a copy of such reports received from any sublicensee as may be pertinent to an accounting of royalties, as well as copies of all sublicense agreements entered into by ANSAN in connection with the Patent Rights.

ARTICLE 3 - DUE DILIGENCE

3.1. ANSAN shall use its reasonable best efforts to bring Licensed Products or Licensed Processes to market through a thorough, vigorous and diligent program for exploitation of the Patent Rights and continue active, diligent marketing efforts for Licensed Products or Licensed Processes throughout the life of this Agreement.

3.2. ANSAN shall endeavor to use the Rabin Medical Center in Petach-Tikva, Israel, as one of the sites to conduct human clinical trials of the Licensed Products provided that US Food and Drug Administration ("FDA") protocols and standards can be achieved and the cost per patient is competitive with the United States.

ARTICLE 4 - ROYALTIES

4.1. For the rights, privileges, and license granted hereunder, ANSAN shall pay to BAR-ILAN, as set forth below, either (i) until the expiration of the last applicable patent within the Patent Rights on any Licensed Product or Licensed Process in the country in which such Licensed Process is used or such Licensed Product is made, used, leased, or sold, after which time ANSAN's license shall become fully paid-up and perpetual in such country, or (ii) or until this License Agreement shall be terminated as hereinafter provided:

4.1.1. In each calendar year, a royalty in an amount equal to [***] percent [***]% of Net Sales of the Licensed Products or Licensed Processes leased or sold, by ANSAN or an AFFILIATE.

4.1.2. In each calendar year, a royalty in an amount equal to [***]% percent [***]% of the royalties, fees, or any other lump sum received by ANSAN or an AFFILIATE from its sublicensees for the use, lease, or sale of Licensed Products and Licensed Processes. ANSAN shall not sell or sublicense the use, lease, sale, or other disposition of Licensed Products or Licensed Processes to an AFFILIATE of ANSAN without obtaining the prior written consent of BAR-ILAN, which consent shall not unreasonably be withheld.

4.2. No multiple royalties shall be payable because use, lease, or sale of any Licensed Product or Licensed Process is, or shall be, covered by more than one valid and unexpired claim contained in the Patent Rights.

4.3. Royalty payments shall be paid in United States Dollars in New York or at such other place as BAR-ILAN may reasonably designate consistent with the laws and regulations controlling in any foreign country. Any withholding taxes which ANSAN or any sublicensee shall be required by law to withhold on remittance of the royalty payments shall be deducted from the royalty paid to BAR-ILAN. ANSAN shall furnish BAR-ILAN the original copies of all official receipts for such taxes. If a currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made using the exchange rate prevailing at

[***] - confidential treatment requested.

Citibank, NA in New York on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

4.4. In all cases, the price utilized to determine Net Sales employed in the computation of royalties shall be a genuine and objective selling price which would otherwise be established in a bona fide arm's length transaction between unrelated and independent parties which have no affiliation or other interest which might affect such genuine and objective selling price. ANSAN covenants not to engage in manipulative transfer pricing, distribution of Licensed Products which are not commercially reasonable, or any other means to avoid the intended application of this Article 4. In the event Licensed Products are used or otherwise disposed of by ANSAN to an AFFILIATE or any other party at a price which is less than a genuine and objective selling price, as described herein, the price utilized to determine Net Sales employed in the computation of royalties shall be the prevailing price of the identical type of Licensed Products sold or leased by ANSAN to independent and unrelated third parties. In the event that ANSAN shall not have customarily sold or leased the identical type of Licensed Products to independent and unrelated third parties then the price employed in the computation of royalties shall be set at [***]% of the full cost of production, including all direct costs and full overhead, for such Licensed Products sold.

4.5. In addition to any royalties payable under Paragraph 4.1, if ANSAN, or an AFFILIATE or sublicensee of ANSAN, receives approval from the US FDA to market a Licensed Product in the ANSAN Field (as those terms are used in this License Agreement) before TITAN, or an AFFILIATE or sublicensee of TITAN, receives approval from the US FDA to market a Licensed Product in the TITAN Field (as those terms are used in the License Agreement between BAR-ILAN and TITAN), then ANSAN shall pay to BAR-ILAN four additional payments of $[***]% each: the first within 90 days of receiving the approval, the second within 180 days of receiving the approval, the third within 270 days of receiving the approval, and the fourth within 360 days of receiving the approval.

[***] - confidential treatment requested.

ARTICLE 5 - REPORTS AND RECORDS

5.1. ANSAN shall keep full, true and accurate books of account containing all particulars that may be necessary to the purpose of showing the amount payable to BAR-ILAN by way of royalty as aforesaid. Said books of account shall be kept at ANSAN's principal place of business. Said books and the supporting data shall be open upon reasonable notice to ANSAN and no more than twice per calendar year, for five (5) years following the end of the calendar year to which they pertain, for inspection by the BAR-ILAN Internal Audit Division and/or by an independent certified public accountant employed by BAR-ILAN, to which ANSAN has no reasonable objection, for the purpose of verifying ANSAN's royalty statement or compliance in other respects with this License Agreement.

5.2. ANSAN, within sixty (60) days after the end each quarter of each calendar year, shall deliver to BAR-ILAN true and accurate reports, giving such particulars of the business conducted by ANSAN during the preceding quarter under this License Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

(a) All Licensed Products and Licensed Processes used, leased, or sold by or for ANSAN, its AFFILIATES and sublicensees.

(b) Total amounts invoiced for Licensed Products and Licensed Processes used, leased, or sold by or for ANSAN, its AFFILIATES and sublicensees.

(c) Deductions applicable in computed "Net Sales" as defined in Paragraph 1.6.

(d) Total royalties due based on Net Sales by or for ANSAN, its AFFILIATES and sublicensees.

(e) Names and addresses of all AFFILIATES and sublicensees of ANSAN.

(f) On an annual basis, ANSAN's Annual Report

5.3. With each such report submitted, ANSAN shall pay to BAR-ILAN the royalties due and payable under this License Agreement. If no royalties (other than any minimum royalty pursuant to Paragraph 14.1) shall be due, ANSAN shall so report.

ARTICLE 6 - PATENT PROSECUTION

6.1. ANSAN, at its own expense and utilizing patent counsel of its choice selected in consultation with BAR-ILAN, shall have the sole right and obligation for the filing, prosecution, and maintenance of the Hemoglobinopathies Patents. ANSAN, or its patent counsel, shall provide BAR-ILAN with copies of all correspondence and documents filed with, or received from, any patent office or patent agent. In addition, ANSAN agrees that any and all official or "ribbon" copies of issued patents shall be forwarded to, and retained by, BAR-ILAN.

6.2. BAR-ILAN, at its own expense and utilizing patent counsel of its choice selected in consultation with ANSAN, shall have the sole right and responsibility for the filing, prosecution, and maintenance of the Basic Patents. BAR-ILAN may delegate this responsibility to a licensee of the Basic Patents; and it is contemplated that BAR-ILAN will delegate this responsibility to TITAN. BAR-ILAN agrees for the benefit of ANSAN that it shall not, nor shall it permit any licensee to whom it may delegate this responsibility, to take any action in regard to prosecution of the Basic Patents (including by reexamination, reissue, or the like) that could result in any diminution of rights with respect to any claims covering rights within the ANSAN Field, in particular, to any composition of matter claims relating to butylidene dibutyrate, except with the consent of ANSAN.

ARTICLE 7 - TERMINATION

7.1. If ANSAN shall become bankrupt or insolvent, shall file a petition in bankruptcy, or if the business of ANSAN shall be placed in the hands of a receiver, assignee, or trustee for the benefit of creditors, whether by the voluntary act of ANSAN or otherwise, this License Agreement shall automatically terminate.

7.2. Should ANSAN fail in its payment to BAR-ILAN of royalties due in accordance with the terms of this License Agreement which are not the subject of a bona fide dispute between BAR-ILAN and ANSAN, BAR-ILAN shall have the right to serve notice upon ANSAN, by certified mail to the address designated in Article 13 hereof, of its intention to terminate this License Agreement within sixty (60) days after receipt of said notice of termination unless

ANSAN shall pay to BAR-ILAN, within the sixty (60) day period, all such royalties due and payable. Upon the expiration of the sixty (60) day period, if ANSAN shall not have paid all such royalties due and payable, the rights, privileges and license granted hereunder shall thereupon immediately terminate.

7.3. Upon any material breach or default of this License Agreement (including without limitation, the failure to submit annual reports as provided under Paragraph 5.2) by ANSAN, other than those occurrences set out in Paragraphs 7.1 and 7.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Paragraph 7.3, BAR-ILAN shall have the right to terminate this License Agreement and the rights, privileges and license granted hereunder by ninety (90) days' notice to ANSAN by certified mail to the address designated in Article 13 hereof. Such termination shall become effective unless ANSAN shall have cured any such breach or default capable of being cured prior to the expiration of the ninety (90) day per from receipt of the notice of termination.

7.4. ANSAN shall have the right to terminate this License Agreement at any time on nine (9) months notice by certified mail to BAR-ILAN.

7.5. Upon termination of this License Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination. ANSAN and/or any sublicensee thereof may, however, after the effective date of such termination, sell all Licensed Products, and complete Licensed Products in the process of manufacture at the time of such termination, and sell the same, provided that ANSAN shall pay to BAR-ILAN the royalties therein as required by Article 4 of this License Agreement and shall submit the reports required by Article 5 hereof on the sales of Licensed Products.

7.6. Upon the termination of this License Agreement, ANSAN shall (except to the extent necessary to complete the manufacture and sale of Products permitted under Paragraph 7.5 above): (i) return to BAR-ILAN any materials still in its possession provided to it by BAR-ILAN pursuant to this License Agreement; (ii) maintain the confidentiality of all proprietary, non-public information provided to it by BAR-ILAN; and (iii) not use the Licensed Products or other

information disclosed pursuant to this License Agreement in any way in connection with its business.

7.7. Upon the termination of this License Agreement for whatever reason, existing sublicense agreements pertaining to Licensed Products entered into by ANSAN pursuant to this License Agreement shall at BAR-ILAN's option be assigned. upon such termination, from ANSAN to BAR-ILAN or to BAR-ILAN's designee.

ARTICLE 8 - ARBITRATION

8.1. Except as to issues relating to the validity, enforceability, or infringement of any patent contained in the Patent Rights licensed hereunder, any and all claims, disputes, or controversies arising under, out of, or in connection with this License Agreement, which have not been resolved by good faith negotiations between the parties, shall be resolved by final and binding arbitration to be held in Tel Aviv under the rules of the American Arbitration Association then in effect. The arbitrators shall have no power to add to, subtract from, or modify any of the terms or conditions of this License Agreement. Any award rendered in such arbitration may be enforced by either party in any court having jurisdiction.

8.2. Any claim, dispute, or controversy concerning the validity, enforceability, or infringement of any patent contained in the Patent Rights licensed hereunder shall be. resolved in any court having jurisdiction thereof. In the event ANSAN institutes a proceeding to contest the validity or enforceability of the Patent Rights, all royalties owed by ANSAN under Article 4 of this License Agreement shall continue to be paid by ANSAN until such proceeding is resolved, after appeals if any.

8.3. In the event that, in any arbitration proceeding, any issue shall arise concerning the validity, enforceability, or infringement of any patent contained in the Patent Rights licensed hereunder, the arbitrators shall, to the extent possible, resolve all issues other than validity, enforceability, and infringement; in any event, the arbitrators shall not delay the arbitration proceeding for the purpose of obtaining or permitting either party to obtain judicial resolution of such issues, unless an order staying the arbitration proceeding shall be entered by a court of

competent jurisdiction. Neither party shall raise any issue concerning the validity, enforceability, or infringement of any patent contained in the Patent Rights licensed hereunder in any proceeding to enforce any arbitration award hereunder, or in any proceeding otherwise arising out of any such arbitration award.

ARTICLE 9 - INFRINGEMENT AND OTHER ACTIONS

9.1. ANSAN and BAR-ILAN shall promptly provide written notice to the other party of any alleged infringement by a third party of the Patent Rights within the ANSAN Field and provide such other party with any available evidence of such infringement.

9.2. During the term of this Agreement, ANSAN shall have the right, but not the obligation, to prosecute and/or defend, at its own expense and utilizing counsel of its choice, any infringement of and/or challenge to the Patent Rights within the ANSAN Field. In furtherance of such right, BAR-ILAN hereby agrees that ANSAN may join BAR-ILAN as a party in any such suit, without expense to BAR-ILAN. No settlement, consent judgment, or other voluntary final disposition of any such suit may be entered into without the consent of BAR-ILAN, which consent shall not unreasonably be withheld. ANSAN shall indemnity BAR-ILAN against any order for costs that may be made against BAR-ILAN in any such suit.

9.3. Any recovery of damages by ANSAN in any such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of ANSAN relating to the suit. The balance remaining from any such recovery shall be treated as royalties received by ANSAN from sublicensees and shared by BAR-ILAN and ANSAN in accordance with Paragraph 4.1.2 hereof

9.4. If within six (6) months after receiving notice of any alleged infringement within the ANSAN Field, ANSAN shall have been unsuccessful in persuading the alleged infringer to desist, or shall not have brought and shall not be diligently prosecuting an infringement action, or if ANSAN shall notify BAR-ILAN, at any time prior thereto, of its intention not to bring suit against the alleged infringer, then, and in those events only, BAR-ILAN shall have the right, but not the obligation, to prosecute, at its own expense and utilizing counsel of its choice, any infringement of the Patent Rights within the ANSAN Field, and BAR-ILAN may, for such

purposes, join ANSAN as a party plaintiff The total cost of any such infringement action commenced solely by BAR-ILAN shall be borne by BAR-ILAN and BAR-ILAN shall keep any recovery or damages for past infringement derived therefrom.

9.5. In any suit to enforce and/or defend the Patent Rights pursuant to this License Agreement, the party not in control of such suit shall, at the request and expense of the controlling party, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

9.6. BAR-ILAN and ANSAN agree for the benefit of TITAN that, before either of them shall commence or respond to a suit to enforce and/or defend the Patent Rights, they shall consult with TITAN in good faith to the extent legally permissible to ensure that no action shall jeopardize the legitimate interests of TITAN in the Patent Rights. ANSAN further agrees that it will cooperate in good faith with TITAN to establish an agreement for shared responsibility and/or cost of enforcement and/or defense to the extent that such enforcement and/or defense implicates both the TITAN Field and the ANSAN Field.

ARTICLE 10 - PRODUCT LIABILITY

10.1. BAR-ILAN, by this License Agreement, makes no representation as to the patentability and/or breadth of the inventions contained in the Patent Rights. BAR-ILAN, by this License Agreement, makes no representation as to patents now held or which will be held by others in the field of the Licensed Products for a particular purpose.

10.2. ANSAN agrees to defend, indemnify, and hold BAR-ILAN, the University and MOR harmless from and against all liability, demands, damages, expense, or losses for death, personal injury, illness, or property damage arising (a) out of the use by ANSAN or its transferees of inventions licensed or information furnished under this License Agreement, or (b) out of any use, sale, or other disposition by ANSAN or its transferees of products made by use of such inventions or information. As used in this clause, BAR-ILAN includes the Trustees, Officers,

Agents, Employees and Students of BAR-ILAN, the University, and MOR, and ANSAN includes its AFFILIATES, Contractors and Sub-contractors.

ARTICLE 11 - ASSIGNMENT

ANSAN may assign or otherwise transfer this License Agreement and the license granted hereunder, and the rights acquired by it hereunder so long as such assignment or transfer shall be accompanied by a sale or other transfer of ANSAN's entire business or of that part of ANSAN's business to which the license granted hereunder relates. ANSAN shall give BAR-ILAN thirty (30) days prior written notice within which to reasonably object to such assignment or transfer. If within thirty (30) days after the giving of such notice, no written objection is received by ANSAN, BAR-ILAN shall be deemed to have approved such assignment or transfer; provided, however, BAR-ILAN shall not be deemed to have approved such assignment and transfer unless such assignee or transferee shall have agreed in writing to be bound by the terms and conditions of this License Agreement. If, within such thirty (30) day period, BAR-ILAN provides written notice of reasonable objection to such assignment or transfer, then no such assignment or transfer shall be made and, if made, shall be deemed null and void. Upon such assignment or transfer and agreement by such assignee or transferee, the term ANSAN as used herein shall mean such assignee or transferee. If ANSAN shall sell or otherwise transfer its entire business or that part of its business to which the license granted hereby relates and the transferee shall not have agreed in writing to be bound by the terms and conditions of this License Agreement, or new terms and conditions shall not have been reasonably agreed upon within sixty (60) days of such sale or transfer, BAR-ILAN shall have the right to terminate this License Agreement.

ARTICLE 12 - NON-USE OF NAMES

ANSAN shall not use the name of BAR-ILAN or MOR or any adaptation thereof in any advertising, promotional, or sales literature without prior written consent obtained from BAR-ILAN, in each case, except that ANSAN may state that it is licensed by BAR-ILAN under one or more of the patents and/or applications comprising the Patent Rights.

ARTICLE 13 - PAYMENTS, NOTICES AND OTHER COMMUNICATIONS

Any payment, notice, or other communication pursuant to this License Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of BAR-ILAN:

Bar-Ilan Research & Development Company Ltd.
Bar-Ilan University
P0 Box 1530
Ramat Gan 52115
Israel

In the case of ANSAN:

Ansan Pharmaceuticals, Inc.
400 Oyster Point Boulevard, Suite 435
South San Francisco, California 94080
USA

ARTICLE 14 - THE TITAN LICENSE AGREEMENT

14.1. Upon the termination of the License Agreement between BAR-ILAN and TITAN for any reason, BAR-ILAN shall have the right, in its sole discretion, to require ANSAN to assume all rights and obligations of TITAN under that License Agreement, including in particular the obligation to make minimum royalty payments to BAR-ILAN under Paragraph 4.1.3. and the right and obligation for the filing, prosecution, and maintenance of the Basic Patents. BAR-ILAN may exercise that right by notice to ANSAN in accordance with Article 13 of this License Agreement. If BAR-ILAN does require ANSAN to accept all rights and obligations of TITAN under the terminated License Agreement between BAR-ILAN and TITAN, then that License Agreement shall be deemed to have been made between BAR-ILAN and ANSAN as of the date of such notice.

14.2. Upon the termination of the License Agreement between BAR-ILAN and TITAN for any reason, BAR-ILAN may, in its sole discretion, offer to ANSAN the right and obligation, at its own expense and utilizing patent counsel of its choice selected in consultation with

BAR-ILAN, for the filing, prosecution, and maintenance of the Basic Patents. If ANSAN accepts, ANSAN, or its patent counsel, shall provide BAR-ILAN with copies of all correspondence and documents filed with, or received from, any patent office or patent agent. In addition, ANSAN agrees that any and all official or "ribbon" copies of issued patents shall be forwarded to, and retained by, BAR-ILAN. Offer by BAR-ILAN and acceptance by ANSAN of the right to file, prosecute, and maintain the Basic Patents under this Paragraph 14.2 shall not constitute any grant or license by BAR-ILAN to ANSAN of any other rights under the License Agreement between BAR-ILAN and TITAN, including any rights to the Licensed Products or Licensed Processes which are within the TITAN Field.

ARTICLE 15 - EFFECTIVENESS

This License Agreement shall become effective and binding on the parties hereto upon the closing of the Agreement and Plan of Reorganization dated July 16, 1997 by and between ANSAN and Discovery Laboratories, Inc.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

16.1. This License Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Israel, except that questions affecting the validity, enforceability, or infringement of any patent contained in the Patent Rights shall be determined by the law of the country in which the patent was granted.

16.2. The parties hereto acknowledge that this License Agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

16.3. The provisions of this License Agreement are severable, and in the event that any provision of this License Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof

16.4. ANSAN agrees to mark the Licensed Products sold in the United States with all applicable United States patent numbers. All Licensed Products shipped to, or sold in, other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.

16.5. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this License Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement, in duplicate, by proper persons thereunto duly authorized.

BAR-ILAN	ANSAN
By: /s/ [Illegible]	By: /s/ V. H. J. Shalson
Name: [Illegible]	Name: V. H. J. SHALSON
Title: Managing Director	Title: PRESIDENT AND CEO
Date: 13-11-97	Date: NOVEMBER 24, 1997

APPENDIX I

1. The "Basic Patents"

Country	Application No.	Filing Date	Patent No.	Issue Date

[***]

[***] - confidential treatment requested.

2. The "Hemoglobinopathies Patents"

Country	Application No.	Filing Date	Patent No.	Issue Date

[***] - confidential treatment requested.

STANDARD FORM OF OFFICE LEASE
The Real Estate Board of New York, Inc. 3/1/86

Agreement of Lease, made as of the 29th day of May 1997, between 509 MADISON AVENUE ASSOCIATES, a California limited partnership having an address c/o Newmark & Company Real Estate, Inc., 125 Park Avenue, New York, New York 10017 party of the first part, hereinafter referred to as OWNER or landlord, and DISCOVERY LABORATORIES, INC., a Delaware corporation having an address at 787 Seventh Avenue, New York, New York 10019 party of the second part, hereinafter referred to as TENANT.

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner space on the fourteenth (14th) floor (as shown on the floor plan annexed hereto as Exhibit A and made a part hereof and also known as Suite 1406 in the building know as 509 Madison Avenue in the Borough of Manhattan, City of New York, for the term of three (3) years and sixteen (16) days (or until such term shall sooner cease and expire as hereinafter provided) to commence on the fifteenth (15th) day of June nineteen hundred and ninety-seven, and to end on the thirtieth (30th) day of June two thousand both dates inclusive, at an annual rental rate set forth in Article 37 hereof which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first _____ monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment or rent payable hereunder and the same shall be payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent

1. Tenant shall pay the rent as above and as hereinafter provided.

Occupancy

2. Tenant shall use and occupy demised premises for general and executive offices and for no other purpose.

Tenant Alterations:

3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner. Tenant shall, before making any alterations, additions, installations or improvement, at its expense, obtain all permits, approvals, and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicate of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and subcontractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or material furnished to, Tenant whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days thereafter, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's right thereto and to have them removed by the Tenant, in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately, and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed, by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense.

Maintenance and Repairs:

4. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein. Tenant shall be responsible for all damage or injury to the demised premises or any other part of the building and the systems and equipment thereof, whether requiring

structural or non-structural repairs caused by or resulting from carelessness, omission, neglect or improper conduct of Tenant, Tenant's subtenants, agents, employees, invitees or licensees, or which arise out of any work, labor, service or equipment done for or supplied to Tenant or any subtenant or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant. Tenant shall also repair all damage to the building and the demised premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the demised premises for which Tenant is responsible, using only the contractor for the trade or trades in question, selected from a list of at least two contractors per trade submitted by Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible shall be performed by Owner at the Tenant's expense. Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portions of its demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such systems presently exists) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the premises for which Owner may be responsible hereunder. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any setoff or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

Window Cleaning:

5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire Insurance, Floor Loads:

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters, Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, whether or not arising out of Tenant's use or manner of use thereof, including Tenant's permitted uses or, with respect to the building if arising out of Tenant's

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STANDARD FORM OF OFFICE LEASE

The Real Estate Board of New York, Inc. 3/1/86

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Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner space on the fourteenth (14th) floor (as shown on the floor plan annexed hereto as Exhibit A and made a part hereof and also known as Suite 1406 in the building know as 509 Madison Avenue in the Borough of Manhattan, City of New York, for the term of three (3) years and sixteen (16) days (or until such term shall sooner cease and expire as hereinafter provided) to commence on the fifteenth (15th) day of June nineteen hundred and ninety-seven, and to end on the thirtieth (30th) day of June two thousand both dates inclusive, at an annual rental rate set forth in Article 37 hereof which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first _____ monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment or rent payable hereunder and the same shall be payable hereunder and the same shall be payable to Owner as additional rent.

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Maintenance and Repairs:

4. Tenant shall, throughout the term of this lease, take good care of the

demised premises and the fixtures and appurtenances therein. Tenant shall be responsible for all damage or injury to the demised premises or any other part of the building and the systems and equipment thereof, whether requiring structural or non-structural repairs caused by or resulting from carelessness, omission, neglect or improper conduct of Tenant, Tenant's subtenants, agents, employees, invitees or licensees, or which arise out of any work, labor, service or equipment done for or supplied to Tenant or any subtenant or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant. Tenant shall also repair all damage to the building and the demised premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the demised premises for which Tenant is responsible, using only the contractor for the trade or trades in question, selected from a list of at least two contractors per trade submitted by Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible shall be performed by Owner at the Tenant's expense. Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portions of its demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such systems presently exists) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the premises for which Owner may be responsible hereunder. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any setoff or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

Window Cleaning:

5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire Insurance, Floor Loads:

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters, Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, whether or not arising out of Tenant's use or manner of use thereof, including Tenant's permitted uses or, with respect to the building if arising out of Tenant's

use or manner of use of the premises or the building (including the use permitted under the lease). Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to Owner's satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorney's fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Owner, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense or constitute a default under the lease or mortgage under which Owner may be obligated, or cause the demised premises or any part thereof to be condemned or vacated. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Owner to any liability or responsibility to any person or for property damage. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fees, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article and if by reason of such failure the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's judgment, to absorb and prevent vibration, noise and annoyance.

Subordination:

7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute promptly any certificate that Owner may request.

Property--Loss, Damage, Reimbursement, Indemnity:

8. Owner or its agent shall not be liable for any damage to any property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefore nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty:

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall gave immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially

unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant' salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by Law, Owner and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasor's insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefitting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain:

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in the event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award.

Assignment, Mortgage, Etc.:

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant shall be deemed as assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current:

12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER* attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installations and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no way make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Premises:

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time and at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to the demised premises or to any other portion of the building or which Owner may elect to perform. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided they are concealed within the walls, floor, or ceiling. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or other wise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the

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* Rider to be added if necessary

same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom. Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder.

Vault, Vault Space, Area:

14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy:

15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

Bankruptcy:

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Owner by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease,or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the reletting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default:

17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises becomes vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under ss. 235 of Title 11 of the U.S. Code (bankruptcy code); or if Tenant shall fail to move into or take possession of the premises within fifteen (15) days after the commencement of the term of this lease, then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completed, cured or remedied within the said five (5)

day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written three (3) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

2. If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption:

18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owners's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or convenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency of any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. 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 dispossessed for any cause, or in the event of Owner obtaining possession of demised premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease, or otherwise.

Fees and Expenses:

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorney's fees, in instituting, prosecuting or defending any action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

Building Alterations and Management:

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways,

corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenants making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations by Owner:

21. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which

it is erected or the demised premises, the rents, leases, expense of operation or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was to taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in which or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is ought.

End of Term:

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair and as provided elsewhere in this lease excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment:

23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession:

24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession) until the Owner shall have given Tenant written notice that the premises are substantially ready for Tenant's occupancy. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except as to the covenant to pay rent. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver:

25. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earlier stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed as accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed as acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury:

26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the

relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4.

Inability to Perform:

27. This Lease and the obligation of Tenant is pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

Bills and Notices:

28. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Services Provided by Owners

29. As long as Tenant is not in default under any of the covenants of this lease, Owners shall provide: (a) necessary elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m. and have one elevator subject to call at all other times; (b) heat to the demised premises when and as required by law, on business days from 8 a.m. to 6 p.m., and on Saturdays from 8 a.m. to 1 p.m.; (c) water for ordinary lavatory purposes, but if Tenant uses or consumes water for any other purposes or in unusual quantities (of which fact Owner shall be the sole judge), Owner may install a water meter at Tenant's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered; (d) cleaning service for the demised premises on business days at Owner's expense provided that the same are kept in order by Tenant. If, however, said premises are to be kept clean by Tenant, it shall be done at Tenant's sole expense, in a manner satisfactory to Owner and no one other than persons approved by Owner shall be permitted to enter said premises or the building of which they are a part for such purpose. Tenant shall pay Owner the cost of removal of any of Tenant's refuse and rubbish from the building; (e) if the demised premises is serviced by Owner's air conditioning/cooling and ventilating system, air conditioning/cooling will be furnished to Tenant from May 15th through September 30th on business days (Mondays through Fridays, holidays excepted) from 8:00 a.m. to 6:00 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/cooling is being furnished as aforesaid. If Tenant requires air conditioning/cooling or ventilation for more extended hours or on Saturdays, Sundays, or on holidays, as defined under Owner's contract with Operating Engineers Local 94-94A, Owner will furnish the same at Tenant's expense. RIDER to be added in respect to rates and conditions for such additional service*; (f) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning, power systems or cleaning or other services, if any, when necessary by reason of accident or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Owner for as long as may be reasonably required by reason thereof. If the building of which the demised premises are a part supplies manually-operated elevator service, Owner at any time may substitute automatic-control elevator services and upon ten days' written notice to Tenant, proceed with alterations necessary therefor without in any wise affecting this lease or the obligation of Tenant hereunder. The same shall be done with a minimum of inconvenience to Tenant and Owner shall pursue the alteration with due diligence.

Captions:

30. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions:

31. The term "office," or "offices," wherever used in this lease, shall not be construed to mean premises used as a store or stores, for the sale or display, at any time, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purposes or for manufacturing. The term "Owner" means a landlord or lessor, and as used in this lease means only the owner, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or

of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement, between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 29 hereof), Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

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* Rider to be added if necessary

Adjacent Excavation--Blasting:

32. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

Rules and Regulations:

33. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violations of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Security:

34. Tenant has deposited with Owner the sum of $14,916.00* as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expand by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency occurred before or after summary proceedings or after re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendor or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel Certificate

35. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Executors and Assigns

36. The covenants, conditions and agreements contained in this lease shall bind and insure to the benefit of Owner and Tenant and their respective heirs, distributors, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

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* Space to be filled in or deleted.

See Rider and Exhibit A attached hereto and made a part hereof.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Landlord:
509 MADISON AVENUE ASSOCIATES
By: Kensico Management, Inc.
Managing General Partner

Witness for Owner:

By: /s/ Alan Zimmerman

- ---------- ----------
Name:

Tenant:
DISCOVERY LABORATORIES, INC.
Witness for Tenant:
By: /s/ James S. Kuo, M.D.
- ---------- ----------
James S. Kuo, M.D., President and Chief Executive Officer

ACKNOWLEDGMENTS

CORPORATE OWNER
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came to me known, who being by me duly sworn, did depose and say that he resides

in ;
that he is the of
the corporation described in and which executed the foregoing instrument, as OWNER; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL OWNER
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known and known to me to be the individual
described in and who, as OWNER, executed the foregoing instrument and
acknowledged to me that he executed the same.

CORPORATE TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known, who being by me duly sworn, did depose and say that he resides

in ;
that he is the of
the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known and known to me to be the individual
described in and who, as TENANT, executed the foregoing instrument and
acknowledged to me that he executed the same.

RIDER ANNEXED TO AND FORMING A PART OF LEASE DATED AS OF THE 29 DAY OF MAY, 1997, BETWEEN 509 MADISON AVENUE ASSOCIATES, AS LANDLORD, AND DISCOVERY LABORATORIES, INC., AS TENANT, AFFECTING SPACE ON THE FOURTEENTH (14TH) FLOOR AT 509 MADISON AVENUE, NEW YORK. NEW YORK

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37. Base Rent, The annual base rent, payable in equal monthly installments, shall be as follows: Eighty Nine Thousand Four Hundred Ninety Six and 00/100 ($89,496.00) Dollars for the period commencing on the Rent Commencement Date (as hereinafter defined) and ending twelve (12) months following the Rent Commencement Date; Ninety One Thousand Nine Hundred Thirty Six and 80/100 ($91,936.80) Dollars for the period commencing thirteen (13) months following the Rent Commencement Date and ending twenty four (24) months following the Rent Commencement Date; and Ninety Four Thousand Four Hundred Fifty and 82/100 ($94,450.82) Dollars for the period commencing twenty five (25) months following the Rent Commencement Date and ending thirty six (36) months following the Rent Commencement Date (herein sometimes called "Base Rent").

38. Rent Commencement Date. Tenant's obligation to pay Base Rent shall commence on June 15, 1997 (the "Rent Commencement Date")

The initial installment of Base Rent paid upon the execution hereof shall be applied as in this Article provided. If the Rent Commencement Date is not the first day of a calendar month, the next monthly installment of Base Rent due hereunder shall be prorated to the end of the calendar month next following the month in which said Rent Commencement Date occurred, so that subsequent monthly installments of Base Rent will be due on the first days of calendar months throughout the term of this lease, except that the last monthly installment will be similarly prorated.

Within ten (10) days of request by either party after the Rent Commencement Date has been determined, Landlord and Tenant shall mutually execute and deliver a supplemental agreement confirming and setting forth the Rent Commencement Date.

39. Condition of Demised Premises. Tenant acknowledges and represents to Landlord that it has thoroughly inspected and examined, or caused to be thoroughly inspected and examined, the demised premises and that it is fully familiar with the physical condition and state of repair thereof, and Tenant does hereby agree to accept same in its existing condition and state of repair, subject to any and all defects therein, latent or otherwise, "AS IS", and Landlord shall have no obligation to do any work or make any installation, repair or alteration of any kind to or in respect thereof, other than as expressly set forth in this lease.

40. Maintenance of Demised Premises. Unless expressly provided in this lease to the contrary, Landlord shall not be responsible for the upkeep or maintenance of the demised premises or any installation therein. In no event shall Landlord be responsible for any installation made by Tenant.

Should Landlord hereafter agree, in writing or otherwise, at the request of Tenant or otherwise, to do any work in or in respect of the demised premises, the same shall be paid for by Tenant not later than ten (10) days after being billed therefor, at a rate and sum equal to the cost to Landlord of any such work plus 15% of such cost. Any sum or charge (except Base Rent) required to be paid by Tenant under this or any Article of this lease is and shall be deemed to be additional rent under this lease, and, if same is not paid as in this lease provided

Landlord shall have the same rights, remedies and privileges in respect of such non-payment as if Base Rent were not paid.

41. Assignment-Sublet. Article 11 hereof is hereby amended to add the following:

"Provided this lease is then in full force and effect and Tenant is not in default thereunder:

"If Tenant desires to assign or sublet all or any portion of the demised premises, Tenant shall promptly notify Landlord and its leasing or managing agent for the Building of its desire to assign this lease or sublet the demised premises. Upon obtaining a proposed assignee or sublessee upon terms satisfactory to Tenant, Tenant shall submit to Landlord in writing (a) the name of the proposed assignee or subtenant; (b) the terms and conditions of the proposed assignment or subletting; and (c) the nature and character of the business of the proposed assignee or subtenant and any other information reasonably requested by Landlord.

"Landlord shall have the following options which may be exercised within sixty (60) days from any notice or submission by Tenant to Landlord pursuant to the last sentence of the preceding paragraph.

(a) If Tenant desires to sublet all or substantially all of the demised premises or to assign this lease, then within sixty (60) days after receipt of the aforesaid notice Landlord may notify Tenant that Landlord elects (i) to cancel this lease, in which event such cancellation shall become effective on the date proposed by Tenant for such subletting or assignment and this lease shall thereupon terminate on said date with the same force and effect as if said date were the expiration date of this lease, or (ii) require Tenant to assign this lease to Landlord effective on the date proposed by Tenant for such subletting or assignment.

(b) If Tenant desires to sublet less than all of the demised premises, then within sixty (60) days after receipt of the aforesaid notice Landlord may notify Tenant that Landlord elects (i) to cancel this lease only as to the portion of the demised premises Tenant proposes to sublet, to take effect as of the proposed effective date of such subletting or (ii) to require Tenant to sublease to Landlord as subtenant of Tenant, the portion of the demised premises that Tenant proposes to sublet for the term, and from the commencement date of the proposed subletting. The annual rent and additional rent which Landlord shall pay to Tenant pursuant to such sublease to Landlord shall be a pro rata apportionment of the annual and additional rent payable hereunder and it is hereby expressly agreed that such sublease to Landlord shall be upon all the covenants, agreements, terms, provisions and conditions contained in this lease except for such thereof which are inapplicable and such sublease shall give Landlord the unqualified and unrestricted right without Tenant's permission to assign such sublease or any interest therein and/or to sublet the space covered by such sublease or any part or parts of such space and to make or cause to have made or permit to be made any and all changes, alterations, decorations, additions, and improvements in the space covered by such sublease, and that such may be removed, in whole or part, at Landlord's option, prior to or upon the expiration or other termination of such sublease provided that any damage or injury caused by such removal shall be repaired. Such sublease to Landlord shall also provide that the parties to such sublease expressly negate any intention that any estate

created under such sublease be merged with any other estate held by either of said parties.

"In the event of the exercise of said option under subparagraph (b) of this Article, the Base Rent and all other charges payable hereunder shall be apportioned on a pro rata basis. In the event that Landlord fails to exercise its options under subparagraphs (a) or (b) of this Article within said sixty (60) day period, Landlord will not unreasonably withhold its consent to the proposed assignment or subletting which was under consideration during such sixty (60) day period, except that Landlord shall not be required to consent to and no assignment or subletting shall be proposed by Tenant with any person, firm or entity that shall, at the time of such proposal, or within six (6) months prior thereto, be or have been a tenant, subtenant or occupant of space at the Building or be or have been negotiating with Landlord or its agent to become a tenant, subtenant or occupant of space thereat, nor that shall be in a business not in keeping with the standards and character of the Building, nor that in the reasonable judgment of Landlord is not financially responsible, nor that shall be a government or governmental agency, department or affiliate thereof, nor that shall in any way be dependent upon government or donation financing for support.

"As further conditions precedent to granting consent to any proposed assignment or subletting, Landlord may require that: Tenant first agree, in a written agreement satisfactory to Landlord's counsel (which agreement shall be secured by a collateral assignment of any such sublease, if applicable and/or such other security as Landlord may require) to pay monthly to Landlord, as additional rent hereunder, an amount equal to all rent and/or other consideration payable by any such assignee or sublessee to Tenant to the extent that such rent and/or other consideration exceeds, on a pro rata basis, a sum, amount or rate in excess of the Base Rent (and additional rent) at the time payable hereunder by Tenant per square rentable foot so affected by any such assignment or sublease; and the proposed assignment or sublease and the documentation therefor shall be otherwise reasonably acceptable to Landlord. (In calculating additional rent that may be due Landlord under the preceding sentence, (i) Tenant shall be credited with actual reasonable costs paid by it in connection with culminating such assignment or subletting, averaged over the remaining term in respect of such assignment or subletting, and (ii) rent or consideration payable by any assignee or sublessee to Tenant shall include, without limitation, sums payable to Tenant for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property, less, in the case of the sale thereof, the then fair market value thereof.) In connection with any such proposed assignment or subletting, Tenant and such proposed assignee or sublessee shall also provide Landlord with such other information as it may reasonably request, including (but not limited to) a certification in affidavit form of all rental and other consideration proposed to be paid in connection with the proposed assignment or subletting. If Tenant shall at any time claim that Landlord unreasonably withheld its consent to a proposed assignment or subletting, that question shall be submitted to arbitration and if Tenant prevails Landlord's sole obligation or liability shall be to so consent thereto. Any and all costs related to separating the demised premises to accommodate a subletting or a partial termination of this lease resulting from Tenant's seeking to enter into a partial subletting, including all construction costs related to modifying the demised premises, shall be borne and paid for solely by Tenant. If Tenant is a corporation, a sale, transfer, pledge or encumbrance of a majority of the stock of Tenant or, if Tenant is a partnership, any sale, assignment, transfer, pledge or other disposition of a controlling interest in such partnership, shall,

subject to the provisions of this Article and Article 11 hereof; provided, however, that no sale, transfer, pledge or encumbrance of a majority of the Tenant's stock shall be deemed an assignment if in a merger or consolidation of the Tenant, the surviving corporation, partnership, buyer, assignee or transferee (the "Surviving Company") will have immediately thereafter a net worth equal to or greater than the net worth of the Tenant immediately prior to such consolidation, merger, sale, lease, assignment, transfer or other disposition and the Surviving Company shall have executed and delivered to the Landlord an agreement, in form and substance reasonably satisfactory to the Landlord, containing an assumption by the Surviving Company of the due and punctual performance and observance of each covenant and condition of the lease.

"If Landlord shall grant its consent to the proposed assignment of this lease or subletting of the demised premises, such consent and the effectiveness of any such assignment or subletting shall nevertheless be conditioned upon Tenant complying with the following conditions:

(a) An executed duplicate original in form satisfactory to Landlord for review by Landlord's counsel of such subleasing or assignment agreement shall be delivered to Landlord at least five (5) business days prior to the effective date thereof.

(b) In the event of any assignment, Tenant will deliver to Landlord at least five (5) business days prior to the effective date thereof an assumption agreement wherein the assignee (except Landlord) agrees to assume all of the terms, covenants and conditions of this lease to be performed by Tenant hereunder and which provides that Tenant named herein and such assignee shall after the effective date of such assignment be jointly and severally liable for the performance of all of the terms, covenants and conditions of this lease.

(c) Each sublease of the demised premises shall contain or shall be deemed to contain, whether or not specifically included therein, the following provisions:

(i) 'In the event of a default under any underlying lease of all or any portion of the premises demised hereby which results in the termination of such lease, or if the lessor under any such underlying lease shall exercise any right to cancel or terminate such underlying lease, the subtenant hereunder shall, at the option of the lessor under any such lease, attorn to and recognize such lessor as Landlord hereunder and shall, promptly upon such lessor's request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition. The subtenant hereunder hereby waives all rights under present or future law to elect, by reason of the termination of such underlying lease, to terminate such sublease or surrender possession of the premises demised hereby. If the lessor under such underlying lease does not exercise the aforesaid option, the term of this sublease shall terminate simultaneously with the term of the underlying lease and subtenant hereby agrees to vacate the premises subleased on or before the effective date of termination of the underlying lease.'

(ii) 'This sublease may not be assigned or the sublet premises further sublet, in whole or in part, without the prior written consent of the lessor under any underlying lease of all or any portion of the premises demised hereby.'

"If this lease is assigned and Landlord consents to such assignment, Tenant covenants and agrees that the terms, covenants and conditions of this lease may be changed, altered or modified in any manner whatsoever by Landlord and the assignee without the prior written consent of Tenant and that no such change, alteration or modification shall release Tenant from the performance by it of any of the terms, covenants and conditions on its part to be performed under this lease. Any such change, alteration or modification which would have the effect of increasing or enlarging Tenant's obligations or liabilities under this lease shall not, to the extent only of such increases or enlargement, be binding upon Tenant.

"Tenant covenants that notwithstanding any subletting or assignment to Landlord or to any other subtenant or assignee and/or acceptance of rent or additional rent by Landlord from any subtenant or assignee, Tenant shall and will remain fully liable for the payment of the annual rent and additional rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this lease on the part of the Tenant to be performed.

"The consent by Landlord to any assignment, subletting, or occupancy shall not in any wise be construed to relieve Tenant from obtaining the express consent, in writing, of Landlord to any further assignment, subletting, sub-subletting, or occupancy, which consent Landlord shall have the right to withhold for any reason whatsoever.

"If Landlord shall decline to grant its consent to the proposed assignment of this lease or subletting of the demised premises, or if Landlord shall exercise any of its options under subparagraph (a) or (b) of this Article, or if Landlord shall grant its consent to the proposed assignment of this lease or subletting of the demised premises, Tenant shall indemnify and save Landlord harmless of, from and against any and all claims (and all expenses and fees, including attorneys' fees, related thereto) for commissions or compensation made by any broker or entity, arising out of or relating to the proposed assignment or subletting.

"In any event, Tenant agrees not to advertise or in any manner to list the demised premises, or any part thereof, for rent or assignment or subletting without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld in the case of a proposed advertisement which does not identify the exact Building address. Any consent granted by Landlord pursuant hereto shall not, in any event, otherwise alter or modify the other provisions of this lease related to assignments or sublettings by Tenant."

Except as specifically set forth in this Article, nothing in this Article is intended to modify the provisions of Article 11 of this lease.

42. Rent Escalations.

(A) For the purposes of this Article, the following quoted words, terms or phrases shall have the meaning in this subdivision (A) ascribed to them:

(1) "Lease Year" shall mean the period of twelve (12) months or less commencing with the commencement date of the term of this lease and ending on the following December 31st, and each successive period of twelve (12) months thereafter during the term, and the final period of twelve (12) months or less commencing with January 1st immediately preceding the expiration of the term;

(2) "Base Tax Year" shall mean the fiscal year ending June 30, 1998;

(3) "Building" shall mean the building in which the demised premises are located and the land upon which such building is situated;

(4) "Tenant's Percentage" shall mean 1.95%.

(B) (1) In the event that the real estate taxes payable with respect to the Building for any fiscal tax year (July 1 through June 30), or any portion thereof, subsequent to the Base Tax Year (the "Tax Escalation Year") shall be greater than the amount of such taxes due and payable during the Base Tax Year, whether by reason of an increase in either the tax rate or the assessed valuation, or both, or by reason of the levy, assessment or imposition of any tax on real estate as such, ordinary or extraordinary, not now levied, assessed or imposed, or for any other reason, Tenant shall pay and does covenant to pay to Landlord, within ten (10) days of Landlord's rendering to Tenant a statement therefor, as additional rent for the Tax Escalation Year in which such date occurs, an amount equal to Tenant's Percentage of the increase in the amount of such tax or installment over the corresponding tax or installment for the Base Tax Year. Tenant shall also pay and does covenant to pay to Landlord, within ten (10) days of Landlord's rendering to Tenant a statement therefor, as additional rent for the Tax Escalation Year in which such date occurs, an amount equal to Tenant's Percentage of any assessment or installment thereof for public betterments or improvements which may be levied upon or in respect of the Building. Landlord may take the benefit of the provisions of any statute or ordinance permitting any such assessment to be paid over a period of time and in such event Tenant shall be obligated to pay only Tenant's Percentage of the installments of any such assessments which shall become due and payable during the term of this lease. Upon request, Landlord shall furnish Tenant with a copy of the real estate tax bill for any Tax Escalation Year in which Tenant is hereunder required to pay additional rent. If at any time during the term of this lease the method(s) of taxation prevailing at the date of execution hereof shall be altered so that in lieu of or as an addition to or as a substitution for the whole or any part of the taxes, assessments, levies or impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed an alternative, additional or new tax or fee, same shall be considered "real estate taxes" for the purposes hereof and if in excess of the real estate taxes due and payable during the Base Tax Year, Tenant shall pay Tenant's Percentage of such excess as herein provided. For the purposes of this subdivision (1), at Landlord's election, vault taxes or charges shall be considered real estate taxes.

(2) Notwithstanding anything in this subdivision (B) to the contrary, it is understood and agreed that if Landlord shall receive a refund of any portion of real estate taxes in respect of which Tenant shall have paid additional rental under this subdivision (B), then and under such circumstances and if this lease shall then be in full force and effect without default on the part of Tenant, Tenant shall be entitled to a credit against future payments of additional rental under this subdivision (B) in an amount equal to Tenant's Percentage of such refund, after first deducting from such total refund all fees, costs and expenses incurred by Landlord in collecting same. If at the expiration of the term of this lease any credit to which Tenant might be entitled pursuant to the preceding sentence shall not have been used as a credit as in such sentence provided, then and under such circumstances and subsequent to Tenant properly vacating the demised premises as herein provided and so long as Tenant is not and has not been otherwise in default hereunder,

Tenant shall be entitled to a payment equal to the amount of any such remaining credit. If the taxes for the Base Tax Year shall be reduced by certiorari proceedings or otherwise, Landlord shall be entitled to recalculate the additional rent in respect of any fiscal tax year after the Base Tax Year that would have been payable by Tenant hereunder in accordance with (1) of this subdivision (B) had such reduction occurred or been known at or prior to the time additional rent for any such fiscal tax year was being originally calculated, and Tenant agrees to pay any additional rent resulting from such recalculation.

(C) If the first or final Lease Year or a Tax Escalation Year shall contain less than twelve months, the additional rent payable under this Article for such Lease Years or a Tax Escalation Year shall be prorated (and in determining whether any additional rent is payable therefor, the Base Tax Year shall also be considered on a pro rata basis). Tenant's obligation hereunder to pay additional rent for any Lease Year or a Tax Escalation Year shall survive the expiration or termination of the term of this lease. In the event that the additional rent to be paid by Tenant under this Article for the final Lease Year has not then as yet been determined, Tenant covenants to pay to Landlord on the first day of the month next preceding the expiration of the term hereof, as additional rent and on account of the additional rent required to be paid pursuant to this Article for the final Lease Year, a sum equal to the additional rent paid or required to be paid by Tenant hereunder for the Lease Year next preceding the final Lease Year prorated to the extent that the final Lease Year is less than a full calendar year. Upon a determination being made by Landlord of the precise amount of additional rent required to be paid by Tenant pursuant to this Article for such final Lease Year, there shall be an adjustment of said additional rent for said Lease Year to the extent that Tenant shall be required to pay to Landlord promptly the sum by which said determination exceeds the prorated sum previously paid, or Landlord shall promptly refund to Tenant the sum by which said determination is less than the prorated sum previously paid. For the non-payment of any additional rent Landlord shall have the same remedies, rights and privileges that Landlord has for the non-payment of any Base Rent hereinbefore provided for. Receipt and acceptance by Landlord of any installment of Base Rent provided for under this lease or any of the additional rent that may be required to be paid by Tenant under this lease, shall not be or be deemed to be a waiver of any other additional rent or Base Rent then due and no delay in determining or billing the amount of any additional rent due pursuant to this Article shall be or be deemed to be a waiver of Landlord's rights thereto.

(D) (l) Commencing with the second Lease Year, it is agreed that Landlord shall be entitled to charge, receive and collect from Tenant and Tenant agrees to pay to Landlord on the first day of each month during each such Lease Year and each Lease Year thereafter an amount equal to 1/12th of 110% of the additional rent hereunder required to be paid by Tenant to Landlord for the preceding Lease Year (such preceding Lease Year's additional rent to be annualized for the purposes hereof, if such Lease Year was a period of less than twelve (12) months), it being further understood and agreed that if the precise amount of additional rent required to be paid by Tenant for such Lease Year shall ultimately be determined to be in excess of such amount theretofore paid by Tenant hereunder, Tenant shall forthwith pay to Landlord the amount of such excess, and if such determination shall be that Tenant paid more than the precise amount of additional rent required to be paid by Tenant for such Lease Year, the amount of such excess shall be credited to future payments of additional rent required to be paid by Tenant hereunder.

(2) Additionally, any time during any Lease Year that it becomes evident to Landlord that monthly payments under this subdivision (D) will be insufficient to satisfy Tenant's additional rental obligation under this Article for such Lease Year, Landlord, on notice to Tenant, may appropriately increase the monthly payments hereunder and Tenant agrees to pay same.

(E) In no event shall anything contained in this Article be deemed or construed to reduce the Base Rent or additional rent provided to be paid under any of the other terms and provisions of this lease.

43. Brokerage. Tenant represents, warrants and confirms to Landlord that Newmark & Company Real Estate, Inc. and Koll Real Estate Services Company (collectively, the "Brokers") are the sole and only brokers with whom it has dealt with respect to this lease or the demised premises. Tenant agrees to indemnify and save Landlord and the Brokers harmless of, from and against any and all claims (and all expenses and fees, including attorneys' fees, related thereto) for commissions or compensation made by any broker or entity (other than the Brokers), arising out of or relating to this lease, the demised premises, the Building and/or the acts of Tenant, its employees or agents. As, if and when this lease shall be mutually executed and delivered by Landlord and Tenant, Landlord agrees to pay the commission that may be due the Brokers in connection with this lease in accordance with separate agreements between Landlord and the Brokers.

44. Maintenance of Air-Conditioning Equipment. Notwithstanding anything contained herein to the contrary, Landlord agrees, at its sole expense, to maintain and keep in good order, condition and repair all air-conditioning equipment currently placed within or serving the demised premises. Anything contained in Article 29 hereof to the contrary notwithstanding, Tenant agrees to keep and cause to be kept closed (during any periods when air-conditioning is in use) all windows in the demised premises and at all times to cooperate fully with Landlord and otherwise to abide by all reasonable regulations and requirements which Landlord may prescribe to permit the proper functioning and protection of the heating and air-conditioning systems (if any) of the Building.

45. Electricity.

(1) As long as Tenant is not in default in the payment of any rent or the performance or observance of any covenants or provisions of this lease on Tenant's part to be observed or performed, but subject in any event to the other provisions of this Article, Landlord shall furnish the electric energy that Tenant shall reasonably require for ordinary reasonable use in the demised premises on a rent inclusion basis. That is, there shall be no charge to Tenant for such electric energy by way of measuring the same on any meter, such electric energy being included in Landlord's services which are covered by the Base Rent reserved hereunder. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electric energy furnished to the demised premises by reason of any requirement, act or omission of the public utility serving the Building with electricity or for any other reason whatsoever. Throughout the term of this lease, Landlord reserves the right to approve the electrical equipment which Tenant may desire to utilize in the demised premises and any additions, supplements or replacements thereof. Tenant shall furnish and maintain and install all lighting tubes, lamps, starters, bulbs and ballasts required in the demised premises, at Tenant's expense or, at Landlord's election, shall purchase the same from Landlord and shall pay Landlord's charges therefor on demand.

(2) Tenant's use of and/or demand for electric energy in the demised premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the demised premises. In order to insure that such capacity is not exceeded and to avoid possible adverse effect upon the electrical service of the Building, Tenant shall not, without Landlord's prior written consent in each instance, connect any additional fixtures, appliances or equipment (other than lamps, typewriters and other usual small business office machines having electric current requirements similar to electric typewriters and the electrical equipment that may have been initially approved by Landlord) to the electric distribution system of the Building or make any alteration or addition to the electric system of the demised premises. If Landlord grants such consent, all additional risers, feeders, or other conductors or equipment required therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant upon Landlord's demand. As a condition to granting such consent, Landlord may require Tenant to agree to an increase in the Base Rent by an amount which will reflect the then value to Tenant of the additional service to be furnished by Landlord, that is, the potential additional electric energy to be made available to Tenant based upon the estimated additional capacity of such additional risers, feeders, conductors or other equipment. If Landlord and Tenant cannot agree thereon, such amount shall be determined in accordance with the procedure set forth in Subdivision (3) of this Article. Pending the determination of such increase Landlord, if requested by Tenant, may make such additional electrical service available to Tenant provided Tenant agrees in writing to pay the increase in accordance with Landlord's initial determination while such dispute is being determined. When the amount of such increase is so determined, the parties shall execute an agreement supplementary to this lease in the form prepared by Landlord to reflect such increase in the amount of Base Rent and the amount as determined by the procedure set forth in said Subdivision (3), effective from the date such additional service is made available to Tenant, but such increase shall be effective from such date even if such supplementary agreement is not executed. Landlord may withhold its consent until a written agreement thereon is reached. Additionally, throughout the term of this lease, Landlord shall have the right and privilege, from time to time, to survey the plans and specifications for the demised premises and the actual installations made or utilized by Tenant therein in order to determine the nature of Tenant's equipment and installations and the value of the electrical service being or to be furnished to Tenant. It is agreed that on the date of execution of this lease there is included in Base Rent the sum of EIGHT THOUSAND ONE HUNDRED THIRTY SIX ($8,136.00) DOLLARS in respect of electrical service. Such estimate of the value of electrical service to Tenant shall be based upon total connected load, as well as the electrical service then necessary for the operation of all lighting and other electrical equipment in the demised premises. If any such survey shall result in a determination that the value to Tenant of the electrical service and/or demand being furnished is or should be above that then included therefor in the Base Rent hereunder, Landlord shall notify Tenant thereof and (unless Tenant objects thereto within ten (10) days of receipt of such notice -- in which event the amount of the increase in Base Rent shall be determined pursuant to the procedure set forth in Subdivision (3)) the Base Rent shall be appropriately increased on an annual basis from and as of the date of any such survey, or as of such earlier date as it may be determined that Tenant has been receiving such additional value. Upon request of Landlord, Tenant shall execute an

agreement supplementary to this lease confirming any increases in Base Rent pursuant hereto, but such increase shall become effective regardless of whether any such supplementary agreement is executed.

(3) Wherever in this Article it is provided that an amount or value shall be determined in accordance with the procedure set forth in Subdivision (3), it is intended that the following procedure shall be followed:

Landlord shall select a reputable independent electrical engineer or utility consultant at the equal expense of Landlord and Tenant to determine the amount or value. If Tenant disagrees with the findings of Landlord's engineer or utility consultant, Tenant, within ten (10) days after Landlord shall have delivered such findings to Tenant, shall have the right, at Tenant's expense, to select a reputable independent electrical engineer to determine the amount and such party shall make such determination within twenty (20) days after such selection. If Tenant's engineer disagrees with the findings of Landlord's representative, Landlord's representative and Tenant's engineer shall select a third reputable independent engineer or utility consultant, at Tenant's expense, to determine such amount and his determination shall be binding and conclusive upon Landlord and Tenant. If Landlord's representative and Tenant's engineer cannot agree upon the selection of a third engineer or utility consultant, the amount shall be determined by arbitration as provided for hereinafter. In all situations, however, pending the determination of such dispute, the Base Rent and increases thereof shall be payable in accordance with Landlord's initial determination.

(4) If at any time or times after the date of this lease the public utility rate schedule for the supply of electric current to the Building shall be increased for whatever reason during the term of this lease, or any charges, fuel adjustments or taxes are imposed upon Landlord in connection therewith or are increased, the Base Rent herein reserved shall be appropriately increased by the same percentage as the resulting increase in Landlord's cost of furnishing electric service to the demised premises. When the amounts of such adjustments are so determined, Landlord and Tenant shall execute an agreement supplementary hereto as prepared by Landlord to reflect such adjustments in the amount of the Base Rent, effective from the effective date of such increase in the public utility rate schedule; but such adjustment shall be effective from the effective date of the change in rates or imposition of or change in charges or taxes, as the case may be, whether or not such a supplementary agreement is executed.

(5) Landlord also reserves the right at any time and for any reason to discontinue furnishing electric energy to Tenant in the demised premises upon not less than thirty (30) days' notice to Tenant or upon such shorter notice as may be required by the public utility serving the Building. However, in the event of Tenant's default in payment of any rent due under the terms of this lease or otherwise, in addition to Landlord's other remedies by reason thereof, Landlord may, without notice, discontinue the service of electric energy to the demised premises for the duration of such default or the term hereof (as Landlord may elect), without releasing Tenant from any liability under this lease and without Landlord incurring any liability for any damage or loss sustained by Tenant by such discontinuance, this lease shall continue in full force and effect and shall be

unaffected thereby, and the same shall not be deemed to be a lessening or diminution of services within the meaning of any law, rule or regulation now or hereafter enacted, promulgated or issued, except only that, from and after the effective date of such discontinuance, Landlord shall not be obligated to furnish electric energy to Tenant and the Base Rent shall be reduced to exclude the amount included in the Base Rent in respect of electrical service, but in no event shall the Base Rent be reduced by more than EIGHT THOUSAND ONE HUNDRED THIRTY SIX ($8,136.00) DOLLARS or the amount then included in Base Rent on account of electricity. If Landlord so discontinues furnishing electric energy to Tenant, Tenant at Tenant's expense shall arrange to obtain electric energy directly from the public utility company furnishing electric service to the Building. Except in such circumstances where a discontinuance of the furnishing of electric energy results from or relates to a default by Tenant, such electric energy may be furnished to Tenant by means of the then existing Building system feeders, risers and wiring to the extent that the same are available, suitable and safe for such purposes. All meters and additional panel boards, feeders, risers, wiring and other conductors and equipment which may be required to obtain electric energy directly from such public utility company shall be installed and maintained by Tenant at its expense, provided, however, that Tenant shall make no alterations or additions to the electrical equipment and/or appliances without the prior written consent of Landlord in each instance. Landlord shall not in any wise be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric energy is changed or is no longer available or suitable for Tenant's requirements. Tenant shall be liable for all loss or damage sustained in connection with its supply of the electric energy.

(6) At no time shall Tenant's connected electrical load in the demised premises exceed four (4) watts per square foot. Tenant has reviewed the electrical capacity available to the demised premises and represents that it is satisfied therewith. For the purposes of this subdivision (6) only it is agreed that the demised premises contain 2,712 square feet.

(7) If any tax is imposed upon Landlord with respect to electrical energy furnished as a service to Tenant by any Federal, State or Municipal Authority, Tenant, unless prohibited by law or by any governmental authority having jurisdiction thereover, shall pay to Landlord, on demand, Tenant's pro rata share of such taxes.

(8) Tenant shall enter into such modifications of this lease as Landlord may from time to time request in connection with any requirement of any public utility or any requirement of law pertaining to electric energy service or charges therefor.

46. Landlord's Agent. Whenever Landlord is required or desires to send any notice or other communication to Tenant under or pursuant to this lease, it is understood and agreed that such notice or communication, if sent by Landlord's agent (of whose agency Landlord shall have advised Tenant), for all purposes shall be deemed to have been sent by Landlord. Landlord hereby advises Tenant that Landlord's current agent is Newmark & Company Real Estate, Inc. of 125 Park Avenue, New York, New York 10017.

Tenant agrees that all of the representations, warranties, waivers and indemnifications made in this lease by Tenant for the benefit of Landlord shall also be deemed to inure to and be for

the benefit of Landlord's agent, its officers, directors, employees and independent contractors.

47. Tenant's Certificate. At any time and from time to time within five (5) days after written demand therefor, Tenant shall execute, acknowledge and deliver to Landlord, without charge, a statement addressed to Landlord (and/or such other persons or parties as Landlord shall require), certifying that to the best knowledge of Tenant, this lease is in full force and effect and is unmodified (or, if there have been modifications, specifying same) and setting forth the dates to which the rentals and other charges payable hereunder have been paid and stating that Landlord is not in default in the performance of any of the covenants or agreements on its part to be performed hereunder (or, if that is not the case, specifying each particular in which the Tenant alleges that Landlord is in default) and certifying as to such other items in respect of this lease as Landlord may reasonably require.

48. Insurance and Indemnity. Landlord and Tenant, respectively, hereby each releases the other party (which term as used in this Article shall include such party's employees, agents, partners, officers, shareholders and directors) from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policies which the releasor carries with respect to the demised premises, or any interest or property therein or thereon (whether or not such insurance is required to be carried under this lease), but only to the extent that such loss is collectible under such insurance policies. Such release is also conditioned upon the inclusion in the applicable policy or policies of a provision whereby any such release shall not adversely affect said policies, or prejudice any right of the releasor to recover thereunder. Each party agrees that its insurance policies aforesaid will include such a provision so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party shall be willing to pay such extra cost. If extra cost shall be chargeable therefor, the holder of the policy shall advise the other party of the amount of the extra cost, and the other party at its election may pay the same, but shall not be obligated to do so.

Additionally, Tenant hereby covenants and agrees forever to indemnify and hold Landlord harmless from and against any and all claims, actions, judgments, damages, liabilities, losses or expenses, including attorneys' fees, in connection with damage to property or injury or death to persons, or any other matters, arising from or out of the use, alteration or occupation of the demised premises except on account of Landlord's negligence. In case Landlord shall be made a party to any litigation commenced against Tenant or others, then Tenant shall protect and hold Landlord forever harmless and shall pay all costs and expenses, including attorneys' fees, incurred or paid by Landlord in connection with such litigation. In furtherance of Tenant's obligations under this Article and this lease (but not in limitation thereof) Tenant covenants and agrees, at its sole cost and expense, to carry and maintain in force from and after the date of this lease and throughout the term hereof (i) workmen's compensation and other required statutory forms of insurance, in statutory limits, and (ii) comprehensive general public liability insurance, which shall be written on an occurrence basis, naming Tenant as the insured and naming Landlord and its agent and, if requested by Landlord, the lessor under any ground or underlying lease or others having an interest in the land and/or the Building of which the demised premises form a part, as additional insureds, in limits of not less than $3,000,000.00 for bodily and personal injury or death to any one person and not less than $3,000,000.00 for bodily and personal injury or death in any one occurrence, and for property damage of not less than $3,000,000.00 per occurrence, including water damage and

sprinkler leakage legal liability, protecting the aforementioned parties from all such claims for bodily or personal injury or death or property damage occurring in or about the demised premises and its appurtenances. All insurance required to be maintained by Tenant shall be carried with a company or companies acceptable to Landlord licensed to do business in the State of New York, shall be written for terms of not less than one year, and Tenant shall furnish Landlord (and any other parties required to be designated as additional insureds under any such policies) with certificates evidencing the maintenance of such insurance and the payment of the premiums therefor, and with renewals thereof and evidence of the payment of the premiums therefor at least thirty (30) days prior to the expiration of any such policy or policies. Such policy or policies shall also provide that it or they shall not be cancelled or materially altered without giving Landlord at least twenty (20) days' prior written notice thereof, sent to Landlord by registered mail at Landlord's address to which notices are required to be sent to Landlord hereunder. Upon Tenant's default in obtaining or delivering any such policy or policies or failure to pay the premiums therefor, Landlord (in addition to and not in limitation of its other rights, remedies and privileges by reason thereof) may (but shall not be obligated to) secure or pay the premium for any such policy or policies and charge Tenant as additional rent therefor an amount equal to 110% of Landlord's costs therefor.

49. Landlord's Liability. Notwithstanding anything herein or any rule of law or statute to the contrary, it is expressly understood and agreed that to the extent that Landlord shall at any time have any liability under, pursuant to or in connection with this lease, neither Tenant nor any officer, director, partner, associate, employee, agent, guest, licensee or invitee of Tenant (or any other party claiming through or on behalf of Tenant) shall seek to enforce any personal or money judgment against Landlord, but shall only pursue any such rights or remedies against Landlord's interest in the Building. In addition to and not in limitation of the foregoing provision of this Article it is agreed that, in no event and under no circumstances, shall Landlord or any partner, officer, employee, agent or principal (disclosed or undisclosed) of Landlord have any personal liability or monetary or other obligation of any kind under or pursuant to this lease. Any attempt by Tenant or any officer, director, partner of Tenant (or any other party claiming through or on behalf of Tenant) to seek to enforce any such personal liability or monetary or other obligation shall, in addition to and not in limitation of Landlord's other rights, powers, privileges and remedies under the terms and provisions of this lease or otherwise afforded by law in respect thereof, immediately vest Landlord with the unconditional right and option to cancel this lease on five (5) days' notice to Tenant.

50. Additional Re Article "7". Anything contained in Article "7" hereof to the contrary notwithstanding, Tenant covenants and agrees that, except as herein otherwise set forth, this lease shall not terminate upon the termination of any ground lease or underlying lease or mortgage at any time affecting the real property of which the demised premises forms a part or any such lease. If for any reason or cause whatsoever any such ground or underlying lease is terminated by summary dispossess proceedings or otherwise or if such ground or underlying lease is terminated through foreclosure proceedings brought by the holder of any mortgage to which such ground or underlying lease is subject and/or subordinate or otherwise, or if Landlord's fee title is foreclosed upon by the holder of any mortgage thereon, all without Tenant having been made a party in any such dispossess and/or foreclosure proceeding, Tenant shall attorn to the lessor under such ground or underlying lease or the purchaser in any such foreclosure proceeding, as the case may be, and this lease shall not be affected in any way whatsoever (except as herein otherwise expressly provided) by any such proceeding or

termination, and this lease shall continue in full force and effect in accordance with its terms; but if Tenant shall be named in any such dispossess and/or foreclosure proceeding, this lease and Tenant's estate shall be terminated thereby.

If such ground or underlying lease shall terminate or any such mortgage be foreclosed, and Tenant shall attorn to the lessor under such ground or underlying lease or the purchaser in any such foreclosure proceeding, such lessor or purchaser shall not be required to accept attornment by Tenant unless such attornment shall be pursuant to a written agreement required by such lessor or purchaser which, among other things, shall contain provisions to the effect that in no event shall such lessor or purchaser, as landlord, (a) be obligated to repair, replace or restore the Building or the demised premises in the event of damage or destruction, beyond such repair, replacement or restoration as can be reasonably accomplished from the net proceeds of insurance actually received by or made available to such landlord, (b) be responsible for any previous act or omission of the landlord or the tenant under such ground or underlying lease or for the return of any security deposit unless actually received by such landlord, (c) be subject to any liability or offset accruing to Tenant against Landlord, (d) be bound by any previous modification or extension of this lease unless previously consented to, or (e) be bound by any previous prepayment of more than one month's rent or other charge.

51. Additional Re Article "22". Article "22" hereof is hereby amended to add the following:

"If the demised premises are not surrendered and vacated as and at the time required by this lease (time being of the essence), Tenant shall be liable to Landlord for (a) all losses and damages which Landlord may incur or sustain by reason thereof, including, without limitation, attorneys' fees, and Tenant shall indemnify Landlord against all claims made by any succeeding tenants against Landlord or otherwise arising out of or resulting from the failure of Tenant timely to surrender and vacate the demised premises in accordance with the provisions of this lease, and (b) per diem use and occupancy in respect of the demised premises equal to two (2) times the Base Rent and additional rent payable hereunder for the last year of the term of this lease (which amount Landlord and Tenant presently agree is the minimum to which Landlord would be entitled and is presently contemplated by them as being fair and reasonable under such circumstances and not a penalty). In no event shall any provision hereof be construed as permitting Tenant to hold over in possession of the demised premises after expiration or termination of the term hereof, and no acceptance by Landlord of payments from Tenant after the expiration or termination of the term hereof shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article. The provisions of this Article shall survive the expiration or termination of the term of this lease."

52. Late Charge. If, during the term of this lease, Tenant shall fail to pay the Base Rent or additional rent or any other charge at any time due or payable hereunder within ten (10) days after same is due and payable, Tenant agrees to pay to Landlord, as and for a late charge by reason thereof, without further notice or demand by Landlord, a sum equal to $.10 for every dollar thereof, which sum shall be considered as additional rent. Nothing contained in this Article is intended to grant Tenant any extension of time in respect of the due dates for any payments under this lease, nor shall same be construed to be a limitation of or a substitution for any other rights, remedies and privileges of Landlord under this lease or otherwise.

53. Fees and Expenses. Whenever any default, request, action or inaction by Tenant causes Landlord to engage an

attorney and/or incur any other costs or expenses, Tenant agrees that it shall pay and/or reimburse Landlord for such costs or expenses within ten (10) days after being billed therefor as additional rent.

54. Arbitration. In such cases where this lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the same shall be settled by arbitration in the Borough of Manhattan, City and State of New York, in accordance with the rules then obtaining of the American Arbitration Association, governing commercial arbitration. In the event that the American Arbitration Association shall not be then in existence, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give written notice thereof to the first party. The arbitrators thus appointed shall appoint a third disinterested person, who shall be an attorney at law admitted to practice in the State of New York actively engaged in the practice of his or her profession for not less than ten (10) years. If the arbitrators thus appointed shall fail to appoint such third disinterested person, then either party may, by application to the presiding Justice, Appellate Division of the Supreme Court of the State of New York for the First Judicial Department seek to appoint such third disinterested person. Upon such appointment, such person shall be the third arbitrator as if appointed by the original two arbitrators. The decision of the majority of the arbitrators shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event the other party shall select the arbitrator not so selected by the first party, and upon such selection, such arbitrator shall be deemed to have been selected by the first party. The expenses of arbitration shall be shared equally by Landlord and Tenant, unless this lease expressly provides otherwise, but each party shall pay and be separately responsible for its own counsel and witness fees, unless this lease expressly provides otherwise. Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder and agree that a judgment or order may be entered in any court of competent jurisdiction based on an arbitration award (including the granting of injunctive relief).

The arbitrators shall have the right to retain and consult experts and competent authorities skilled in the matters under arbitration, but any such consultation shall be made in the presence of both parties, with full right on their part to cross-examine such experts and authorities. The arbitrators shall render their decision and award not later than sixty (60) days after the appointment of the third arbitrator. Their decision and award shall be in writing and counterpart copies thereof shall be delivered to each of the parties. In rendering their decision and award, the arbitrators shall have no power to modify or in any manner alter or reform any of the provisions of this lease, and the jurisdiction of the arbitrators is limited accordingly.

55. Default Under Other Lease(s). A default by Tenant under this lease shall be considered a default under any other lease Tenant may at any time have in respect of other space in the Building or other space owned or controlled by Landlord or any of Landlord's principals. Similarly, a default by Tenant under any such other lease shall be considered a default under this lease.

56. Additional Re Article "9". Supplementing the provisions of Article "9" hereof, Landlord shall not be obligated to commence any repairs or restorations to the demised premises as required thereunder unless and until Landlord has received the proceeds of all fire insurance policies affecting the building of which the demised premises forms a part.

57. Diagram. Tenant acknowledges that it has been informed by Landlord that any diagram attached to this lease is solely for the purpose of identifying the premises demised hereunder and Landlord has made no representation and is unwilling to make any representation and nothing in this lease shall be deemed or construed to be a representation or covenant as to the dimensions of and/or the square foot area contained in the demised premises.

58. No Attornment. All checks tendered to Landlord as and for the rent and/or additional rent required hereunder shall be deemed payments for the account of the Tenant. Acceptance by the Landlord of rent and/or additional rent from anyone other than the Tenant shall not be deemed to operate as an attornment to the Landlord by the payor of such rent and/or additional rent or as a consent by the Landlord to an assignment of this lease or subletting by the Tenant of the demised premises to such payor, or as a modification of any of the provisions of this lease.

59. Liens. Tenant shall not create or suffer to be created or to remain, and shall (within ten (10) days of the filing or imposition thereof) remove or discharge, by bonding or payment, any lien, encumbrance or charge upon the demised premises or the real property of which the same forms a part caused by or in any manner related to any act or alleged act of commission or omission on the part of Tenant, or any of its agents or contractors. Further, should any such lien be bonded and should Landlord or its agents be thereafter named as a party to any action or proceeding in respect of such bond or claim, Tenant agrees to indemnify and save harmless Landlord and its agents in respect thereof and to pay all costs and expenses (including legal fees) of Landlord related thereto. Tenant agrees to surrender the demised premises free and clear of all liens, charges or encumbrances thereon of every nature and description, and free and clear of all violations thereon placed by any governmental or quasi-governmental body resulting from any act of omission or commission on the part of Tenant or any of its agents or contractors, or otherwise related to Tenant's use or occupancy of the demised premises. Nothing in this lease contained shall be construed as constituting the consent or request of Landlord to any contractor, laborer or materialman for the performance of any labor or services or the furnishing of any materials for the improvement or repair of the demised premises.

60. Notice of Damage. Tenant shall give prompt notice to Landlord of any fire, accident, loss or damage or dangerous or defective condition materially affecting the demised premises or any part thereof or the fixtures or other property of Landlord therein of which Tenant has any knowledge. Such notice shall not, however, be deemed or construed to impose upon Landlord any obligation to perform any work to be performed by Tenant under this lease or not otherwise hereunder undertaken to be performed by Landlord.

61. Building Renovation. Tenant understands and acknowledges that Landlord may alter, restore and/or renovate the entrance lobby and/or other portions of the Building (including, without limitation, the relocation of the entrance to the Building) and that such alterations, restoration and/or renovation or other work in the Building may result in certain inconveniences or disturbances to Tenant and other occupants of the Building; such renovations, however, shall not result in preventing Tenant's reasonable access to the demised premises.

Tenant agrees that the performance of any such work shall not constitute or be deemed to be a constructive eviction or be grounds for a termination of this lease or the terms hereof, nor shall the same in any way affect the obligations of Tenant under this lease, including, without limitation, the obligation to pay the rents herein reserved or give Tenant the right to claim damages or any matter or thing from Landlord or Landlord's agent(s) or contractor(s).

62. Conditional Limitation. In the event Tenant shall make default in the payment of the rent reserved herein, or any item of additional rent herein mentioned, or any part of either, or in making any other payment herein required for a total of two (2) months, whether or not consecutive, in any twelve (12) month period, and Landlord shall have served upon Tenant petitions and notices of petition to dispossess Tenant by summary proceedings in each such instance, then, notwithstanding that such default may have been cured prior to the entry of a judgment against Tenant, any further default in the payment of any money due Landlord hereunder shall be deemed to be deliberate and Landlord may serve a written three (3) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof, and Tenant shall then quit and surrender the demised premises to Landlord, but Tenant shall remain liable as elsewhere provided in this lease.

63. Subsidiaries and Affiliates. So long as Tenant is not in default in any of the terms, covenants, or conditions of this lease, Tenant may, without the prior written consent of Landlord, permit all or any portion of the demised premises to be used by an entity which is a subsidiary or affiliate of Tenant. The terms "subsidiary" and "affiliate", as used herein, shall include any entity (i) which holds a majority of the shares of stock of all classes of Tenant; or (ii) a majority of the shares of stock of all classes of which (if the subsidiary or affiliate is a corporation), or a majority of the interest in the entity and control thereof (if the subsidiary or affiliate is not a corporation), shall be held by Tenant; or (iii) a majority of the shares of stock of all classes of which (if the subsidiary or affiliate is a corporation), or a majority of the interest in the entity and control thereof (if the subsidiary or affiliate is not a corporation), shall be held by the same person, corporation or entity which holds all of the shares of stock of all classes of Tenant. If, for any reason whatsoever, such ownership is reduced to less than a majority of the interest, such reduction shall constitute a prohibited assignment of this lease or a sublease of all or a portion of the demised premises, as the case may be, and Tenant shall cause such subsidiary or affiliate to vacate that portion of the demised premises which it occupies simultaneously with the occurrence of such reduction. The failure of the subsidiary or affiliate to vacate that portion of the demised premises which it occupies shall constitute a substantial default under the terms of this lease and Landlord shall have all the rights and remedies set forth herein in the event of a default by Tenant.

64. Modifications Requested by Mortgagee. If any prospective mortgagee of the Building, the land thereunder or any leasehold interest in either requires, as a condition precedent to issuing its loan, the modification of this lease in such manner as does not materially lessen Tenant's rights or increase its obligations hereunder, Tenant shall not withhold or delay its consent to such modification and shall execute and deliver such confirming documents therefor as such mortgagee requires.

65. Basement Space. If any basement or sub-basement space is included in the premises demised hereunder, Tenant agrees

that, notwithstanding anything to the contrary contained in this lease, such basement or sub-basement space (i) shall not be used for any purpose other than storage and (ii) shall not be sublet or used by anyone other than Tenant without the prior written consent of Landlord, which consent Landlord shall have the right to withhold for any reason whatsoever.

66. Building Directory. At the written request of Tenant, Landlord shall list on the building's directory the name of Tenant, any trade name under which Tenant has the right to operate, any other entity permitted to occupy any portion of the demised premises under the terms of this lease, and the officers and employees of each of the foregoing entities, provided the number of names so listed does not exceed Tenant's Percentage of the capacity of such directory. If requested by Tenant, Landlord may (but shall not be required to) list the name of Tenant's subsidiaries and affiliates; however, the listing of any name other than that of Tenant shall neither grant such party or entity any right or interest in this lease or in the demised premises nor constitute Landlord's consent to any assignment or sublease to, or occupancy of the demised premises by, such party or entity. Except for the name of Tenant, any such listing may be terminated by Landlord, at any time, without notice.

67. Miscellaneous.

(A) If at the commencement of, or at any time or times during the term of this lease, the rents reserved in this lease shall not be fully collectible by reason of any Federal, State, County, City or other governmental law, proclamation, order or regulation, or direction of a public officer or body pursuant to law, Tenant shall enter into such agreements and take such other steps as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents which may from time to time during the continuance of such legal rent restriction be legally permissible (but not in excess of the amounts reserved therefor under this lease). Upon termination of such legal rent restriction prior to the expiration of the term of this lease, (a) the rents shall become and thereafter be payable thereunder in accordance with the amounts reserved in this lease for the periods following such termination and (b) Tenant shall pay to Landlord, if legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this lease but for such legal rent restriction less (ii) the rents paid by Tenant to Landlord during the period or periods such legal rent restriction was in effect.

(B) If at any time Tenant is other than a single, partnership, firm, corporation, individual or other entity, the act of, or notice, demand, request or other communication from or to, or any payment or refund from or to, or signature of, any of the individuals, partnerships, firms, corporations or other entities then constituting Tenant with respect to Tenant's estate or interest in the demised premises or this lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request or other communication, or so had given or received such payment or refund, or had so signed, and they shall be jointly and severally liable for the performance of Tenant's obligations hereunder.

(C) If any provision of this lease shall be held invalid or unenforceable, such invalidity or unenforceability shall affect only such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this lease, and this lease shall be enforced as if any such invalid or unenforceable provision were not contained herein.

(D) Landlord and Tenant hereby agree that this lease shall be governed by and construed and enforced in accordance with the internal laws of the State of New York without giving reference

to principles of conflict of laws. The state courts of the State of New York shall have jurisdiction to hear and determine any dispute between Landlord and Tenant pertaining directly or indirectly to this lease or any matter arising therefrom, and Tenant hereby expressly consents and submits in advance to such jurisdiction in any action or proceeding commenced in such courts by either party hereto.

(E) It is expressly noted, acknowledged and confirmed by Tenant that a breach, default or failure to observe, perform or otherwise comply with any material obligations, covenants, conditions, rules and regulations in this lease on Tenant's part to be observed, performed or complied with shall be and be deemed to be a violation by Tenant of a substantial obligation of the tenancy created by this lease entitling Landlord to pursue any and all rights, remedies and privileges provided under this lease or at law or in equity, including, without limitation, the right to terminate said tenancy and recover possession of the demised premises.

(F) Supplementing Article 3, Landlord's consent shall not be required for minor changes to the demised premises such as the installation of furniture, furnishings, cabinets and shelves which are not affixed to the realty. All other renovations, decorations, additions, installations, improvements and alterations of any kind or nature in or to the demised premises whether performed by Tenant or by Landlord ("Tenant Changes") shall require the prior written consent of Landlord which, in the case of non-structural interior Tenant Changes, Landlord agrees not to unreasonably withhold, provided Tenant first complies with all applicable requirements of this lease including any Workletter attached to this lease and the building Rules and Regulations Governing Tenant Alterations ("Alterations Rules") In granting its consent to any Tenant Changes, Landlord may impose such conditions (as to guarantee of completion including, without limitation, requiring Tenant to post a bond to insure the completion of Tenant Changes, payment for Tenant Changes and other charges payable under this Article, restoration or otherwise), as Landlord may reasonably require. In no event shall Landlord be required to consent to any Tenant Changes which would affect the structure of the building, the exterior thereof, any part of the building outside of the demised premises or the mechanical, electrical, heating, ventilation, air conditioning, sanitary, plumbing or other service systems and facilities (including elevators) of the building, and such Tenant Changes shall be performed only by contractors designated or approved by Landlord. Tenant shall, promptly upon demand, reimburse Landlord's agent for any reasonable out-of-pocket fees, expenses and other charges incurred by Landlord or its agent in connection with the review, modification and/or approval of such plans and specifications by Landlord's agent and other professional consultants of Landlord and shall pay to Landlord's agent during the course of the work, as a charge of Landlord's agent for the supervision and coordination by Landlord's agent of any Tenant Changes for Landlord's benefit and without waiver of any of the requirements of this lease, the Workletter, if any, or the Alterations Rules, a fee of five (5%) percent of the cost of such Tenant Changes. Tenant shall promptly provide such evidence as Landlord or Landlord's agent may request to substantiate any such costs incurred by Tenant. Tenant shall, at its sole cost and expense, in making any Tenant Changes, comply with all requirements of the Alterations Rules.

(G) Tenant agrees that in connection with any work which may be performed by Tenant pursuant to this lease, such work shall not be performed in a manner which would create any work stoppage, picketing, labor disruption or dispute or violate union contracts affecting the land and/or the Building nor unreasonably interfere with the business of Landlord or any tenant or occupant of the Building.

(H) If there shall be any conflict between any provision contained in this Rider and the printed provisions of this lease, the provisions of this Rider shall prevail.

68. Binding Clause. Neither the submission of this lease form to Tenant nor the execution of this lease by Tenant shall constitute an offer by Landlord to Tenant to lease the space herein described as the demised premises or otherwise. This lease shall not be or become binding upon Landlord to any extent or for any purpose unless and until it is executed by Landlord and a fully executed copy thereof is delivered to Tenant or Tenant's counsel.

69. Substitute Space. At any time and from time to time during the term of this lease Landlord shall have the right to substitute for the demised premises (for the purposes of this Article only, the demised premises are hereinafter called the "Replaced Premises") other space in the Building (such other space hereinafter called the "Substitute Premises") by written notice (the "Notice") given to Tenant no later than sixty (60) days prior to the date set forth in said notice as the effective date (the "Substitution Date") for such substitution. Landlord's notice shall include a floor plan identifying the Substitute Premises, which premises shall have a rentable area equal to or greater than the Replaced Premises and shall be similar thereto in configuration. Tenant shall vacate the Replaced Premises and surrender the same to Landlord on or before the Substitution Date. Promptly after Tenant enters into occupancy of the Substitute Premises and provided Tenant is not then in default under any of the terms or conditions of this lease, Landlord shall reimburse Tenant for any reasonable moving expenses, any other reasonable costs and expenses incurred by Tenant in duplicating the Substitute Premises, the alterations and additions previously made by Tenant in the Replaced Premises, and other reasonable expenses incurred by Tenant as a result of the move. From and after the Substitution Date, the term "demised premises" shall mean the Substitute Premises for all purposes hereunder.

70. Security Deposit. Article 34 hereof is hereby amended to add the following:

"Said security deposit shall be placed by Landlord in an interest bearing federally insured account. Interest that may accrue thereon shall belong to Tenant, except such portion thereof as shall be equal to one (1%) percent of such interest per annum, which such percentage shall belong to and be the sole property of Landlord and which Landlord may withdraw from time to time and retain. Landlord shall, upon Tenant's request, advise Tenant of the name of the bank where such deposit is held. Landlord shall give Tenant notice of any transfer of such deposit to a different bank simultaneous with or promptly after any such transfer. The obligation to pay any taxes, whether income or otherwise, related to or affecting any interest earned on such security deposit (except as to that portion thereof which belongs to Landlord) shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Landlord or its agent with a tax identification number for use in respect of such cash deposit. If Landlord at any time utilizes any portion of the cash security deposit in respect or by reason of a default by Tenant, Tenant shall, within ten (10) days after demand, restore and pay to Landlord the amount so utilized."

71. Office Door Signage. Notwithstanding anything herein to the contrary, Tenant shall not place any sign on the exterior door to the demised premises, it being understood and agreed that Landlord, in an effort to provide uniform signage in the Building, shall install any such sign with Building Standard

lettering and Tenant shall, upon demand, pay Landlord's reasonable cost therefor.

72. Environmental Obligations. Tenant covenants and agrees that it shall not permit any materials to be used on the demised premises in violation of any applicable environmental law, and Tenant hereby indemnifies Landlord for any loss incurred by Landlord as a result of the breach of the foregoing covenant and agreement. Tenant hereby agrees promptly to notify Landlord in the event that it becomes aware of any violation of any applicable environmental law affecting the demised premises.

73. Condition of Tenant. Tenant represents that (i) it is a corporation duly formed and validly existing in good standing under the laws of the State of Delaware, (ii) it is duly qualified as a foreign corporation authorized to transact business existing in good standing under the laws of the State of New York, and (iii) the party executing this lease on Tenant's behalf is authorized to so execute this lease and bind Tenant.

74. Rent Concession. So long as Tenant shall not then be in default of any of the terms, covenants, conditions and agreements to be performed by Tenant under this lease, Tenant shall be entitled to a rent credit in the amount of $6,780.00 on the first (1st) day of the second (2nd) month of the term of this lease.

[GRAPHIC OMITTED]

Exhibit A attached hereto and forming a part of lease dated as of the 29th day of May, 1997 between 509 Madison Avenue Associates, as Landlord, and Discovery Laboratories, Inc., as Tenant, with respect to Suite 1406 at 509 Madison Avenue, New York, New York.

GUARANTY

FOR VALUE RECEIVED, and in consideration for, and as an inducement to Owner making the within lease with Tenant, the undersigned guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the covenants, conditions and agreements, therein provided to be performed and observed by Tenant, including the "Rules and Regulations" as therein provided, without requiring any notice of non-payment, non-performance, or non-observance, or proof, or notice, or demand, whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this agreement and the obligations of the guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Owner against Tenant of any of the rights or remedies reserved to Owner pursuant to the provisions of the within letter. The undersigned further covenants and agrees that this guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of this lease and during any period when Tenant is occupying the premises as a "statutory tenant." As a further inducement to Owner to make this lease and in consideration thereof. Owner and the undersigned covenant and agree that in any action or proceeding brought by either Owner or the undersigned against the other on any matters whatsoever arising out of, under, or by virtue of the terms of this lease or of this guaranty that Owner and the undersigned shall and do hereby waive trial by jury.

Dated New York City _____ 19__

WITNESS:

_____

STATE OF NEW YORK,) ss.:
County of)

On this ___ day of _____, 19__, before me personally came _____
_____,
to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

_____
Notary

Residence _____

Business Address _____

Firm Name _____

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND
MADE A PART OF THIS LEASE
IN ACCORDANCE WITH ARTICLE 33.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or drainage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit it to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the

same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building, between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by an Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to keep all windows closed at all times and to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Landlord's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures requires special handling, all work in connection therewith shall comply with the Administrative Code of the City of New York and all other laws and regulations applicable thereto and shall be done during such hours as Owner may designate.

Address

Premises

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TO

==========

STANDARD FORM OF
[LOGO] OFFICE [LOGO]
LEASE

==========

Dated _____ 19__.

Rent per Year _____

Rent per Month _____

Term _____

From _____

To _____

Drawn by _____ Checked by _____

Entered by _____ Approved by _____

==========

STANDARD FORM OF OFFICE LEASE
The Real Estate Board of New York, Inc. 3/1/86

Agreement of Lease, made as of the 29th day of May 1997, between 509 MADISON AVENUE ASSOCIATES, a California limited partnership having an address c/o Newmark & Company Real Estate, Inc., 125 Park Avenue, New York, New York 10017 party of the first part, hereinafter referred to as OWNER or landlord, and DISCOVERY LABORATORIES, INC., a Delaware corporation having an address at 787 Seventh Avenue, New York, New York 10019 party of the second part, hereinafter referred to as TENANT.

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner space on the fourteenth (14th) floor (as shown on the floor plan annexed hereto as Exhibit A and made a part hereof and also known as Suite 1406 in the building know as 509 Madison Avenue in the Borough of Manhattan, City of New York, for the term of three (3) years and sixteen (16) days (or until such term shall sooner cease and expire as hereinafter provided) to commence on the fifteenth (15th) day of June nineteen hundred and ninety-seven, and to end on the thirtieth (30th) day of June two thousand both dates inclusive, at an annual rental rate set forth in Article 37 hereof which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first _____ monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment or rent payable hereunder and the same shall be payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent

1. Tenant shall pay the rent as above and as hereinafter provided.

Occupancy

2. Tenant shall use and occupy demised premises for general and executive offices and for no other purpose.

Tenant Alterations:

3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner, and to the provisions of this article, Tenant at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved by Owner. Tenant shall, before making any alterations, additions, installations or improvement, at its expense, obtain all permits, approvals, and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicate of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and subcontractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have been done for, or material furnished to, Tenant whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days thereafter, at Tenant's expense, by filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner in Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's right thereto and to have them removed by the Tenant, in which event the same shall be removed from the premises by Tenant prior to the expiration of the lease, at Tenant's expense. Nothing in this Article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installations as may be required by Owner, Tenant shall immediately, and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed, by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner, at Tenant's expense.

Maintenance and Repairs:

4. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein. Tenant shall be responsible for all damage or injury to the demised premises or any other part of the building and the systems and equipment thereof, whether requiring

structural or non-structural repairs caused by or resulting from carelessness, omission, neglect or improper conduct of Tenant, Tenant's subtenants, agents, employees, invitees or licensees, or which arise out of any work, labor, service or equipment done for or supplied to Tenant or any subtenant or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant. Tenant shall also repair all damage to the building and the demised premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense, all repairs in and to the demised premises for which Tenant is responsible, using only the contractor for the trade or trades in question, selected from a list of at least two contractors per trade submitted by Owner. Any other repairs in or to the building or the facilities and systems thereof for which Tenant is responsible shall be performed by Owner at the Tenant's expense. Owner shall maintain in good working order and repair the exterior and the structural portions of the building, including the structural portions of its demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such systems presently exists) serving the demised premises. Tenant agrees to give prompt notice of any defective condition in the premises for which Owner may be responsible hereunder. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall not be entitled to any setoff or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this Lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty which are dealt with in Article 9 hereof.

Window Cleaning:

5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

Requirements of Law, Fire Insurance, Floor Loads:

6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters, Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, whether or not arising out of Tenant's use or manner of use thereof, including Tenant's permitted uses or, with respect to the building if arising out of Tenant's

use or manner of use of the premises or the building (including the use permitted under the lease). Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to Owner's satisfaction against all damages, interest, penalties and expenses, including, but not limited to, reasonable attorney's fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Owner, contest and appeal any such laws, ordinances, orders, rules, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense or constitute a default under the lease or mortgage under which Owner may be obligated, or cause the demised premises or any part thereof to be condemned or vacated. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Owner to any liability or responsibility to any person or for property damage. Tenant shall not keep anything in the demised premises except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fees, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article and if by reason of such failure the fire insurance rate shall, at the beginning of this lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to

prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's judgment, to absorb and prevent vibration, noise and annoyance.

Subordination:

7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall execute promptly any certificate that Owner may request.

Property--Loss, Damage, Reimbursement, Indemnity:

8. Owner or its agent shall not be liable for any damage to any property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. If at any time any windows of the demised premises are temporarily closed, darkened or bricked up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefore nor abatement or diminution of rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any sub-tenant and any agent, contractor, employee, invitee or licensee of any sub-tenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty:

9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall gave immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner, subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant' salvageable inventory and movable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by Law, Owner and Tenant each hereby releases and waives all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasor's insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefitting from the waiver shall pay such premium within ten days after written demand or shall be deemed

to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

Eminent Domain:

10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in the event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease and assigns to Owner, Tenant's entire interest in any such award.

Assignment, Mortgage, Etc.:

11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate Tenant shall be deemed as assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current:

12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER* attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installations and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no way make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain.

Access to Premises:

13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time and at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to the demised premises or to any other portion of the building or which Owner may elect to perform. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein provided they are concealed within the walls, floor, or ceiling. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or other wise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the

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* Rider to be added if necessary

same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom. Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder.

Vault, Vault Space, Area:

14. No Vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy:

15. Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violations, whether or not of record.

Bankruptcy:

16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Owner by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease,or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the reletting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

Default:

17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises becomes vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under ss. 235 of Title 11 of the U.S. Code (bankruptcy code); or if Tenant shall fail to move into or take possession of the premises within fifteen (15) days after the commencement of the term of this lease, then, in any one or more of such events, upon Owner serving a written five (5) days notice upon Tenant specifying the nature of said default and upon the expiration of said five (5) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completed, cured or remedied within the said five (5)

day period, and if Tenant shall not have diligently commenced curing such default within such five (5) day period, and shall not thereafter with reasonable diligence and in good faith, proceed to remedy or cure such default, then Owner may serve a written three (3) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

2. If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption:

18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owners's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or convenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency of any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. 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 dispossessed for any cause, or in the event of Owner obtaining possession of demised premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease, or otherwise.

Fees and Expenses:

19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder. If Owner, in connection with the foregoing or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to attorney's fees, in instituting, prosecuting or defending any action or proceeding, then Tenant will reimburse Owner for such sums so paid or obligations incurred with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within five (5) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

Building Alterations and Management:

20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways,

corridors, elevators, stairs, toilets or other public parts of the building and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenants making any repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such controls of the manner of access to the building by Tenant's social or business visitors as the Owner may deem necessary for the security of the building and its occupants.

No Representations by Owner:

21. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which

it is erected or the demised premises, the rents, leases, expense of operation or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and the building of which the same form a part were in good and satisfactory condition at the time such possession was to taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in which or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is ought.

End of Term:

22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear and damages which Tenant is not required to repair and as provided elsewhere in this lease excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment:

23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession:

24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession) until the Owner shall have given Tenant written notice that the premises are substantially ready for Tenant's occupancy. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except as to the covenant to pay rent. The provisions of this article are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

No Waiver:

25. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earlier stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed as accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed as acceptance of a surrender of said premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

Waiver of Trial by Jury:

26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the

relationship of Owner and Tenant, Tenant's use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding including a counterclaim under Article 4.

Inability to Perform:

27. This Lease and the obligation of Tenant is pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause whatsoever including, but not limited to, government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

Bills and Notices:

28. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

Services Provided by Owners

29. As long as Tenant is not in default under any of the covenants of this lease, Owners shall provide: (a) necessary elevator facilities on business days from 8 a.m. to 6 p.m. and on Saturdays from 8 a.m. to 1 p.m. and have one elevator subject to call at all other times; (b) heat to the demised premises when and as required by law, on business days from 8 a.m. to 6 p.m., and on Saturdays from 8 a.m. to 1 p.m.; (c) water for ordinary lavatory purposes, but if Tenant uses or consumes water for any other purposes or in unusual quantities (of which fact Owner shall be the sole judge), Owner may install a water meter at Tenant's expense which Tenant shall thereafter maintain at Tenant's expense in good working order and repair to register such water consumption and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered; (d) cleaning service for the demised premises on business days at Owner's expense provided that the same are kept in order by Tenant. If, however, said premises are to be kept clean by Tenant, it shall be done at Tenant's sole expense, in a manner satisfactory to Owner and no one other than persons approved by Owner shall be permitted to enter said premises or the building of which they are a part for such purpose. Tenant shall pay Owner the cost of removal of any of Tenant's refuse and rubbish from the building; (e) if the demised premises is serviced by Owner's air conditioning/cooling and ventilating system, air conditioning/cooling will be furnished to Tenant from May 15th through September 30th on business days (Mondays through Fridays, holidays excepted) from 8:00 a.m. to 6:00 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/cooling is being furnished as aforesaid. If Tenant requires air conditioning/cooling or ventilation for more extended hours or on Saturdays, Sundays, or on holidays, as defined under Owner's contract with Operating Engineers Local 94-94A, Owner will furnish the same at Tenant's expense. RIDER to be added in respect to rates and conditions for such additional service*; (f) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning, power systems or cleaning or other services, if any, when necessary by reason of accident or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Owner for as long as may be reasonably required by reason thereof. If the building of which the demised premises are a part supplies manually-operated elevator service, Owner at any time may substitute automatic-control elevator services and upon ten days' written notice to Tenant, proceed with alterations necessary therefor without in any wise affecting this lease or the obligation of Tenant hereunder. The same shall be done with a minimum of inconvenience to Tenant and Owner shall pursue the alteration with due diligence.

Captions:

30. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions:

31. The term "office," or "offices," wherever used in this lease, shall not be construed to mean premises used as a store or stores, for the sale or display, at any time, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purposes or for manufacturing. The term "Owner" means a landlord or lessor, and as used in this lease means only the owner, or the mortgagee in possession, for the time being of the land and building (or the owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or

of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement, between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays (except such portion thereof as is covered by specific hours in Article 29 hereof), Sundays and all days observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service.

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* Rider to be added if necessary

Adjacent Excavation--Blasting:

32. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

Rules and Regulations:

33. Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule or Regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within ten (10) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violations of the same by any other tenant, its servants, employees, agents, visitors or licensees.

Security:

34. Tenant has deposited with Owner the sum of $14,916.00* as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expand by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency occurred before or after summary proceedings or after re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendor or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security, and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel Certificate

35. Tenant, at any time, and from time to time, upon at least 10 days' prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by Owner under this Lease, and, if so, specifying each such default.

Executors and Assigns

36. The covenants, conditions and agreements contained in this lease shall bind and insure to the benefit of Owner and Tenant and their respective heirs, distributors, executors, administrators, successors, and except as otherwise provided in this lease, their assigns.

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* Space to be filled in or deleted.

See Rider and Exhibit A attached hereto and made a part hereof.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Landlord:
509 MADISON AVENUE ASSOCIATES
By: Kensico Management, Inc.
Managing General Partner

Witness for Owner:

By: /s/ Alan Zimmerman

- ---------- ----------
Name:

Tenant:
DISCOVERY LABORATORIES, INC.
Witness for Tenant:
By: /s/ James S. Kuo, M.D.
- ---------- ----------
James S. Kuo, M.D., President and Chief Executive Officer

ACKNOWLEDGMENTS

CORPORATE OWNER
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came to me known, who being by me duly sworn, did depose and say that he resides

in ;
that he is the of
the corporation described in and which executed the foregoing instrument, as OWNER; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL OWNER
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known and known to me to be the individual
described in and who, as OWNER, executed the foregoing instrument and
acknowledged to me that he executed the same.

CORPORATE TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known, who being by me duly sworn, did depose and say that he resides

in ;
that he is the of
the corporation described in and which executed the foregoing instrument, as TENANT; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

INDIVIDUAL TENANT
STATE OF NEW YORK, ss.:
County of

On this day of , 19 , before me personally came ,
to me known and known to me to be the individual
described in and who, as TENANT, executed the foregoing instrument and
acknowledged to me that he executed the same.

RIDER ANNEXED TO AND FORMING A PART OF LEASE DATED AS OF THE 29 DAY OF MAY, 1997, BETWEEN 509 MADISON AVENUE ASSOCIATES, AS LANDLORD, AND DISCOVERY LABORATORIES, INC., AS TENANT, AFFECTING SPACE ON THE FOURTEENTH (14TH) FLOOR AT 509 MADISON AVENUE, NEW YORK. NEW YORK

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37. Base Rent, The annual base rent, payable in equal monthly installments, shall be as follows: Eighty Nine Thousand Four Hundred Ninety Six and 00/100 ($89,496.00) Dollars for the period commencing on the Rent Commencement Date (as hereinafter defined) and ending twelve (12) months following the Rent Commencement Date; Ninety One Thousand Nine Hundred Thirty Six and 80/100 ($91,936.80) Dollars for the period commencing thirteen (13) months following the Rent Commencement Date and ending twenty four (24) months following the Rent Commencement Date; and Ninety Four Thousand Four Hundred Fifty and 82/100 ($94,450.82) Dollars for the period commencing twenty five (25) months following the Rent Commencement Date and ending thirty six (36) months following the Rent Commencement Date (herein sometimes called "Base Rent").

38. Rent Commencement Date. Tenant's obligation to pay Base Rent shall commence on June 15, 1997 (the "Rent Commencement Date")

The initial installment of Base Rent paid upon the execution hereof shall be applied as in this Article provided. If the Rent Commencement Date is not the first day of a calendar month, the next monthly installment of Base Rent due hereunder shall be prorated to the end of the calendar month next following the month in which said Rent Commencement Date occurred, so that subsequent monthly installments of Base Rent will be due on the first days of calendar months throughout the term of this lease, except that the last monthly installment will be similarly prorated.

Within ten (10) days of request by either party after the Rent Commencement Date has been determined, Landlord and Tenant shall mutually execute and deliver a supplemental agreement confirming and setting forth the Rent Commencement Date.

39. Condition of Demised Premises. Tenant acknowledges and represents to Landlord that it has thoroughly inspected and examined, or caused to be thoroughly inspected and examined, the demised premises and that it is fully familiar with the physical condition and state of repair thereof, and Tenant does hereby agree to accept same in its existing condition and state of repair, subject to any and all defects therein, latent or otherwise, "AS IS", and Landlord shall have no obligation to do any work or make any installation, repair or alteration of any kind to or in respect thereof, other than as expressly set forth in this lease.

40. Maintenance of Demised Premises. Unless expressly provided in this lease to the contrary, Landlord shall not be responsible for the upkeep or maintenance of the demised premises or any installation therein. In no event shall Landlord be responsible for any installation made by Tenant.

Should Landlord hereafter agree, in writing or otherwise, at the request of Tenant or otherwise, to do any work in or in respect of the demised premises, the same shall be paid for by Tenant not later than ten (10) days after being billed therefor, at a rate and sum equal to the cost to Landlord of any such work plus 15% of such cost. Any sum or charge (except Base Rent) required to be paid by Tenant under this or any Article of this lease is and shall be deemed to be additional rent under this lease, and, if same is not paid as in this lease provided

Landlord shall have the same rights, remedies and privileges in respect of such non-payment as if Base Rent were not paid.

41. Assignment-Sublet. Article 11 hereof is hereby amended to add the following:

"Provided this lease is then in full force and effect and Tenant is not in default thereunder:

"If Tenant desires to assign or sublet all or any portion of the demised premises, Tenant shall promptly notify Landlord and its leasing or managing agent for the Building of its desire to assign this lease or sublet the demised premises. Upon obtaining a proposed assignee or sublessee upon terms satisfactory to Tenant, Tenant shall submit to Landlord in writing (a) the name of the proposed assignee or subtenant; (b) the terms and conditions of the proposed assignment or subletting; and (c) the nature and character of the business of the proposed assignee or subtenant and any other information reasonably requested by Landlord.

"Landlord shall have the following options which may be exercised within sixty (60) days from any notice or submission by Tenant to Landlord pursuant to the last sentence of the preceding paragraph.

(a) If Tenant desires to sublet all or substantially all of the demised premises or to assign this lease, then within sixty (60) days after receipt of the aforesaid notice Landlord may notify Tenant that Landlord elects (i) to cancel this lease, in which event such cancellation shall become effective on the date proposed by Tenant for such subletting or assignment and this lease shall thereupon terminate on said date with the same force and effect as if said date were the expiration date of this lease, or (ii) require Tenant to assign this lease to Landlord effective on the date proposed by Tenant for such subletting or assignment.

(b) If Tenant desires to sublet less than all of the demised premises, then within sixty (60) days after receipt of the aforesaid notice Landlord may notify Tenant that Landlord elects (i) to cancel this lease only as to the portion of the demised premises Tenant proposes to sublet, to take effect as of the proposed effective date of such subletting or (ii) to require Tenant to sublease to Landlord as subtenant of Tenant, the portion of the demised premises that Tenant proposes to sublet for the term, and from the commencement date of the proposed subletting. The annual rent and additional rent which Landlord shall pay to Tenant pursuant to such sublease to Landlord shall be a pro rata apportionment of the annual and additional rent payable hereunder and it is hereby expressly agreed that such sublease to Landlord shall be upon all the covenants, agreements, terms, provisions and conditions contained in this lease except for such thereof which are inapplicable and such sublease shall give Landlord the unqualified and unrestricted right without Tenant's permission to assign such sublease or any interest therein and/or to sublet the space covered by such sublease or any part or parts of such space and to make or cause to have made or permit to be made any and all changes, alterations, decorations, additions, and improvements in the space covered by such sublease, and that such may be removed, in whole or part, at Landlord's option, prior to or upon the expiration or other termination of such sublease provided that any damage or injury caused by such removal shall be repaired. Such sublease to Landlord shall also provide that the parties to such sublease expressly negate any intention that any estate

created under such sublease be merged with any other estate held by either of said parties.

"In the event of the exercise of said option under subparagraph (b) of this Article, the Base Rent and all other charges payable hereunder shall be apportioned on a pro rata basis. In the event that Landlord fails to exercise its options under subparagraphs (a) or (b) of this Article within said sixty (60) day period, Landlord will not unreasonably withhold its consent to the proposed assignment or subletting which was under consideration during such sixty (60) day period, except that Landlord shall not be required to consent to and no assignment or subletting shall be proposed by Tenant with any person, firm or entity that shall, at the time of such proposal, or within six (6) months prior thereto, be or have been a tenant, subtenant or occupant of space at the Building or be or have been negotiating with Landlord or its agent to become a tenant, subtenant or occupant of space thereat, nor that shall be in a business not in keeping with the standards and character of the Building, nor that in the reasonable judgment of Landlord is not financially responsible, nor that shall be a government or governmental agency, department or affiliate thereof, nor that shall in any way be dependent upon government or donation financing for support.

"As further conditions precedent to granting consent to any proposed assignment or subletting, Landlord may require that: Tenant first agree, in a written agreement satisfactory to Landlord's counsel (which agreement shall be secured by a collateral assignment of any such sublease, if applicable and/or such other security as Landlord may require) to pay monthly to Landlord, as additional rent hereunder, an amount equal to all rent and/or other consideration payable by any such assignee or sublessee to Tenant to the extent that such rent and/or other consideration exceeds, on a pro rata basis, a sum, amount or rate in excess of the Base Rent (and additional rent) at the time payable hereunder by Tenant per square rentable foot so affected by any such assignment or sublease; and the proposed assignment or sublease and the documentation therefor shall be otherwise reasonably acceptable to Landlord. (In calculating additional rent that may be due Landlord under the preceding sentence, (i) Tenant shall be credited with actual reasonable costs paid by it in connection with culminating such assignment or subletting, averaged over the remaining term in respect of such assignment or subletting, and (ii) rent or consideration payable by any assignee or sublessee to Tenant shall include, without limitation, sums payable to Tenant for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture or other personal property, less, in the case of the sale thereof, the then fair market value thereof.) In connection with any such proposed assignment or subletting, Tenant and such proposed assignee or sublessee shall also provide Landlord with such other information as it may reasonably request, including (but not limited to) a certification in affidavit form of all rental and other consideration proposed to be paid in connection with the proposed assignment or subletting. If Tenant shall at any time claim that Landlord unreasonably withheld its consent to a proposed assignment or subletting, that question shall be submitted to arbitration and if Tenant prevails Landlord's sole obligation or liability shall be to so consent thereto. Any and all costs related to separating the demised premises to accommodate a subletting or a partial termination of this lease resulting from Tenant's seeking to enter into a partial subletting, including all construction costs related to modifying the demised premises, shall be borne and paid for solely by Tenant. If Tenant is a corporation, a sale, transfer, pledge or encumbrance of a majority of the stock of Tenant or, if Tenant is a partnership, any sale, assignment, transfer, pledge or other disposition of a controlling interest in such partnership, shall,

subject to the provisions of this Article and Article 11 hereof; provided, however, that no sale, transfer, pledge or encumbrance of a majority of the Tenant's stock shall be deemed an assignment if in a merger or consolidation of the Tenant, the surviving corporation, partnership, buyer, assignee or transferee (the "Surviving Company") will have immediately thereafter a net worth equal to or greater than the net worth of the Tenant immediately prior to such consolidation, merger, sale, lease, assignment, transfer or other disposition and the Surviving Company shall have executed and delivered to the Landlord an agreement, in form and substance reasonably satisfactory to the Landlord, containing an assumption by the Surviving Company of the due and punctual performance and observance of each covenant and condition of the lease.

"If Landlord shall grant its consent to the proposed assignment of this lease or subletting of the demised premises, such consent and the effectiveness of any such assignment or subletting shall nevertheless be conditioned upon Tenant complying with the following conditions:

(a) An executed duplicate original in form satisfactory to Landlord for review by Landlord's counsel of such subleasing or assignment agreement shall be delivered to Landlord at least five (5) business days prior to the effective date thereof.

(b) In the event of any assignment, Tenant will deliver to Landlord at least five (5) business days prior to the effective date thereof an assumption agreement wherein the assignee (except Landlord) agrees to assume all of the terms, covenants and conditions of this lease to be performed by Tenant hereunder and which provides that Tenant named herein and such assignee shall after the effective date of such assignment be jointly and severally liable for the performance of all of the terms, covenants and conditions of this lease.

(c) Each sublease of the demised premises shall contain or shall be deemed to contain, whether or not specifically included therein, the following provisions:

(i) 'In the event of a default under any underlying lease of all or any portion of the premises demised hereby which results in the termination of such lease, or if the lessor under any such underlying lease shall exercise any right to cancel or terminate such underlying lease, the subtenant hereunder shall, at the option of the lessor under any such lease, attorn to and recognize such lessor as Landlord hereunder and shall, promptly upon such lessor's request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition. The subtenant hereunder hereby waives all rights under present or future law to elect, by reason of the termination of such underlying lease, to terminate such sublease or surrender possession of the premises demised hereby. If the lessor under such underlying lease does not exercise the aforesaid option, the term of this sublease shall terminate simultaneously with the term of the underlying lease and subtenant hereby agrees to vacate the premises subleased on or before the effective date of termination of the underlying lease.'

(ii) 'This sublease may not be assigned or the sublet premises further sublet, in whole or in part, without the prior written consent of the lessor under any underlying lease of all or any portion of the premises demised hereby.'

"If this lease is assigned and Landlord consents to such assignment, Tenant covenants and agrees that the terms, covenants and conditions of this lease may be changed, altered or modified in any manner whatsoever by Landlord and the assignee without the prior written consent of Tenant and that no such change, alteration or modification shall release Tenant from the performance by it of any of the terms, covenants and conditions on its part to be performed under this lease. Any such change, alteration or modification which would have the effect of increasing or enlarging Tenant's obligations or liabilities under this lease shall not, to the extent only of such increases or enlargement, be binding upon Tenant.

"Tenant covenants that notwithstanding any subletting or assignment to Landlord or to any other subtenant or assignee and/or acceptance of rent or additional rent by Landlord from any subtenant or assignee, Tenant shall and will remain fully liable for the payment of the annual rent and additional rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions and conditions contained in this lease on the part of the Tenant to be performed.

"The consent by Landlord to any assignment, subletting, or occupancy shall not in any wise be construed to relieve Tenant from obtaining the express consent, in writing, of Landlord to any further assignment, subletting, sub-subletting, or occupancy, which consent Landlord shall have the right to withhold for any reason whatsoever.

"If Landlord shall decline to grant its consent to the proposed assignment of this lease or subletting of the demised premises, or if Landlord shall exercise any of its options under subparagraph (a) or (b) of this Article, or if Landlord shall grant its consent to the proposed assignment of this lease or subletting of the demised premises, Tenant shall indemnify and save Landlord harmless of, from and against any and all claims (and all expenses and fees, including attorneys' fees, related thereto) for commissions or compensation made by any broker or entity, arising out of or relating to the proposed assignment or subletting.

"In any event, Tenant agrees not to advertise or in any manner to list the demised premises, or any part thereof, for rent or assignment or subletting without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld in the case of a proposed advertisement which does not identify the exact Building address. Any consent granted by Landlord pursuant hereto shall not, in any event, otherwise alter or modify the other provisions of this lease related to assignments or sublettings by Tenant."

Except as specifically set forth in this Article, nothing in this Article is intended to modify the provisions of Article 11 of this lease.

42. Rent Escalations.

(A) For the purposes of this Article, the following quoted words, terms or phrases shall have the meaning in this subdivision (A) ascribed to them:

(1) "Lease Year" shall mean the period of twelve (12) months or less commencing with the commencement date of the term of this lease and ending on the following December 31st, and each successive period of twelve (12) months thereafter during the term, and the final period of twelve (12) months or less commencing with January 1st immediately preceding the expiration of the term;

(2) "Base Tax Year" shall mean the fiscal year ending June 30, 1998;

(3) "Building" shall mean the building in which the demised premises are located and the land upon which such building is situated;

(4) "Tenant's Percentage" shall mean 1.95%.

(B) (1) In the event that the real estate taxes payable with respect to the Building for any fiscal tax year (July 1 through June 30), or any portion thereof, subsequent to the Base Tax Year (the "Tax Escalation Year") shall be greater than the amount of such taxes due and payable during the Base Tax Year, whether by reason of an increase in either the tax rate or the assessed valuation, or both, or by reason of the levy, assessment or imposition of any tax on real estate as such, ordinary or extraordinary, not now levied, assessed or imposed, or for any other reason, Tenant shall pay and does covenant to pay to Landlord, within ten (10) days of Landlord's rendering to Tenant a statement therefor, as additional rent for the Tax Escalation Year in which such date occurs, an amount equal to Tenant's Percentage of the increase in the amount of such tax or installment over the corresponding tax or installment for the Base Tax Year. Tenant shall also pay and does covenant to pay to Landlord, within ten (10) days of Landlord's rendering to Tenant a statement therefor, as additional rent for the Tax Escalation Year in which such date occurs, an amount equal to Tenant's Percentage of any assessment or installment thereof for public betterments or improvements which may be levied upon or in respect of the Building. Landlord may take the benefit of the provisions of any statute or ordinance permitting any such assessment to be paid over a period of time and in such event Tenant shall be obligated to pay only Tenant's Percentage of the installments of any such assessments which shall become due and payable during the term of this lease. Upon request, Landlord shall furnish Tenant with a copy of the real estate tax bill for any Tax Escalation Year in which Tenant is hereunder required to pay additional rent. If at any time during the term of this lease the method(s) of taxation prevailing at the date of execution hereof shall be altered so that in lieu of or as an addition to or as a substitution for the whole or any part of the taxes, assessments, levies or impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed an alternative, additional or new tax or fee, same shall be considered "real estate taxes" for the purposes hereof and if in excess of the real estate taxes due and payable during the Base Tax Year, Tenant shall pay Tenant's Percentage of such excess as herein provided. For the purposes of this subdivision (1), at Landlord's election, vault taxes or charges shall be considered real estate taxes.

(2) Notwithstanding anything in this subdivision (B) to the contrary, it is understood and agreed that if Landlord shall receive a refund of any portion of real estate taxes in respect of which Tenant shall have paid additional rental under this subdivision (B), then and under such circumstances and if this lease shall then be in full force and effect without default on the part of Tenant, Tenant shall be entitled to a credit against future payments of additional rental under this subdivision (B) in an amount equal to Tenant's Percentage of such refund, after first deducting from such total refund all fees, costs and expenses incurred by Landlord in collecting same. If at the expiration of the term of this lease any credit to which Tenant might be entitled pursuant to the preceding sentence shall not have been used as a credit as in such sentence provided, then and under such circumstances and subsequent to Tenant properly vacating the demised premises as herein provided and so long as Tenant is not and has not been otherwise in default hereunder,

Tenant shall be entitled to a payment equal to the amount of any such remaining credit. If the taxes for the Base Tax Year shall be reduced by certiorari proceedings or otherwise, Landlord shall be entitled to recalculate the additional rent in respect of any fiscal tax year after the Base Tax Year that would have been payable by Tenant hereunder in accordance with (1) of this subdivision (B) had such reduction occurred or been known at or prior to the time additional rent for any such fiscal tax year was being originally calculated, and Tenant agrees to pay any additional rent resulting from such recalculation.

(C) If the first or final Lease Year or a Tax Escalation Year shall contain less than twelve months, the additional rent payable under this Article for such Lease Years or a Tax Escalation Year shall be prorated (and in determining whether any additional rent is payable therefor, the Base Tax Year shall also be considered on a pro rata basis). Tenant's obligation hereunder to pay additional rent for any Lease Year or a Tax Escalation Year shall survive the expiration or termination of the term of this lease. In the event that the additional rent to be paid by Tenant under this Article for the final Lease Year has not then as yet been determined, Tenant covenants to pay to Landlord on the first day of the month next preceding the expiration of the term hereof, as additional rent and on account of the additional rent required to be paid pursuant to this Article for the final Lease Year, a sum equal to the additional rent paid or required to be paid by Tenant hereunder for the Lease Year next preceding the final Lease Year prorated to the extent that the final Lease Year is less than a full calendar year. Upon a determination being made by Landlord of the precise amount of additional rent required to be paid by Tenant pursuant to this Article for such final Lease Year, there shall be an adjustment of said additional rent for said Lease Year to the extent that Tenant shall be required to pay to Landlord promptly the sum by which said determination exceeds the prorated sum previously paid, or Landlord shall promptly refund to Tenant the sum by which said determination is less than the prorated sum previously paid. For the non-payment of any additional rent Landlord shall have the same remedies, rights and privileges that Landlord has for the non-payment of any Base Rent hereinbefore provided for. Receipt and acceptance by Landlord of any installment of Base Rent provided for under this lease or any of the additional rent that may be required to be paid by Tenant under this lease, shall not be or be deemed to be a waiver of any other additional rent or Base Rent then due and no delay in determining or billing the amount of any additional rent due pursuant to this Article shall be or be deemed to be a waiver of Landlord's rights thereto.

(D) (l) Commencing with the second Lease Year, it is agreed that Landlord shall be entitled to charge, receive and collect from Tenant and Tenant agrees to pay to Landlord on the first day of each month during each such Lease Year and each Lease Year thereafter an amount equal to 1/12th of 110% of the additional rent hereunder required to be paid by Tenant to Landlord for the preceding Lease Year (such preceding Lease Year's additional rent to be annualized for the purposes hereof, if such Lease Year was a period of less than twelve (12) months), it being further understood and agreed that if the precise amount of additional rent required to be paid by Tenant for such Lease Year shall ultimately be determined to be in excess of such amount theretofore paid by Tenant hereunder, Tenant shall forthwith pay to Landlord the amount of such excess, and if such determination shall be that Tenant paid more than the precise amount of additional rent required to be paid by Tenant for such Lease Year, the amount of such excess shall be credited to future payments of additional rent required to be paid by Tenant hereunder.

(2) Additionally, any time during any Lease Year that it becomes evident to Landlord that monthly payments under this subdivision (D) will be insufficient to satisfy Tenant's additional rental obligation under this Article for such Lease Year, Landlord, on notice to Tenant, may appropriately increase the monthly payments hereunder and Tenant agrees to pay same.

(E) In no event shall anything contained in this Article be deemed or construed to reduce the Base Rent or additional rent provided to be paid under any of the other terms and provisions of this lease.

43. Brokerage. Tenant represents, warrants and confirms to Landlord that Newmark & Company Real Estate, Inc. and Koll Real Estate Services Company (collectively, the "Brokers") are the sole and only brokers with whom it has dealt with respect to this lease or the demised premises. Tenant agrees to indemnify and save Landlord and the Brokers harmless of, from and against any and all claims (and all expenses and fees, including attorneys' fees, related thereto) for commissions or compensation made by any broker or entity (other than the Brokers), arising out of or relating to this lease, the demised premises, the Building and/or the acts of Tenant, its employees or agents. As, if and when this lease shall be mutually executed and delivered by Landlord and Tenant, Landlord agrees to pay the commission that may be due the Brokers in connection with this lease in accordance with separate agreements between Landlord and the Brokers.

44. Maintenance of Air-Conditioning Equipment. Notwithstanding anything contained herein to the contrary, Landlord agrees, at its sole expense, to maintain and keep in good order, condition and repair all air-conditioning equipment currently placed within or serving the demised premises. Anything contained in Article 29 hereof to the contrary notwithstanding, Tenant agrees to keep and cause to be kept closed (during any periods when air-conditioning is in use) all windows in the demised premises and at all times to cooperate fully with Landlord and otherwise to abide by all reasonable regulations and requirements which Landlord may prescribe to permit the proper functioning and protection of the heating and air-conditioning systems (if any) of the Building.

45. Electricity.

(1) As long as Tenant is not in default in the payment of any rent or the performance or observance of any covenants or provisions of this lease on Tenant's part to be observed or performed, but subject in any event to the other provisions of this Article, Landlord shall furnish the electric energy that Tenant shall reasonably require for ordinary reasonable use in the demised premises on a rent inclusion basis. That is, there shall be no charge to Tenant for such electric energy by way of measuring the same on any meter, such electric energy being included in Landlord's services which are covered by the Base Rent reserved hereunder. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electric energy furnished to the demised premises by reason of any requirement, act or omission of the public utility serving the Building with electricity or for any other reason whatsoever. Throughout the term of this lease, Landlord reserves the right to approve the electrical equipment which Tenant may desire to utilize in the demised premises and any additions, supplements or replacements thereof. Tenant shall furnish and maintain and install all lighting tubes, lamps, starters, bulbs and ballasts required in the demised premises, at Tenant's expense or, at Landlord's election, shall purchase the same from Landlord and shall pay Landlord's charges therefor on demand.

(2) Tenant's use of and/or demand for electric energy in the demised premises shall not at any time exceed the capacity of any of the electrical conductors and equipment in or otherwise serving the demised premises. In order to insure that such capacity is not exceeded and to avoid possible adverse effect upon the electrical service of the Building, Tenant shall not, without Landlord's prior written consent in each instance, connect any additional fixtures, appliances or equipment (other than lamps, typewriters and other usual small business office machines having electric current requirements similar to electric typewriters and the electrical equipment that may have been initially approved by Landlord) to the electric distribution system of the Building or make any alteration or addition to the electric system of the demised premises. If Landlord grants such consent, all additional risers, feeders, or other conductors or equipment required therefor shall be provided by Landlord and the cost thereof shall be paid by Tenant upon Landlord's demand. As a condition to granting such consent, Landlord may require Tenant to agree to an increase in the Base Rent by an amount which will reflect the then value to Tenant of the additional service to be furnished by Landlord, that is, the potential additional electric energy to be made available to Tenant based upon the estimated additional capacity of such additional risers, feeders, conductors or other equipment. If Landlord and Tenant cannot agree thereon, such amount shall be determined in accordance with the procedure set forth in Subdivision (3) of this Article. Pending the determination of such increase Landlord, if requested by Tenant, may make such additional electrical service available to Tenant provided Tenant agrees in writing to pay the increase in accordance with Landlord's initial determination while such dispute is being determined. When the amount of such increase is so determined, the parties shall execute an agreement supplementary to this lease in the form prepared by Landlord to reflect such increase in the amount of Base Rent and the amount as determined by the procedure set forth in said Subdivision (3), effective from the date such additional service is made available to Tenant, but such increase shall be effective from such date even if such supplementary agreement is not executed. Landlord may withhold its consent until a written agreement thereon is reached. Additionally, throughout the term of this lease, Landlord shall have the right and privilege, from time to time, to survey the plans and specifications for the demised premises and the actual installations made or utilized by Tenant therein in order to determine the nature of Tenant's equipment and installations and the value of the electrical service being or to be furnished to Tenant. It is agreed that on the date of execution of this lease there is included in Base Rent the sum of EIGHT THOUSAND ONE HUNDRED THIRTY SIX ($8,136.00) DOLLARS in respect of electrical service. Such estimate of the value of electrical service to Tenant shall be based upon total connected load, as well as the electrical service then necessary for the operation of all lighting and other electrical equipment in the demised premises. If any such survey shall result in a determination that the value to Tenant of the electrical service and/or demand being furnished is or should be above that then included therefor in the Base Rent hereunder, Landlord shall notify Tenant thereof and (unless Tenant objects thereto within ten (10) days of receipt of such notice -- in which event the amount of the increase in Base Rent shall be determined pursuant to the procedure set forth in Subdivision (3)) the Base Rent shall be appropriately increased on an annual basis from and as of the date of any such survey, or as of such earlier date as it may be determined that Tenant has been receiving such additional value. Upon request of Landlord, Tenant shall execute an

agreement supplementary to this lease confirming any increases in Base Rent pursuant hereto, but such increase shall become effective regardless of whether any such supplementary agreement is executed.

(3) Wherever in this Article it is provided that an amount or value shall be determined in accordance with the procedure set forth in Subdivision (3), it is intended that the following procedure shall be followed:

Landlord shall select a reputable independent electrical engineer or utility consultant at the equal expense of Landlord and Tenant to determine the amount or value. If Tenant disagrees with the findings of Landlord's engineer or utility consultant, Tenant, within ten (10) days after Landlord shall have delivered such findings to Tenant, shall have the right, at Tenant's expense, to select a reputable independent electrical engineer to determine the amount and such party shall make such determination within twenty (20) days after such selection. If Tenant's engineer disagrees with the findings of Landlord's representative, Landlord's representative and Tenant's engineer shall select a third reputable independent engineer or utility consultant, at Tenant's expense, to determine such amount and his determination shall be binding and conclusive upon Landlord and Tenant. If Landlord's representative and Tenant's engineer cannot agree upon the selection of a third engineer or utility consultant, the amount shall be determined by arbitration as provided for hereinafter. In all situations, however, pending the determination of such dispute, the Base Rent and increases thereof shall be payable in accordance with Landlord's initial determination.

(4) If at any time or times after the date of this lease the public utility rate schedule for the supply of electric current to the Building shall be increased for whatever reason during the term of this lease, or any charges, fuel adjustments or taxes are imposed upon Landlord in connection therewith or are increased, the Base Rent herein reserved shall be appropriately increased by the same percentage as the resulting increase in Landlord's cost of furnishing electric service to the demised premises. When the amounts of such adjustments are so determined, Landlord and Tenant shall execute an agreement supplementary hereto as prepared by Landlord to reflect such adjustments in the amount of the Base Rent, effective from the effective date of such increase in the public utility rate schedule; but such adjustment shall be effective from the effective date of the change in rates or imposition of or change in charges or taxes, as the case may be, whether or not such a supplementary agreement is executed.

(5) Landlord also reserves the right at any time and for any reason to discontinue furnishing electric energy to Tenant in the demised premises upon not less than thirty (30) days' notice to Tenant or upon such shorter notice as may be required by the public utility serving the Building. However, in the event of Tenant's default in payment of any rent due under the terms of this lease or otherwise, in addition to Landlord's other remedies by reason thereof, Landlord may, without notice, discontinue the service of electric energy to the demised premises for the duration of such default or the term hereof (as Landlord may elect), without releasing Tenant from any liability under this lease and without Landlord incurring any liability for any damage or loss sustained by Tenant by such discontinuance, this lease shall continue in full force and effect and shall be

unaffected thereby, and the same shall not be deemed to be a lessening or diminution of services within the meaning of any law, rule or regulation now or hereafter enacted, promulgated or issued, except only that, from and after the effective date of such discontinuance, Landlord shall not be obligated to furnish electric energy to Tenant and the Base Rent shall be reduced to exclude the amount included in the Base Rent in respect of electrical service, but in no event shall the Base Rent be reduced by more than EIGHT THOUSAND ONE HUNDRED THIRTY SIX ($8,136.00) DOLLARS or the amount then included in Base Rent on account of electricity. If Landlord so discontinues furnishing electric energy to Tenant, Tenant at Tenant's expense shall arrange to obtain electric energy directly from the public utility company furnishing electric service to the Building. Except in such circumstances where a discontinuance of the furnishing of electric energy results from or relates to a default by Tenant, such electric energy may be furnished to Tenant by means of the then existing Building system feeders, risers and wiring to the extent that the same are available, suitable and safe for such purposes. All meters and additional panel boards, feeders, risers, wiring and other conductors and equipment which may be required to obtain electric energy directly from such public utility company shall be installed and maintained by Tenant at its expense, provided, however, that Tenant shall make no alterations or additions to the electrical equipment and/or appliances without the prior written consent of Landlord in each instance. Landlord shall not in any wise be liable or responsible to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric energy is changed or is no longer available or suitable for Tenant's requirements. Tenant shall be liable for all loss or damage sustained in connection with its supply of the electric energy.

(6) At no time shall Tenant's connected electrical load in the demised premises exceed four (4) watts per square foot. Tenant has reviewed the electrical capacity available to the demised premises and represents that it is satisfied therewith. For the purposes of this subdivision (6) only it is agreed that the demised premises contain 2,712 square feet.

(7) If any tax is imposed upon Landlord with respect to electrical energy furnished as a service to Tenant by any Federal, State or Municipal Authority, Tenant, unless prohibited by law or by any governmental authority having jurisdiction thereover, shall pay to Landlord, on demand, Tenant's pro rata share of such taxes.

(8) Tenant shall enter into such modifications of this lease as Landlord may from time to time request in connection with any requirement of any public utility or any requirement of law pertaining to electric energy service or charges therefor.

46. Landlord's Agent. Whenever Landlord is required or desires to send any notice or other communication to Tenant under or pursuant to this lease, it is understood and agreed that such notice or communication, if sent by Landlord's agent (of whose agency Landlord shall have advised Tenant), for all purposes shall be deemed to have been sent by Landlord. Landlord hereby advises Tenant that Landlord's current agent is Newmark & Company Real Estate, Inc. of 125 Park Avenue, New York, New York 10017.

Tenant agrees that all of the representations, warranties, waivers and indemnifications made in this lease by Tenant for the benefit of Landlord shall also be deemed to inure to and be for

the benefit of Landlord's agent, its officers, directors, employees and independent contractors.

47. Tenant's Certificate. At any time and from time to time within five (5) days after written demand therefor, Tenant shall execute, acknowledge and deliver to Landlord, without charge, a statement addressed to Landlord (and/or such other persons or parties as Landlord shall require), certifying that to the best knowledge of Tenant, this lease is in full force and effect and is unmodified (or, if there have been modifications, specifying same) and setting forth the dates to which the rentals and other charges payable hereunder have been paid and stating that Landlord is not in default in the performance of any of the covenants or agreements on its part to be performed hereunder (or, if that is not the case, specifying each particular in which the Tenant alleges that Landlord is in default) and certifying as to such other items in respect of this lease as Landlord may reasonably require.

48. Insurance and Indemnity. Landlord and Tenant, respectively, hereby each releases the other party (which term as used in this Article shall include such party's employees, agents, partners, officers, shareholders and directors) from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policies which the releasor carries with respect to the demised premises, or any interest or property therein or thereon (whether or not such insurance is required to be carried under this lease), but only to the extent that such loss is collectible under such insurance policies. Such release is also conditioned upon the inclusion in the applicable policy or policies of a provision whereby any such release shall not adversely affect said policies, or prejudice any right of the releasor to recover thereunder. Each party agrees that its insurance policies aforesaid will include such a provision so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party shall be willing to pay such extra cost. If extra cost shall be chargeable therefor, the holder of the policy shall advise the other party of the amount of the extra cost, and the other party at its election may pay the same, but shall not be obligated to do so.

Additionally, Tenant hereby covenants and agrees forever to indemnify and hold Landlord harmless from and against any and all claims, actions, judgments, damages, liabilities, losses or expenses, including attorneys' fees, in connection with damage to property or injury or death to persons, or any other matters, arising from or out of the use, alteration or occupation of the demised premises except on account of Landlord's negligence. In case Landlord shall be made a party to any litigation commenced against Tenant or others, then Tenant shall protect and hold Landlord forever harmless and shall pay all costs and expenses, including attorneys' fees, incurred or paid by Landlord in connection with such litigation. In furtherance of Tenant's obligations under this Article and this lease (but not in limitation thereof) Tenant covenants and agrees, at its sole cost and expense, to carry and maintain in force from and after the date of this lease and throughout the term hereof (i) workmen's compensation and other required statutory forms of insurance, in statutory limits, and (ii) comprehensive general public liability insurance, which shall be written on an occurrence basis, naming Tenant as the insured and naming Landlord and its agent and, if requested by Landlord, the lessor under any ground or underlying lease or others having an interest in the land and/or the Building of which the demised premises form a part, as additional insureds, in limits of not less than $3,000,000.00 for bodily and personal injury or death to any one person and not less than $3,000,000.00 for bodily and personal injury or death in any one occurrence, and for property damage of not less than $3,000,000.00 per occurrence, including water damage and

sprinkler leakage legal liability, protecting the aforementioned parties from all such claims for bodily or personal injury or death or property damage occurring in or about the demised premises and its appurtenances. All insurance required to be maintained by Tenant shall be carried with a company or companies acceptable to Landlord licensed to do business in the State of New York, shall be written for terms of not less than one year, and Tenant shall furnish Landlord (and any other parties required to be designated as additional insureds under any such policies) with certificates evidencing the maintenance of such insurance and the payment of the premiums therefor, and with renewals thereof and evidence of the payment of the premiums therefor at least thirty (30) days prior to the expiration of any such policy or policies. Such policy or policies shall also provide that it or they shall not be cancelled or materially altered without giving Landlord at least twenty (20) days' prior written notice thereof, sent to Landlord by registered mail at Landlord's address to which notices are required to be sent to Landlord hereunder. Upon Tenant's default in obtaining or delivering any such policy or policies or failure to pay the premiums therefor, Landlord (in addition to and not in limitation of its other rights, remedies and privileges by reason thereof) may (but shall not be obligated to) secure or pay the premium for any such policy or policies and charge Tenant as additional rent therefor an amount equal to 110% of Landlord's costs therefor.

49. Landlord's Liability. Notwithstanding anything herein or any rule of law or statute to the contrary, it is expressly understood and agreed that to the extent that Landlord shall at any time have any liability under, pursuant to or in connection with this lease, neither Tenant nor any officer, director, partner, associate, employee, agent, guest, licensee or invitee of Tenant (or any other party claiming through or on behalf of Tenant) shall seek to enforce any personal or money judgment against Landlord, but shall only pursue any such rights or remedies against Landlord's interest in the Building. In addition to and not in limitation of the foregoing provision of this Article it is agreed that, in no event and under no circumstances, shall Landlord or any partner, officer, employee, agent or principal (disclosed or undisclosed) of Landlord have any personal liability or monetary or other obligation of any kind under or pursuant to this lease. Any attempt by Tenant or any officer, director, partner of Tenant (or any other party claiming through or on behalf of Tenant) to seek to enforce any such personal liability or monetary or other obligation shall, in addition to and not in limitation of Landlord's other rights, powers, privileges and remedies under the terms and provisions of this lease or otherwise afforded by law in respect thereof, immediately vest Landlord with the unconditional right and option to cancel this lease on five (5) days' notice to Tenant.

50. Additional Re Article "7". Anything contained in Article "7" hereof to the contrary notwithstanding, Tenant covenants and agrees that, except as herein otherwise set forth, this lease shall not terminate upon the termination of any ground lease or underlying lease or mortgage at any time affecting the real property of which the demised premises forms a part or any such lease. If for any reason or cause whatsoever any such ground or underlying lease is terminated by summary dispossess proceedings or otherwise or if such ground or underlying lease is terminated through foreclosure proceedings brought by the holder of any mortgage to which such ground or underlying lease is subject and/or subordinate or otherwise, or if Landlord's fee title is foreclosed upon by the holder of any mortgage thereon, all without Tenant having been made a party in any such dispossess and/or foreclosure proceeding, Tenant shall attorn to the lessor under such ground or underlying lease or the purchaser in any such foreclosure proceeding, as the case may be, and this lease shall not be affected in any way whatsoever (except as herein otherwise expressly provided) by any such proceeding or

termination, and this lease shall continue in full force and effect in accordance with its terms; but if Tenant shall be named in any such dispossess and/or foreclosure proceeding, this lease and Tenant's estate shall be terminated thereby.

If such ground or underlying lease shall terminate or any such mortgage be foreclosed, and Tenant shall attorn to the lessor under such ground or underlying lease or the purchaser in any such foreclosure proceeding, such lessor or purchaser shall not be required to accept attornment by Tenant unless such attornment shall be pursuant to a written agreement required by such lessor or purchaser which, among other things, shall contain provisions to the effect that in no event shall such lessor or purchaser, as landlord, (a) be obligated to repair, replace or restore the Building or the demised premises in the event of damage or destruction, beyond such repair, replacement or restoration as can be reasonably accomplished from the net proceeds of insurance actually received by or made available to such landlord, (b) be responsible for any previous act or omission of the landlord or the tenant under such ground or underlying lease or for the return of any security deposit unless actually received by such landlord, (c) be subject to any liability or offset accruing to Tenant against Landlord, (d) be bound by any previous modification or extension of this lease unless previously consented to, or (e) be bound by any previous prepayment of more than one month's rent or other charge.

51. Additional Re Article "22". Article "22" hereof is hereby amended to add the following:

"If the demised premises are not surrendered and vacated as and at the time required by this lease (time being of the essence), Tenant shall be liable to Landlord for (a) all losses and damages which Landlord may incur or sustain by reason thereof, including, without limitation, attorneys' fees, and Tenant shall indemnify Landlord against all claims made by any succeeding tenants against Landlord or otherwise arising out of or resulting from the failure of Tenant timely to surrender and vacate the demised premises in accordance with the provisions of this lease, and (b) per diem use and occupancy in respect of the demised premises equal to two (2) times the Base Rent and additional rent payable hereunder for the last year of the term of this lease (which amount Landlord and Tenant presently agree is the minimum to which Landlord would be entitled and is presently contemplated by them as being fair and reasonable under such circumstances and not a penalty). In no event shall any provision hereof be construed as permitting Tenant to hold over in possession of the demised premises after expiration or termination of the term hereof, and no acceptance by Landlord of payments from Tenant after the expiration or termination of the term hereof shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article. The provisions of this Article shall survive the expiration or termination of the term of this lease."

52. Late Charge. If, during the term of this lease, Tenant shall fail to pay the Base Rent or additional rent or any other charge at any time due or payable hereunder within ten (10) days after same is due and payable, Tenant agrees to pay to Landlord, as and for a late charge by reason thereof, without further notice or demand by Landlord, a sum equal to $.10 for every dollar thereof, which sum shall be considered as additional rent. Nothing contained in this Article is intended to grant Tenant any extension of time in respect of the due dates for any payments under this lease, nor shall same be construed to be a limitation of or a substitution for any other rights, remedies and privileges of Landlord under this lease or otherwise.

53. Fees and Expenses. Whenever any default, request, action or inaction by Tenant causes Landlord to engage an

attorney and/or incur any other costs or expenses, Tenant agrees that it shall pay and/or reimburse Landlord for such costs or expenses within ten (10) days after being billed therefor as additional rent.

54. Arbitration. In such cases where this lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the same shall be settled by arbitration in the Borough of Manhattan, City and State of New York, in accordance with the rules then obtaining of the American Arbitration Association, governing commercial arbitration. In the event that the American Arbitration Association shall not be then in existence, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give written notice thereof to the first party. The arbitrators thus appointed shall appoint a third disinterested person, who shall be an attorney at law admitted to practice in the State of New York actively engaged in the practice of his or her profession for not less than ten (10) years. If the arbitrators thus appointed shall fail to appoint such third disinterested person, then either party may, by application to the presiding Justice, Appellate Division of the Supreme Court of the State of New York for the First Judicial Department seek to appoint such third disinterested person. Upon such appointment, such person shall be the third arbitrator as if appointed by the original two arbitrators. The decision of the majority of the arbitrators shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event the other party shall select the arbitrator not so selected by the first party, and upon such selection, such arbitrator shall be deemed to have been selected by the first party. The expenses of arbitration shall be shared equally by Landlord and Tenant, unless this lease expressly provides otherwise, but each party shall pay and be separately responsible for its own counsel and witness fees, unless this lease expressly provides otherwise. Landlord and Tenant agree to sign all documents and to do all other things necessary to submit any such matter to arbitration and further agree to, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder and agree that a judgment or order may be entered in any court of competent jurisdiction based on an arbitration award (including the granting of injunctive relief).

The arbitrators shall have the right to retain and consult experts and competent authorities skilled in the matters under arbitration, but any such consultation shall be made in the presence of both parties, with full right on their part to cross-examine such experts and authorities. The arbitrators shall render their decision and award not later than sixty (60) days after the appointment of the third arbitrator. Their decision and award shall be in writing and counterpart copies thereof shall be delivered to each of the parties. In rendering their decision and award, the arbitrators shall have no power to modify or in any manner alter or reform any of the provisions of this lease, and the jurisdiction of the arbitrators is limited accordingly.

55. Default Under Other Lease(s). A default by Tenant under this lease shall be considered a default under any other lease Tenant may at any time have in respect of other space in the Building or other space owned or controlled by Landlord or any of Landlord's principals. Similarly, a default by Tenant under any such other lease shall be considered a default under this lease.

56. Additional Re Article "9". Supplementing the provisions of Article "9" hereof, Landlord shall not be obligated to commence any repairs or restorations to the demised premises as required thereunder unless and until Landlord has received the proceeds of all fire insurance policies affecting the building of which the demised premises forms a part.

57. Diagram. Tenant acknowledges that it has been informed by Landlord that any diagram attached to this lease is solely for the purpose of identifying the premises demised hereunder and Landlord has made no representation and is unwilling to make any representation and nothing in this lease shall be deemed or construed to be a representation or covenant as to the dimensions of and/or the square foot area contained in the demised premises.

58. No Attornment. All checks tendered to Landlord as and for the rent and/or additional rent required hereunder shall be deemed payments for the account of the Tenant. Acceptance by the Landlord of rent and/or additional rent from anyone other than the Tenant shall not be deemed to operate as an attornment to the Landlord by the payor of such rent and/or additional rent or as a consent by the Landlord to an assignment of this lease or subletting by the Tenant of the demised premises to such payor, or as a modification of any of the provisions of this lease.

59. Liens. Tenant shall not create or suffer to be created or to remain, and shall (within ten (10) days of the filing or imposition thereof) remove or discharge, by bonding or payment, any lien, encumbrance or charge upon the demised premises or the real property of which the same forms a part caused by or in any manner related to any act or alleged act of commission or omission on the part of Tenant, or any of its agents or contractors. Further, should any such lien be bonded and should Landlord or its agents be thereafter named as a party to any action or proceeding in respect of such bond or claim, Tenant agrees to indemnify and save harmless Landlord and its agents in respect thereof and to pay all costs and expenses (including legal fees) of Landlord related thereto. Tenant agrees to surrender the demised premises free and clear of all liens, charges or encumbrances thereon of every nature and description, and free and clear of all violations thereon placed by any governmental or quasi-governmental body resulting from any act of omission or commission on the part of Tenant or any of its agents or contractors, or otherwise related to Tenant's use or occupancy of the demised premises. Nothing in this lease contained shall be construed as constituting the consent or request of Landlord to any contractor, laborer or materialman for the performance of any labor or services or the furnishing of any materials for the improvement or repair of the demised premises.

60. Notice of Damage. Tenant shall give prompt notice to Landlord of any fire, accident, loss or damage or dangerous or defective condition materially affecting the demised premises or any part thereof or the fixtures or other property of Landlord therein of which Tenant has any knowledge. Such notice shall not, however, be deemed or construed to impose upon Landlord any obligation to perform any work to be performed by Tenant under this lease or not otherwise hereunder undertaken to be performed by Landlord.

61. Building Renovation. Tenant understands and acknowledges that Landlord may alter, restore and/or renovate the entrance lobby and/or other portions of the Building (including, without limitation, the relocation of the entrance to the Building) and that such alterations, restoration and/or renovation or other work in the Building may result in certain inconveniences or disturbances to Tenant and other occupants of the Building; such renovations, however, shall not result in preventing Tenant's reasonable access to the demised premises.

Tenant agrees that the performance of any such work shall not constitute or be deemed to be a constructive eviction or be grounds for a termination of this lease or the terms hereof, nor shall the same in any way affect the obligations of Tenant under this lease, including, without limitation, the obligation to pay the rents herein reserved or give Tenant the right to claim damages or any matter or thing from Landlord or Landlord's agent(s) or contractor(s).

62. Conditional Limitation. In the event Tenant shall make default in the payment of the rent reserved herein, or any item of additional rent herein mentioned, or any part of either, or in making any other payment herein required for a total of two (2) months, whether or not consecutive, in any twelve (12) month period, and Landlord shall have served upon Tenant petitions and notices of petition to dispossess Tenant by summary proceedings in each such instance, then, notwithstanding that such default may have been cured prior to the entry of a judgment against Tenant, any further default in the payment of any money due Landlord hereunder shall be deemed to be deliberate and Landlord may serve a written three (3) days' notice of cancellation of this lease upon Tenant, and upon the expiration of said three (3) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such three (3) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof, and Tenant shall then quit and surrender the demised premises to Landlord, but Tenant shall remain liable as elsewhere provided in this lease.

63. Subsidiaries and Affiliates. So long as Tenant is not in default in any of the terms, covenants, or conditions of this lease, Tenant may, without the prior written consent of Landlord, permit all or any portion of the demised premises to be used by an entity which is a subsidiary or affiliate of Tenant. The terms "subsidiary" and "affiliate", as used herein, shall include any entity (i) which holds a majority of the shares of stock of all classes of Tenant; or (ii) a majority of the shares of stock of all classes of which (if the subsidiary or affiliate is a corporation), or a majority of the interest in the entity and control thereof (if the subsidiary or affiliate is not a corporation), shall be held by Tenant; or (iii) a majority of the shares of stock of all classes of which (if the subsidiary or affiliate is a corporation), or a majority of the interest in the entity and control thereof (if the subsidiary or affiliate is not a corporation), shall be held by the same person, corporation or entity which holds all of the shares of stock of all classes of Tenant. If, for any reason whatsoever, such ownership is reduced to less than a majority of the interest, such reduction shall constitute a prohibited assignment of this lease or a sublease of all or a portion of the demised premises, as the case may be, and Tenant shall cause such subsidiary or affiliate to vacate that portion of the demised premises which it occupies simultaneously with the occurrence of such reduction. The failure of the subsidiary or affiliate to vacate that portion of the demised premises which it occupies shall constitute a substantial default under the terms of this lease and Landlord shall have all the rights and remedies set forth herein in the event of a default by Tenant.

64. Modifications Requested by Mortgagee. If any prospective mortgagee of the Building, the land thereunder or any leasehold interest in either requires, as a condition precedent to issuing its loan, the modification of this lease in such manner as does not materially lessen Tenant's rights or increase its obligations hereunder, Tenant shall not withhold or delay its consent to such modification and shall execute and deliver such confirming documents therefor as such mortgagee requires.

65. Basement Space. If any basement or sub-basement space is included in the premises demised hereunder, Tenant agrees

that, notwithstanding anything to the contrary contained in this lease, such basement or sub-basement space (i) shall not be used for any purpose other than storage and (ii) shall not be sublet or used by anyone other than Tenant without the prior written consent of Landlord, which consent Landlord shall have the right to withhold for any reason whatsoever.

66. Building Directory. At the written request of Tenant, Landlord shall list on the building's directory the name of Tenant, any trade name under which Tenant has the right to operate, any other entity permitted to occupy any portion of the demised premises under the terms of this lease, and the officers and employees of each of the foregoing entities, provided the number of names so listed does not exceed Tenant's Percentage of the capacity of such directory. If requested by Tenant, Landlord may (but shall not be required to) list the name of Tenant's subsidiaries and affiliates; however, the listing of any name other than that of Tenant shall neither grant such party or entity any right or interest in this lease or in the demised premises nor constitute Landlord's consent to any assignment or sublease to, or occupancy of the demised premises by, such party or entity. Except for the name of Tenant, any such listing may be terminated by Landlord, at any time, without notice.

67. Miscellaneous.

(A) If at the commencement of, or at any time or times during the term of this lease, the rents reserved in this lease shall not be fully collectible by reason of any Federal, State, County, City or other governmental law, proclamation, order or regulation, or direction of a public officer or body pursuant to law, Tenant shall enter into such agreements and take such other steps as Landlord may request and as may be legally permissible to permit Landlord to collect the maximum rents which may from time to time during the continuance of such legal rent restriction be legally permissible (but not in excess of the amounts reserved therefor under this lease). Upon termination of such legal rent restriction prior to the expiration of the term of this lease, (a) the rents shall become and thereafter be payable thereunder in accordance with the amounts reserved in this lease for the periods following such termination and (b) Tenant shall pay to Landlord, if legally permissible, an amount equal to (i) the rents which would have been paid pursuant to this lease but for such legal rent restriction less (ii) the rents paid by Tenant to Landlord during the period or periods such legal rent restriction was in effect.

(B) If at any time Tenant is other than a single, partnership, firm, corporation, individual or other entity, the act of, or notice, demand, request or other communication from or to, or any payment or refund from or to, or signature of, any of the individuals, partnerships, firms, corporations or other entities then constituting Tenant with respect to Tenant's estate or interest in the demised premises or this lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request or other communication, or so had given or received such payment or refund, or had so signed, and they shall be jointly and severally liable for the performance of Tenant's obligations hereunder.

(C) If any provision of this lease shall be held invalid or unenforceable, such invalidity or unenforceability shall affect only such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this lease, and this lease shall be enforced as if any such invalid or unenforceable provision were not contained herein.

(D) Landlord and Tenant hereby agree that this lease shall be governed by and construed and enforced in accordance with the internal laws of the State of New York without giving reference

to principles of conflict of laws. The state courts of the State of New York shall have jurisdiction to hear and determine any dispute between Landlord and Tenant pertaining directly or indirectly to this lease or any matter arising therefrom, and Tenant hereby expressly consents and submits in advance to such jurisdiction in any action or proceeding commenced in such courts by either party hereto.

(E) It is expressly noted, acknowledged and confirmed by Tenant that a breach, default or failure to observe, perform or otherwise comply with any material obligations, covenants, conditions, rules and regulations in this lease on Tenant's part to be observed, performed or complied with shall be and be deemed to be a violation by Tenant of a substantial obligation of the tenancy created by this lease entitling Landlord to pursue any and all rights, remedies and privileges provided under this lease or at law or in equity, including, without limitation, the right to terminate said tenancy and recover possession of the demised premises.

(F) Supplementing Article 3, Landlord's consent shall not be required for minor changes to the demised premises such as the installation of furniture, furnishings, cabinets and shelves which are not affixed to the realty. All other renovations, decorations, additions, installations, improvements and alterations of any kind or nature in or to the demised premises whether performed by Tenant or by Landlord ("Tenant Changes") shall require the prior written consent of Landlord which, in the case of non-structural interior Tenant Changes, Landlord agrees not to unreasonably withhold, provided Tenant first complies with all applicable requirements of this lease including any Workletter attached to this lease and the building Rules and Regulations Governing Tenant Alterations ("Alterations Rules") In granting its consent to any Tenant Changes, Landlord may impose such conditions (as to guarantee of completion including, without limitation, requiring Tenant to post a bond to insure the completion of Tenant Changes, payment for Tenant Changes and other charges payable under this Article, restoration or otherwise), as Landlord may reasonably require. In no event shall Landlord be required to consent to any Tenant Changes which would affect the structure of the building, the exterior thereof, any part of the building outside of the demised premises or the mechanical, electrical, heating, ventilation, air conditioning, sanitary, plumbing or other service systems and facilities (including elevators) of the building, and such Tenant Changes shall be performed only by contractors designated or approved by Landlord. Tenant shall, promptly upon demand, reimburse Landlord's agent for any reasonable out-of-pocket fees, expenses and other charges incurred by Landlord or its agent in connection with the review, modification and/or approval of such plans and specifications by Landlord's agent and other professional consultants of Landlord and shall pay to Landlord's agent during the course of the work, as a charge of Landlord's agent for the supervision and coordination by Landlord's agent of any Tenant Changes for Landlord's benefit and without waiver of any of the requirements of this lease, the Workletter, if any, or the Alterations Rules, a fee of five (5%) percent of the cost of such Tenant Changes. Tenant shall promptly provide such evidence as Landlord or Landlord's agent may request to substantiate any such costs incurred by Tenant. Tenant shall, at its sole cost and expense, in making any Tenant Changes, comply with all requirements of the Alterations Rules.

(G) Tenant agrees that in connection with any work which may be performed by Tenant pursuant to this lease, such work shall not be performed in a manner which would create any work stoppage, picketing, labor disruption or dispute or violate union contracts affecting the land and/or the Building nor unreasonably interfere with the business of Landlord or any tenant or occupant of the Building.

(H) If there shall be any conflict between any provision contained in this Rider and the printed provisions of this lease, the provisions of this Rider shall prevail.

68. Binding Clause. Neither the submission of this lease form to Tenant nor the execution of this lease by Tenant shall constitute an offer by Landlord to Tenant to lease the space herein described as the demised premises or otherwise. This lease shall not be or become binding upon Landlord to any extent or for any purpose unless and until it is executed by Landlord and a fully executed copy thereof is delivered to Tenant or Tenant's counsel.

69. Substitute Space. At any time and from time to time during the term of this lease Landlord shall have the right to substitute for the demised premises (for the purposes of this Article only, the demised premises are hereinafter called the "Replaced Premises") other space in the Building (such other space hereinafter called the "Substitute Premises") by written notice (the "Notice") given to Tenant no later than sixty (60) days prior to the date set forth in said notice as the effective date (the "Substitution Date") for such substitution. Landlord's notice shall include a floor plan identifying the Substitute Premises, which premises shall have a rentable area equal to or greater than the Replaced Premises and shall be similar thereto in configuration. Tenant shall vacate the Replaced Premises and surrender the same to Landlord on or before the Substitution Date. Promptly after Tenant enters into occupancy of the Substitute Premises and provided Tenant is not then in default under any of the terms or conditions of this lease, Landlord shall reimburse Tenant for any reasonable moving expenses, any other reasonable costs and expenses incurred by Tenant in duplicating the Substitute Premises, the alterations and additions previously made by Tenant in the Replaced Premises, and other reasonable expenses incurred by Tenant as a result of the move. From and after the Substitution Date, the term "demised premises" shall mean the Substitute Premises for all purposes hereunder.

70. Security Deposit. Article 34 hereof is hereby amended to add the following:

"Said security deposit shall be placed by Landlord in an interest bearing federally insured account. Interest that may accrue thereon shall belong to Tenant, except such portion thereof as shall be equal to one (1%) percent of such interest per annum, which such percentage shall belong to and be the sole property of Landlord and which Landlord may withdraw from time to time and retain. Landlord shall, upon Tenant's request, advise Tenant of the name of the bank where such deposit is held. Landlord shall give Tenant notice of any transfer of such deposit to a different bank simultaneous with or promptly after any such transfer. The obligation to pay any taxes, whether income or otherwise, related to or affecting any interest earned on such security deposit (except as to that portion thereof which belongs to Landlord) shall be the sole responsibility of Tenant and Tenant hereby agrees to pay same and to forever indemnify and save harmless Landlord in respect thereof. Tenant shall, within fifteen (15) days after demand, furnish Landlord or its agent with a tax identification number for use in respect of such cash deposit. If Landlord at any time utilizes any portion of the cash security deposit in respect or by reason of a default by Tenant, Tenant shall, within ten (10) days after demand, restore and pay to Landlord the amount so utilized."

71. Office Door Signage. Notwithstanding anything herein to the contrary, Tenant shall not place any sign on the exterior door to the demised premises, it being understood and agreed that Landlord, in an effort to provide uniform signage in the Building, shall install any such sign with Building Standard

lettering and Tenant shall, upon demand, pay Landlord's reasonable cost therefor.

72. Environmental Obligations. Tenant covenants and agrees that it shall not permit any materials to be used on the demised premises in violation of any applicable environmental law, and Tenant hereby indemnifies Landlord for any loss incurred by Landlord as a result of the breach of the foregoing covenant and agreement. Tenant hereby agrees promptly to notify Landlord in the event that it becomes aware of any violation of any applicable environmental law affecting the demised premises.

73. Condition of Tenant. Tenant represents that (i) it is a corporation duly formed and validly existing in good standing under the laws of the State of Delaware, (ii) it is duly qualified as a foreign corporation authorized to transact business existing in good standing under the laws of the State of New York, and (iii) the party executing this lease on Tenant's behalf is authorized to so execute this lease and bind Tenant.

74. Rent Concession. So long as Tenant shall not then be in default of any of the terms, covenants, conditions and agreements to be performed by Tenant under this lease, Tenant shall be entitled to a rent credit in the amount of $6,780.00 on the first (1st) day of the second (2nd) month of the term of this lease.

[GRAPHIC OMITTED]

Exhibit A attached hereto and forming a part of lease dated as of the 29th day of May, 1997 between 509 Madison Avenue Associates, as Landlord, and Discovery Laboratories, Inc., as Tenant, with respect to Suite 1406 at 509 Madison Avenue, New York, New York.

GUARANTY

FOR VALUE RECEIVED, and in consideration for, and as an inducement to Owner making the within lease with Tenant, the undersigned guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the covenants, conditions and agreements, therein provided to be performed and observed by Tenant, including the "Rules and Regulations" as therein provided, without requiring any notice of non-payment, non-performance, or non-observance, or proof, or notice, or demand, whereby to charge the undersigned therefor, all of which the undersigned hereby expressly waives and expressly agrees that the validity of this agreement and the obligations of the guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion by Owner against Tenant of any of the rights or remedies reserved to Owner pursuant to the provisions of the within letter. The undersigned further covenants and agrees that this guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of this lease and during any period when Tenant is occupying the premises as a "statutory tenant." As a further inducement to Owner to make this lease and in consideration thereof. Owner and the undersigned covenant and agree that in any action or proceeding brought by either Owner or the undersigned against the other on any matters whatsoever arising out of, under, or by virtue of the terms of this lease or of this guaranty that Owner and the undersigned shall and do hereby waive trial by jury.

Dated New York City _____ 19__

WITNESS:

_____

STATE OF NEW YORK,) ss.:
County of)

On this ___ day of _____, 19__, before me personally came _____
_____,
to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

_____
Notary

Residence _____

Business Address _____

Firm Name _____

IMPORTANT - PLEASE READ

RULES AND REGULATIONS ATTACHED TO AND
MADE A PART OF THIS LEASE
IN ACCORDANCE WITH ARTICLE 33.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress or egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and sideguards. If said premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalk and curb in front of said premises clean and free from ice, snow, dirt and rubbish.

2. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed and no sweepings, rubbish, rags, acids or other substances shall be deposited therein, and the expense of any breakage, stoppage, or drainage resulting from the violation of this rule shall be borne by the Tenant who, or whose clerks, agents, employees or visitors, shall have caused it.

3. No carpet, rug or other article shall be hung or shaken out of any window of the building; and no Tenant shall sweep or throw or permit to be swept or thrown from the demised premises any dirt or other substances into any of the corridors or halls, elevators, or out of the doors or windows or stairways of the building and Tenant shall not use, keep or permit it to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the buildings by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be kept in or about the building. Smoking or carrying lighted cigars or cigarettes in the elevators of the building is prohibited.

4. No awnings or other projections shall be attached to the outside walls of the building without the prior written consent of Owner.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the

same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability, and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.

6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any changes be made in existing locks or mechanism thereof. Each Tenant must, upon the termination of his Tenancy, restore to Owner all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant, and in the event of the loss of any keys, so furnished, such Tenant shall pay to Owner the cost thereof.

8. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations of the lease or which these Rules and Regulations are a part.

9. Canvassing, soliciting and peddling in the building is prohibited and each Tenant shall cooperate to prevent the same.

10. Owner reserves the right to exclude from the building, between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and legal holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such persons.

11. Owner shall have the right to prohibit any advertising by an Tenant which in Owner's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

12. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible or explosive fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

13. If the building contains central air conditioning and ventilation, Tenant agrees to keep all windows closed at all times and to abide by all rules and regulations issued by the Owner with respect to such services. If Tenant requires air conditioning or ventilation after the usual hours, Tenant shall give notice in writing to the building superintendent prior to 3:00 P.M. in the case of services required on week days, and prior to 3:00 P.M. on the day prior in the case of after hours service required on weekends or on holidays.

14. Tenant shall not move any safe, heavy machinery, heavy equipment, bulky matter, or fixtures into or out of the building without Landlord's prior written consent. If such safe, machinery, equipment, bulky matter or fixtures requires special handling, all work in connection therewith shall comply with the Administrative Code of the City of New York and all other laws and regulations applicable thereto and shall be done during such hours as Owner may designate.

Address

Premises

==========

TO

==========

STANDARD FORM OF
[LOGO] OFFICE [LOGO]
LEASE

==========

Dated _____ 19__.

Rent per Year _____

Rent per Month _____

Term _____

From _____

To _____

Drawn by _____ Checked by _____

Entered by _____ Approved by _____

==========

[LETTERHEAD OF MAIN STREET GROUP, INC.]

MEMORANDUM

DATE: November 11, 1996

TO: Acute Therapeutics, Inc.

FROM: Walter S. Smerconish

RE: 3359 Durham Road, Buckingham Township

- ---

This letter will confirm that I have received a copy of a lease agreement (attached hereto), that establishes a leasehold interest for your firm at the subject property.

In the event that I am the successful purchaser of said property, then I agree to abide by the provisions of said lease agreement as Lessor.

/s/ Walter S. Smerconish

Walter S. Smerconish
Owner in Equity: 3359 Durham Road,
Buckingham, PA

11/11/96

Date

WSS/lc

MEMORANDUM

DATE: November 8, 1996

TO: Acute Therapeutics, Inc.

FROM: Kevin and Marilyn MacDonald

RE: Lessee's Right to Early Termination of Lease Agreement
Dated November 8, 1996

- ---

This letter will confirm that Acute Therapeutics, Inc. (hereinafter "Lessee") shall have the right to terminate the above referenced lease agreement for 5,400 square feet, located at 3359 Durham Road, Buckingham, Pennsylvania, at the end of the twenty-fourth (24th) month of said agreement. Early termination may therefore occur on November 10, 1998, provided however, that written notice of Lessee's intent to exercise Lessee's option for early termination is delivered by Lessee, to Lessor, in writing at least one hundred twenty (120) days prior to November 10, 1998. Notice is therefore required, in writing, from Lessee to Lessor, by July 10, 1998. If notice of intent to terminate is not delivered from Lessee to Lessor in accordance with the foregoing, then the lease agreement will continue in full force and effect.

/s/ Kevin MacDonald
- ---
- ---
Lessor

Nov. 9, 1996
- ---
Date

/s/ Marilyn MacDonald

/s/ Robert J. Capetola

Lessee

Nov. 11, 1997

Date

Lease Agreement

1. Parties

This Agreement, MADE THE 8th day of November one thousand nine hundred and Ninety Six (1996), by and between Kevin MacDonald and Marilyn MacDonald (hereinafter called Lessor), of the one part, and Acute Therapeutics, Inc. (hereinafter called Lessee), of the other part.

2. Premises; 3. Term; 4. Minimum Rent

WITNESSETH THAT: Lessor does hereby demise and let unto Lessee all that certain 3359 Durham Road, in the Buckingham Twp., PA, being the converted stone barn, in its entirety, comprising approximately 5,400 square feet. Tax map parcel 6-7-8. The stone farmhouse and free-standing storage shed are specifically excluded, in the township of Buckingham, State of Pennsylvania, to be used and occupied as professional offices and for no other purpose, for the term of five (5) years beginning the 11th day of November, one thousand nine hundred and ninety six (1996), and ending the 10th day of November, two thousand and one (2001), for the minimum annual rental of sixty-three thousand six hundred (base years) Dollars ($63,600.00) lawful money of the United States of America, payable in monthly installments in advance during the said term of this lease, or any renewal hereof, in sums of five thousand three hundred (base years) Dollars ($5,300.00) on the first day of each month, rent to begin from the eleventh day of November, 1996, the first installment to be paid at the time of signing this lease. The first rental payment to be made during the occupancy of the premises shall be adjusted to pro-rate a partial month of occupancy, if any, at the inception of this lease.

Rental payments shall be fixed for the first two years of the lease term ("Base Years"). Annual rental shall increase to sixty-six thousand seven hundred eighty dollars for lease years three through five, and shall be payable in monthly installments, in advance in sums of five thousand five hundred sixty-five dollars ($5,565.00).

5. Inability to give Possession

If Lessor is unable to give Lessee possession of the demised premises, as herein provided, by reason of the holding over of a previous occupant, or by reason of any cause beyond the control of the Lessor, the Lessor shall not be liable in damages to the Lessee therefor, and during the period that the Lessor is unable to give possession, all rights and remedies of both parties hereunder shall be suspended, and if Lessor is unable for any reason to give possession of the demised premises with 5 days of Lessee's demand therefor following commencement of the term hereof Lessee shall have the option, by notice to Lessor, to cancel this lease agreement and receive return of any prepaid rents and security deposit in full and final settlement of any and all claims against Lessor.

6. Additional Rent

(a) Damages for Default

(a) Lessee agrees to pay as rent in addition to the minimum rental herein reserved any and all sums which may become due by reason of the failure of Lessee to comply with all of the covenants of this lease and any and all damages, costs and expenses which the Lessor may suffer or incur by reason of any default of the Lessee or failure on his part to comply with the covenants of this lease, and each of them, and also any and all damages to the demised premises caused by an act or neglect of the Lessee.

(b) Taxes

(b) Lessee further agrees to pay as rent in addition to the minimum rental herein reserved all taxes assessed or imposed upon the demised premises and/or the building of which the demised premises is a part during the term of this lease, in excess of and over and above those assessed or imposed at the time of making this lease. The amount due hereunder on account of such taxes shall be apportioned for that part of the first and last calendar years covered by the term hereof. The same shall be paid by Lessee to Lessor on or before the first day of July of each and every year.

(c) Fire Insurance Premiums

(c) Lessee further agrees to pay to Lessor as additional rent all increase or increases in fire insurance premiums upon the demised premises and/or the building of which the demised premises is a part, due to an increase in the rate of fire insurance in excess of the rate on the demised premises at the time of making this lease, if said increase is caused by any act or neglect of the Lessee or the nature of the Lessee's business.

(d) Water Rent

(d) Lessee further agrees to pay as additional rent, if there is a metered water connection to said premises, all charges for water consumed upon the demised premises in excess of the yearly minimum meter charge and all charges for repairs to the said meter or meters on the premises, whether such repairs are made necessary by ordinary wear and tear, freezing, hot water, accident or other causes, immediately when the same become due.

(e) Lessee further agrees to pay as additional rent, if there is a metered water connection to said, premises, all sewer rental or charges for use of sewers, sewage system, and sewage treatment works servicing the demised premises

in excess of the yearly minimum of such sewer charges, immediately when the same become due.

7. Place of Payment

All rent shall be payable without prior notice or demand at the office of Lessor, _____ or at such other place as Lessor may from time to time designate by notice in writing.

8. Affirmative Covenants of Lessee

Lessee covenants and agrees that he will without demand

(a) Payment of Rent

(a) Pay the rent and all other charges herein reserved as rent at the times and at the place that the same are payable, without fail; and if Lessor shall at any time or times accept said rent or rent charges after the same shall have become delinquent, such acceptance shall not excuse delay upon subsequent occasions, or constitute or be construed as a waiver of any of Lessor's rights. Lessee agrees that any charge or payment herein reserved, included, or agreed to be treated or collected as rent and/or any other charges, expenses, or costs herein agreed to be paid by Lessee may be proceeded for and recovered by Lessor by legal process in the same manner as rent due and in arrears.

(b) Cleaning, Repairing, etc.

(b) Keep the demised premises clean and free from all ashes, dirt and other refuse matter; replace all glass windows, doors, etc., broken; keep all waste and drain pipes open; repair all damage to plumbing and to the premises in general; keep the same in good order and repair as they are now, reasonable wear and tear and damage by accidental fire or other casualty not occurring through the negligence of Lessee or those employed by or acting for Lessee alone excepted. The Lessee agrees to surrender the demised premises in the same condition in which Lessee has herein agreed to keep the same during the continuance of this lease.

(c) Requirements of Public Authorities

(c) Comply with any requirements of any of the constituted public authorities, and work with the terms of any State or Federal statute or local ordinance or regulation applicable to Lessee or his use of the demised premises, and save Lessor harmless from penalties, fines, costs or damages resulting from failure so to do.

(d) Fire

(d) Use every reasonable precaution against fire.

(e) Rules and Regulations

(e) Comply with rules and regulations of Lessor promulgated as hereinafter provided.

(f) Surrender of Possession

(f) Peaceably deliver up and surrender possession of the demised premises to the Lessor at the expiration or sooner termination of this lease, promptly delivering to Lessor at his office all keys for the demised premises.

(g) Notice of Fire, etc.

(g) Give to Lessor prompt written notice of any accident, fire, or damage occurring on or to the demised premises.

(h) Condition of Pavement

(h) Lessee shall be responsible for the condition of the pavement, curb, cellar doors, awnings and other erections in the pavement during the term of this lease; shall keep the pavement free from snow and ice; and shall be and hereby agrees that Lessee is solely liable for any accidents, due or alleged to be due to their defective condition, or to any accumulations of snow and ice.

(i) Agency on Removal

(i) The Lessee agrees that if, with the permission in writing of Lessor, Lessee shall vacate or decide at any time during the term of this lease, or any renewal thereof, to vacate the herein demised premises prior to the expiration of this lease, or any renewal hereof, Lessee will not cause or allow any other agent to represent Lessee in any sub-letting or reletting of the demised premises other than an agent approved by the Lessor and that should Lessee do so, or attempt to do so, the Lessor may remove any signs that may be placed on or about the demised premises by such other agent without any liability to Lessor or to said agent, the Lessee assuming all responsibility for such action.

(j) Indemnification

(j) Indemnify and save Lessor harmless from any and all loss occasioned by Lessee's breach of any of the covenants, terms and conditions of this lease, or caused by his family, guests, visitors, agents and employees.

9. Negative Covenants of Lessee

Lessee covenants and agrees that he will do none of the following things without first obtaining the consent, in writing of Lessor, which consent Lessor shall not unreasonably withhold, and without providing Lessor with reimbursement for any expenses incurred or incidental for Lessee's proposed action.

(a) Use of Premises

(a) Occupy the demised premises in any other manner or for any other purposes than as above set forth.

(b) Assignment and Subletting

(b) Assign, mortgage or pledge this lease or under-let or sub-lease the demised premises, or any part thereof, or permit any other person, firm or corporation to occupy the demised premises, or any part thereof; nor shall any assignee or sub-lessee assign, mortgage or pledge this lease or such sub-lease, without an additional written consent by the Lessor, and without such consent no such assignment, mortgage or pledge shall be valid. If the Lessee becomes embarrassed or insolvent, or makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against the Lessee or a bill in equity or other proceeding for the appointment of a receiver for the Lessee is filed, or if the real or personal property of the Lessee shall be sold or levied upon by any Sheriff, Marshal or Constable, the same shall be a violation of this covenant.

(c) Signs

(c) Place or allow to be placed any stand, booth, sign or show case upon the doorsteps, vestibules or outside walls or pavements of said premises, or paint, place, erect or cause to be painted, placed or erected any sign, projection or device on or in any part of the premises. Lessee shall remove any sign, projection or device painted, placed or erected, if permission has been granted and restore the walls, etc., to their former conditions, at or prior to the expiration of this lease. In case of the breach of this covenant (in addition to all other remedies given to Lessor in case of the breach of any conditions or covenants of this lease) Lessor shall have the privilege of removing said stand, booth, sign, show case, projection or device, and restoring said walls, etc., to their former condition, and Lessee, at Lessor's option, shall be liable to Lessor for any and all expenses so incurred by Lessor.

(d) Alterations, Improvements

(d) Make any alterations, improvements, or additions to the demised premises. All alterations, improvements, additions or fixtures, whether installed before or after the execution of this lease, shall remain upon the premises at the expiration or sooner determination of this lease and become the property of Lessor, unless Lessor shall, prior to the determination of this lease, have given written notice to Lessee to remove the same, in which event Lessee will remove such alterations, improvements and additions and restore the premises to the same good order and condition in which they now are. Should Lessee fail so to do, Lessor may do so, collecting, at Lessor's option, the cost and expense thereof from Lessee as additional rent.

(e) Machinery

(e) Use or operate any machinery that, in Lessor's opinion, is harmful to the building or disturbing to other tenants occupying other parts thereof.

(f) Weights

(f) Place any weights in any portion of the demised premises beyond the safe carrying capacity of the structure.

(g) Fire Insurance

(g) Do or suffer to be done, any act, matter or thing objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the demised premises, or any part thereof, or on the building of which the demised premises may be a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date of execution of this lease, or employ any person or persons objectionable to the fire insurance companies or carry or have any benzine or explosive matter of any kind in and about the demised premises. In case of a breach of this covenant (in addition to all other remedies given to Lessor in case of the breach of any of the conditions or covenants of this lease) Lessee agrees to pay to Lessor as additional rent any and all increase or increases of premiums on insurance carried by Lessor on the demised premises, or any part thereof, or on the building of which the demised premises may be a part, caused in any way by the occupancy of Lessee.

(h) Removal of Goods

(h) Remove, attempt to remove or manifest an intention to remove Lessee's goods or property from or out of the demised premises otherwise than in the ordinary and usual course of business, without having first paid and satisfied Lessor for all rent which may become due during the entire term of this lease.

(i) Vacate Premises

(i) Vacate or desert said premises during the term of this lease, or permit the same to be empty and unoccupied.

10. Lessor's Rights

Lessee covenants and agrees that Lessor shall have the right to do the following things and matters in and about the demised premises:

(a) Inspection of premises

(a) At all reasonable times by himself or his duly authorized agents to go upon and inspect the demised premises and every part thereof and/or at his option to make repairs, alterations and additions to the demised premises or the building of which the demised premises is a part.

(b) Rules and Regulations

(b) At any time or times and from time to time make such reasonable rules and regulations as may be necessary or desirable for the safety, care, and cleanliness of the demised premises and/or of the building of which the demised premises is a part and of real and personal property contained therein and for the preservation of good order. Such rules and regulations shall, when communicated in writing to Lessee, form a part of this lease.

(c) Sale or Rent Sign, Prospective Purchasers or Tenants

(c) To display a "For Sale" sign at any time, and also, after notice from either party of intention to determine this lease, or at anytime within three months prior to the expiration of this lease, a "For Rent" sign, or both "For Rent" and "For Sale" signs; and all of said signs shall be placed upon such part

of the premises as Lessor may elect and may contain such matter as Lessor shall require. Persons authorized by Lessor may inspect the premises at reasonable hours during the said periods.

(d) Discontinue Facilities and Service

(d) Lessor may discontinue at any time, any or all facilities furnished and services rendered by Lessor not expressly covenanted for herein or required to be furnished or rendered by law; it being understood that they constitute no part of the consideration for this lease.

11. Responsibility of Lessee

(a) Lessee agrees to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in the demised premises, whether belonging to the Lessee or any other person caused by any fire, breakage, or leakage in any part or portion of the building of which the demised premises is a part or from water, rain or snow that may leak into, issue or flow from any part of the said premises, or of the building of which the demised premises is a part, from the drains, pipes, or plumbing work of the same or from any place or quarter, unless such breakage, leakage, injury or damage be caused by or results from the negligence of Lessor or its servants or agents.

(b) Lessee also agrees to relieve and hereby relieves Lessor from all liability by reason of any damage or injury to any property or to Lessee or Lessee's guests, servants or employees which may arise from or be due to the use, misuse or abuse of all or any of the elevators, hatches, openings, stairways, hallways of any kind whatsoever which may exist or hereafter be erected or constructed on the said premises or the sidewalks surrounding the building of which may arise from defective construction, failure of water supply, light, power, electric wiring, plumbing or machinery, wind, lightning, storm or any other case whatsoever on the said premises or the building of which the demised premises is a part, unless such damage, injury, use, misuse or abuse be caused by or result form the negligence of Lessor, its servants or agents.

12. Responsibility of Lessor

(a) Total Destruction of Premises

(a) In the event the demised premises are totally destroyed or so damaged by fire or other casualty that, in the opinion of a licensed architect retained by Lessor, the same cannot be repaired and restored within ninety days from the happening of such injury this lease shall absolutely cease and determine, and the rent shall abate for the balance of the term.

(b) Partial Destruction of Premises

(b) If the damage be only partial and such that the premises can be restored, in the opinion of a licensed architect retained by Lessor, to approximately their former condition within ninety days from the date of the casualty loss Lessor may, at Lessor's option, restore the same with reasonable promptness, reserving the right to enter upon the demised premises for that purpose. Lessor also reserves the right to enter upon the demised premises whenever necessary to repair damage caused by fire or other casualty to the building of which the demised premises is a part even though the effect of such entry be to render the demised premises or a part thereof untenantable. In either event the rent shall be apportioned and suspended during the time Lessor is in possession, taking into account the proportion of the demised premises rendered untenantable and the duration of Lessor's possession. If a dispute arises as to the amount of rent due under this clause, Lessee agrees to pay the full amount claimed by Lessor, but Lessee shall have the right to proceed by law to recover the excess payment, if any.

(c) Repairs by Lessor

(c) Lessor shall make such election to repair the premises or terminate this lease by giving notice thereof to Lessee at the leased premises within thirty days from the day Lessor received notice that the demised premises had been destroyed or damaged by fire or other casualty.

(d) Damage for Interruption of Use

(d) Except to the extent hereinbefore provided, Lessor shall not be liable for any damage, compensation, or claim by reason of the necessity of repairing any portion of the building, the interruption in the use of the premises, any inconvenience or annoyance arising as a result of such repairs or interruption, or the termination of this lease by reason of damage to or destruction of the premises.

(e) Representation of Condition of Premises

(e) Lessor has let the demised premises in their present "as is" condition and without any representations, other than those specifically endorsed hereon by Lessor, through its officers, employees, servants and/or agents. It is understood and agreed that Lessor is under no duty to make repairs, alterations, or decorations at the inception of this lease or at any time thereafter unless such duty of Lessor shall be set forth in writing endorsed hereon.

(f) Zoning

(f) It is understood and agreed that the Lessor hereof does not warrant or undertake that the Lessee shall be able to obtain a permit under any Zoning Ordinance or Regulation for such use as Lessee intends to make of the said premises, and nothing in this lease contained shall obligate the Lessor to assist Lessee in obtaining said permit; the Lessee further agrees that in the event a permit cannot be obtained by Lessee under any Zoning Ordinance or

Regulation, this lease shall not terminate without Lessor's consent, and the Lessee shall use the premises only in a manner permitted under such Zoning Ordinance or Regulations.

13. Miscellaneous Agreements and Conditions

(a) Effect of Repairs on Rental

(a) No contract entered into or that may be subsequently entered into by Lessor with Lessee, relative to any alterations, additions, improvements or repairs, nor the failure of Lessor to make such alterations, additions, improvements or repairs as required by any such contract, nor the making by Lessor or his agents or contractors of such alternations, additions, improvements or repairs shall in any way affect the payments of the rent or said other charges a the times specified in this lease, except to the extent and in the manner hereinbefore provided.

(b) Agency

(b) It is hereby expressly agreed and understood that the said Flo Smerconish, Realtor is acting as agent only and shall not in any event be held liable to the owner or to Lessee for the fulfillment or non-fulfillment of any of the terms or conditions of this lease, or for any action or proceedings that may be taken by the owner against Lessee, or by Lessee against the owner.

(c) Waiver of Custom

(c) It is hereby covenanted and agreed, any law, usage or custom to the contrary notwithstanding, that Lessor shall have the right at all times to enforce the covenants and provisions of this lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from so doing at any time or times; and, further, that the failure of Lessor at any time or times to enforce his rights under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions and covenants of this lease or as having in any way or manner modified the same.

(d) Conduct of Lessee

(d) This lease is granted upon the express condition that Lessee and/or the occupants of the premises herein leased shall not conduct themselves in a manner which is improper or objectionable, and if at any time during the term of this lease or any extension or continuation thereof Lessee or any occupier of the said premises shall have conducted himself in a manner which is improper or objectionable, Lessee shall be taken to have broken the covenants and conditions of this lease, and Lessor will be entitled to all of the rights and remedies granted and reserved herein for the Lessee's failure to observe all of the covenants and conditions of this lease.

(e) Failure of Lessee to Repair

(e) In the event of the failure of Lessee promptly to perform the covenants of Section 8(b) hereof, Lessor may go upon the demised premises and perform such covenants, the cost thereof, at the sole option of Lessor, to be charged to Lessee as additional and delinquent rent.

(f) Waiver of Subrogation

(f) Lessor and Lessee hereby agree that all insurance policies which each of them shall carry to insure the demised premises and the contents therein against casualty loss, and all liability policies which they shall carry pertaining to the use and occupancy of the demised premises shall contain waivers of the right of subrogation against Lessor and Lessee herein, their heirs, administrators, successors, and assigns.

(g) Security Interest

(g) Lessee hereby grants to Lessor a security interest under the Uniform Commercial Code in all of Lessee's goods and property in, on, or about the demised premises. Said security interest shall secure unto Lessor the payment of all rent (and charges collectible or reserved as rent) hereunder which shall become due under the provisions of this lease. Lessee hereby agrees to execute, upon request of Lessor, such financing statements as may be required under the provisions of the said Uniform Commercial Code to perfect a security interest in Lessee's said goods and property.

14. Remedies of Lessor

If the Lessee

(a) Does not pay in full when due any and all installments of rent and/or any other charge or payment herein reserved, included, or agreed to be treated or collected as rent and/or any other charge, expense, or cost herein agreed to be paid by the Lessee, or

(b) Violates or fails to perform or otherwise breaks any covenant or agreement herein contained; or

(c) Vacates the demised premises or removes or attempts to remove or manifests an intention to remove any goods or property therefrom otherwise than in the ordinary and usual course of business without having first paid and satisfied the Lessor in full for all rent and other charges then due or that may thereafter become due until the expiration of the then current term, above mentioned; or

(d) Becomes embarrassed or insolvent, or makes an assignment for the benefit of creditors, or if a petition in bankruptcy is filed by or against

Lessee or a complaint in equity or other proceedings for the appointment of a receiver for Lessee is filed, or if proceedings for reorganization or for composition with creditors under any State or Federal law be instituted by or against Lessee, or if the real or personal property of Lessee shall be levied upon or be sold, of if for any other reason Lessor shall, in good faith, believe that Lessee's ability to comply with the covenants of this lease, including the prompt payment of rent hereunder, is or may become impaired,

thereupon:

(1) The whole balance of rents and other charges, payments, costs, and expenses herein agreed to be paid by Lessee, or any part thereof, and also all costs and officers' commissions including watchmen's wages shall be taken to be due and payable and in arrears as if by the terms and provisions of this lease said balance of rent and other charges, payment, taxes, costs and expenses were on that date, payable in advance. Further, if this lease or any part thereof is assigned, or if the premises or any part thereof is sublet, Lessee hereby irrevocably constitutes and [illegible]

[illegible].

(2) At the option of Lessor, this lease and the terms hereby created shall determine and become absolutely void without any right on the part of Lessee to reinstate this lease by payment of any sum due or by other performance of any condition, term, or covenant broken; whereupon, Lessor shall be entitled to recover damages for such breach in an amount equal to the amount of rent reserved for the balance of the term of this lease, less the fair rental value of the said demised premises for the remainder of the lease term.

15. Further Remedies of Lessor

In the event of any default as above set forth in Section 14, Lessor, or anyone acting on Lessor's behalf, at Lessor's option:

(a) May let said premises or any part or parts thereof to such person or persons as may, in Lessor's discretion, be best; and Lessee shall be liable for any loss of rent for the balance of the then current term. Any such re-entry or re-letting by Lessor under the terms hereof shall be without prejudice to Lessor's claim for actual damages, and shall under no circumstances, release Lessee from liability for such damages arising out of the breach of any of the covenants, terms, and conditions of this lease.

(b) May proceed as a secured party under the provisions of the Uniform Commercial Code against the goods in which Lessor has been granted a security interest pursuant to Section 13(g) hereof; and

(c) May have and exercise any and all other rights and/or remedies, granted or allowed landlords by any existing or future Statute, Act of Assembly, or other law of this state in cases where a landlord seeks to enforce rights arising under a lease agreement against a tenant who has defaulted or otherwise breached the terms of such lease agreement; subject, however, to all of the rights granted or created by any such Statute, Act of Assembly, or other law of this state existing for the protection and benefit of tenants; and

(d) May have and exercise any and all other rights and remedies contained in this lease agreement, including the rights and remedies provided by Sections 16 and 17 hereof.

16. Confession of Judgment for Money

Lessee covenants and agrees that if the rent and/or any charges reserved in this lease as rent (including all accelerations of rent permissible under the provisions of this lease) shall remain unpaid five (5) days after the same is required to be paid, then and in that event, Lessor may cause Judgment to be entered against Lessee, and for that purpose Lessee hereby authorizes and empowers Lessor or any Prothonotary, Clerk of Court or Attorney of any Court of Record to appear for and confess judgment against Lessee and agrees that Lessor may commence an action pursuant to Pennsylvania Rules of Civil Procedure No. 2950 et seq. for the recovery from Lessee of all rent hereunder (including all accelerations of rent permissible under the provisions of this lease) and/or for all charges reserved hereunder as rent, as well as for interest and costs and Attorney's commission, for which authorization to confess judgment, this lease, or a true and correct copy thereof, shall be sufficient warrant. Such Judgment may be confessed against Lessee for the amount of rent in arrears (including all accelerations of rent permissible under the provisions of this lease) and/or for all charges reserved hereunder as rent, as well as for interest and costs; together with an attorney's commission of five percent (5%) of the full amount of Lessor's claim against Lessee. Neither the right to institute an action pursuant to Pennsylvania Rules of Civil Procedure No. 2950 et seq. nor the authority to confess judgment granted herein shall be exhausted by one or more exercises thereof, but successive complaints may be filed and successive judgments may be entered for the aforedescribed sums five days or more after they become due as well as after the expiration of the original term and/or during or after expiration of any extension or renewal of this lease.

17. Confession of Judgment for Possession of Real Property

Lessee covenants and agrees that if this lease shall be terminated (either because of condition broken during the term of this lease or any renewal or extension thereof and/or when the term hereby created or any extension thereof shall have expired) then, and in that event, Lessor may cause a judgment in ejectment to be entered against Lessee for possession of the demised premises, and for that purpose Lessee hereby authorizes and empowers any Prothonotary, Clerk of Court or Attorney of any Court of Record to appear for Lessee and to confess judgment against Lessee in Ejectment for possession of the herein demised premises, and agrees that Lessor may commence an action pursuant to Pennsylvania Rules of Procedure No. 2970 et seq. for the entry of an order in Ejectment for the possession of real property, and Lessee further agrees that a Writ of Possession pursuant thereto may issue forthwith, for which authorization to confess judgment and for the issuance of a writ or writs of possession pursuant thereto, this lease, or a true and correct copy thereof, shall be sufficient warrant. Lessee further covenants and agrees, that if for any reason whatsoever, after said action shall have commenced the action shall be terminated and the possession of the premises demised hereunder shall remain in or be restored to Lessee, Lessor shall have the right upon any subsequent default or defaults, or upon the termination of this lease as above set forth to commence successive actions for possession of real property and to cause the entry of successive judgments by confession in Ejectment for possession of the premises demised hereunder.

18. Affidavit of Default

In any procedure or action to enter Judgment by Confession for Money

pursuant to Section 16 hereof, or to enter Judgment by Confession in Ejectment for possession of real property pursuant to Section 17 hereof, if Lessor shall first cause to be filed in such action an affidavit or averment of the facts constituting the default or occurrence of the condition precedent, or event, the happening of which default, occurrence, or event authorizes and empowers Lessor to cause the entry of judgment by confession, such affidavit or averment shall be conclusive evidence of such facts, defaults, occurrences, conditions precedent, or events; and if a true copy of this lease (and of the truth of which such affidavit or averment shall be sufficient evidence) be filed in such procedure or action, it shall not be necessary to file the original as a Warrant of Attorney, any rule of court, custom, or practice to the contrary notwithstanding.

19. Waivers by Lessee of Errors, Right of Appeal, Stay, Exemption, Inquisition

Lessee hereby releases to Lessor and to any and all attorneys who may appear for Lessee all errors in any procedure or action to enter Judgment by Confession by virtue of the warrants of attorney contained in this lease, and all liability therefor. Lessee further authorizes the Prothonotary or any Clerk of any Court of Record to issue a Write of Execution or other process, and further agrees that real estate may be sold on a Writ of Execution or other process. If proceedings shall be commenced to recover possession of the demised premises either at the end of the term or sooner termination of this lease, or for non-payment of rent or for any other reason, Lessee specifically waives the right to the three (3) months' notice to quit and/or the fifteen (15) or thirty (30) days' notice to quit required by the Act of April 6, 1951, P.I. 69, as amended, and agrees that five (5) days' notice shall be sufficient in either or any such case.

20. Right of Assignee of Lessor

The right to enter judgment against Lessee by confession and to enforce all of the other provisions of this lease herein provided for may at the option of any assignee of this lease, be exercised by any assignee of the Lessor's right, title and interest in this lease in his, her, or their own name, any statute, rule of court, custom, or practice to the contrary notwithstanding.

21. Remedies Cumulative

All of the remedies hereinbefore given to Lessor and all rights and remedies given to it by law and equity shall be cumulative and concurrent. No determination of this lease or the taking or recovering possession of the premises shall deprive Lessor of any of its remedies or actions against the Lessee for rent due at the time or which, under the terms hereof, would in the future become due as if there had been no determination, nor shall the bringing of any action for rent or breach of covenant, or the resort to any other remedy herein provided for the recovery of rent be construed as a waiver of the right to obtain possession of the premises.

22. Condemnation

In the event that the premises demised herein, or any part thereof, is taken or condemned for a public or quasi-public use, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and rent shall abate in proportion to the square feet of leased space taken or condemned or shall cease if the entire premises be so taken. In either event the Lessee waives all claims against the Lessor by reason of the complete or partial taking of the demised property.

23. Subordination

This Agreement of Lease and all its terms, covenants and provisions are and each of them is subject and subordinate to any lease or other arrangement or right to possession, under which the Lessor is in Control of the demised premises, to the rights of the owner or owners of the demised premises and of the land or buildings of which the demised premises are a part, to all rights of the Lessor's landlord and to any and all mortgages and other encumbrances now or hereafter placed upon the demised premises or upon the land and/or the buildings containing the same; and Lessee expressly agrees that if Lessor's tenancy, control, or right to possession shall terminate either by expiration, forfeiture or otherwise, then this lease shall thereupon immediately terminate and the Lessee shall, thereupon, give immediate possession; and Lessee hereby waives any and all claims for damages or otherwise by reason of such termination as aforesaid.

24. Termination of Lease

It is hereby mutually agreed that either party hereto may determine this lease at the end of said term by giving to the other party written notice thereof at least 120 days prior thereto, but in default of such notice, this lease shall continue upon the same terms and conditions in force immediately prior to the expiration of the term hereof as are herein contained for a further period of one month and so on from month to month unless or until terminated by either party hereto, giving the other 120 days written notice for removal previous to expiration of the then current term; PROVIDED, however, that should this lease be continued for a further period under the terms hereinabove mentioned, any allowances given Lessee on the rent during the original term shall not extend beyond such original term, and further provided, however, that if Lessor shall have given such written notice prior to the expiration of any term hereby created, of his intention to change the terms and conditions of this lease, and Lessee shall not within ten days from such notice notify Lessor of Lessee's intention to vacate the demised premises at the end of the then current term, Lessee shall be considered as Lessee under the terms and conditions mentioned in such notice for a further term as above provided, or for such further term as may be stated in such notice. In the event that Lessee shall give notice, as stipulated in this lease, of intention to vacate the demised premises at the end of the present term, or any renewal or extension thereof,

and shall fail or refuse to vacate the same on the date designated by such notice, then it is expressly agreed that Lessor shall have the option either (a) to disregard the notice so given as having no effect, in which case all the terms and conditions of this lease shall continue thereafter with full force precisely as if such notice had not been given, or (b) Lessor may, at any time within thirty days after the present term or any renewal or extension thereof, as aforesaid, give the said Lessee ten days' written notice of his intention to terminate the said lease; whereupon the Lessee expressly agrees to vacate said premises at the expiration of the said period of ten days specified in said notice. All powers granted to Lessor by this lease may be exercised and all obligations imposed upon Lesser by this lease shall be performed by Lessee as well during any extension of the original term of this lease as during the original term itself.

25. Notices

All notices must be given by certified mail, return receipt requested.

26. Lease Contains all Agreements

It is expressly understood and agreed by and between the parties hereto that this lease and the riders attached hereto and forming a part hereof set forth all the promises, agreements, conditions and understandings between Lessor or his Agent and Lessee relative to the demised premises, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than herein set forth. It is further understood and agreed that, except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon Lessor or Lessee unless reduced to writing and signed by them.

27. Heirs and Assignees

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors and assigns of said parties; and if there shall be more than one Lessee, they shall all be bound jointly and severally by the terms, covenants and agreements herein, and the word "Lessee" shall be deemed and taken to mean each and every person or party mentioned as a Lessee herein, be the same one or more; and if there shall be more than one Lessee, any notice required or permitted by the terms of this lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The words "his" and "him" wherever stated herein, shall be deemed to refer to the "Lessor" or "Lessee" whether such Lessor or Lessee be singular of plural and irrespective of gender. No rights, however, shall inure to the benefit of any assignee of Lessee unless the assignment to such assignee has been approved by Lessor in writing as aforesaid.

28. Security Deposit

Lessee does herewith deposit with Lessor the sum of fifteen thousand Dollars, to be held as security for the full and faithful performance by Lessee of Lessee's obligations under this Lease and for the payment of damages to the demised premises. Said security deposit is to be held by Lessor as an Escrow Fund pursuant to the terms and provisions of the Penna Act of Assembly approved December 29, 1972, Act. No. 363. Except for such sum as shall be lawfully applied by Lessor to satisfy valid claims against Lessee arising from defaults under this lease or by reason of damages to the demised premises, the Escrow Fund shall be returned to Lessee at the expiration of the terms of this lease or any renewals or extensions thereof but as provided for in the said Act of Assembly. It is understood that no part of any security deposit or Escrow Fund is to be considered as the last rental due under the terms of the lease.

29. Headings no part of Lease

Any headings preceding the test of the several paragraphs and sub-paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this lease nor shall they affect its meaning, construction or effect.

30. SPECIAL CLAUSES — Lessee agrees to pay Lessee's pro rata charges for snow removal, trash removal, and all utility charges (electric and fuel.) Lessee office space of approximately 5,400 square feet is approximately 68% (sixty-eight percent) of entire office site of approximately 8,000 square feet, (stone barn, plus stone farmhouse, plus storage shed.) Payments by Lessee to Lessor will be on demand.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written, and intend to be legally bound thereby.

SEALED AND DELIVERED IN THE PRESENCE OF:

/s/ [ILLEGIBLE]
- ---------- Agent

X /s/ Kevin MacDonald — /s/ Robert J. Capetola ---------- [SEAL]

X /s/ Marilyn MacDonald

- ---------- [SEAL]

- ---------- [SEAL]

- ---------- [SEAL]

=====
LEASE
=====

Kevin MacDonald and
Marilyn MacDonald

TO

Acute Therapeutics, Inc.

Premises Converted Stone Barn
3359 Durham Rd.
Buckingham, TWP., PA

Rent $5,300/mo. (BASE YEARS)

Dated Nov. 8, 1996

Term Nov. 11, 1996 thru
Nov. 10, 2001

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FOR VALUE RECEIVED _____ hereby assign, transfer and set over unto _____ Executors, Administrators and assigns all _____ right, title and interest in the within _____ and all benefit and advantages to be derived therefrom.

WITNESS _____ hand and seal this _____ day of _____ A.D. 19__.

SEALED IN THE PRESENCE OF)
)
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CONSULTATION AND MEDICAL ADVISORY BOARD AGREEMENT

THIS CONSULTATION and MEDICAL ADVISORY BOARD AGREEMENT (the "Agreement"), dated as of October 1, 1996, between Discovery Laboratories, Inc., 787 Seventh Avenue, 44th floor, New York, New York 10019 (the "Company"), and Hector DeLuca, Ph.D. ("Consultant").

WITNESSETH

WHEREAS, Consultant is an expert in scientific and medical matters of particular importance to the advancement of the Company's technology relating to the ST-630 compound for use in the treatment of osteoporosis;

WHEREAS, the Company desires to have the benefit of Consultant's knowledge and experience, and Consultant desires to provide consulting services to the Company, all as hereinafter provided in this Agreement; and

WHEREAS, the Company desires to have Consultant serve as a member of the Company's Medical Advisory Board (the "MAB"), and Consultant desires to serve as a member of such Board;

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, effective the date hereof, the Company and Consultant hereby agree as follows:

1. Consultation and Medical Advisory Board. The Company shall retain Consultant as a consultant, and Consultant shall serve the Company as a consultant and a member of the MAB upon the terms and conditions hereinafter set forth.

2. Term. Subject to the terms and conditions hereinafter set forth, the term of the Consultant's consulting arrangement and service on the MAB hereunder (hereinafter referred to as the "Consultation Period") shall commence on the date hereof, and shall continue through September 31, 1999.

3. Consulting and Board Member Duties.

3.1 During the Consultation Period, Consultant shall render to Company or to Company's designee such consulting services in his fields of expertise and knowledge related to the business of Company and at such times and places as Company may from time to time request, including (i) attending meetings of the MAB and (ii) providing advice to the Company on clinical trial design, scientific planning and research and development relating to the ST-630 Compound for use in treating osteoporosis. The Company shall give Consultant reasonable advance notice of any services required of him hereunder.

3.2 All work-to be performed by Consultant for the Company shall be under the general supervision of the Company.

3.3 Consultant shall devote his best efforts and ability to the performance of the duties attaching to this obligation. All work performed by Consultant to the Company shall be at times reasonably convenient to the Consultant, and nothing contained herein shall interfere with Consultant's teaching responsibilities, research duties or his other teaching and administrative responsibilities.

3.4 During the Consultation Period, Consultant shall serve as a member of the MAB which will meet periodically to advise the Company on scientific affairs.

4. Compensation.

4.1 Consulting Fees. The Company shall pay to the Consultant (i) an annual consulting fee of $30,000, payable monthly and (ii) stock options granted pursuant to Section 5 hereof.

4.2 Benefits. The Consultant shall not be entitled to any benefits, coverages or privileges, including, without limitation, social security, unemployment, medical or pension payments, made available to employees of the Company.

5. Stock Options to Consultant.

5.1 The Company shall grant to Consultant an option (the "Option") to purchase 15,000 shares of Common Stock of the Company at a price of $0.20 per share (the "Option Shares") pursuant to the terms and conditions of the Company's Stock Option Plan.

5.2 The Option granted hereunder shall become exercisable immediately with respect to 3,750 of the Option Shares and, thereafter, an additional 3,750 of the Option Shares shall become exercisable on each anniversary of the date hereof, on a cumulative basis for the next three years. The Options granted under this agreement shall expire on the tenth anniversary of the date hereof

6. Termination. The Company may, without prejudice to any right or remedy it may have due to any failure of the Consultant to perform his obligations under this Agreement, terminate the Consultation Period upon 30 days, prior written notice to the Consultant. In the event of such termination, the Consultant shall be entitled to payment for services performed prior to the effective date of termination. Such payments shall constitute full settlement of any and all claims of the Consultant of every description against the Company.

Notwithstanding the foregoing, the Company may terminate the Consultation Period, effective immediately upon receipt of written notice, if the Consultant breaches or threatens to breach any provision of Sections 7, 8, or 10.

7. Cooperation. The Consultant shall use his best efforts in the performance of his obligations under this Agreement. The Company shall provide such access to its information and property as may be reasonably required in order to permit the Consultant to perform his obligations hereunder. The Consultant shall cooperate with the Company's personnel, shall not interfere with the conduct of the Company's business and shall observe all rules, regulations and security requirements of the Company concerning the safety of persons and property.

8. Proprietary Information and Inventions Agreement. Upon commencement of this Agreement, Consultant shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

9. Independent Contractor Status. The Consultant shall perform all services under this Agreement as an "independent contractor" and not as an employee or agent of the Company. The Consultant is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the Company or to bind the Company in any manner.

10. Noncompetition. Consultant agrees, during the Consultation Period, and for two (2) years thereafter, not to render services (i) to any competitors of the Company in the field of the development, clinical evaluation and manufacture of ST-630 for use in the treatment of osteoporosis or (ii) for any other group that is developing an oral version of the ST-630 compound; provided however, Consultant may provide such services for Sumitomo Pharmaceuticals and Taisho Pharmaceuticals.

11. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 11.

12. Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.

14. Amendment. This Agreement may be amended or modified only by a written instrument executed by both the Company and the Consultant.

15. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York.

16. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, both parties and their respective successors and assigns, including any corporation with which, or into which, the Company may be merged or which may succeed to its assets or business, provided, however, that the obligations of the Consultant are personal and shall not be assigned by him.

17. Miscellaneous.

17.1 No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

17.2 The captions of the sections of, this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

17.3 In the event that any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

DISCOVERY LABORATORIES, NC.

/s/ James S. Kuo, M.A.

By: James S. Kuo, M.A.
Title: President

Address: 787 Seventh Avenue
44th Floor
New York, New York 10019

CONSULTANT

/s/ Hector DeLuca

By:

Address: 1809 Hwy BB
Deerfield, WI 53531

[Letterhead of The Sage Group]

October 28, 1996

Robert J. Capetola
President/CEO
Acute Therapeutics, Inc.
6097 Hidden Valley Drive
Doylestown, PA

Dear Bob,

As discussed I am revising our Valere agreement of June 25, 1996 to reflect the changes anticipated given the Castle Group (Discovery Labs) financing and corporate name change to Acute Therapeutics, Inc. (ATI).

This letter sets out some of the key aspects of a proposed arrangement between ATI and The Sage Group and addresses more specifically some of the issues we discussed. The objective of working closely with ATI is to play a key role in helping to establish the company via a J & J license and subsequently to assisting management in the strategic, product development and commercialization aspects required to successfully develop and grow the business. We view the role of The Sage Group essentially as serving the Business Development Department of ATI with at least the general activities shown below included in our responsibilities:

- Develop a formal business plan in conjunction with management and assist in implementation.
- Design corporate development plan in conjunction with company and direct implementation of partnering activities.
- Assist management in operational business activities as needed.

To provide ATI flexibility and reduced risk, we propose the term be 18 months, renewable upon mutual agreement, and that this agreement be non-cancelable, by ATI, during the first term except for non-performance by The Sage Group. Non-performance would be defined as failure of The Sage Group to carry out the above activities in a reasonably due diligent fashion. We suggest that there be formalized quarterly reviews to track performance.

In recognition of our past efforts on behalf of the founders and in anticipation of The Sage Group future involvement with ATI, Sage Partners has been fully vested in equity in the newly formed company, i.e., 15,000 total shares @ $0.01 per share, plus each of Daniel Tripodi, Wayne Pambianchi, Gordon Ramseier, R. Douglas Hulse and Richard G. Power has received options to purchase 1,000 shares of ATI Common Stock exercisable six (6) months after October 28, 1996

and options to purchase 1,120 shares of ATI stock Common Stock exercisable upon certain acceleration events as defined in the Notice of Grant to the stock option agreements entered into by the Company and each of Messrs. Pambianchi, Ramseier, Hulse, Power and Tripodi as of October 10, 1996.

In addition, The Sage Group will receive a monthly management fee of $7500 payable on the first of each month beginning November 1, 1996. ATI also will reimburse The Sage Group for all out-of-pocket expenses with significant travel and related expenses pre-approved by ATI.

Bob, I trust that this revised letter of agreement reflects the general discussions we have had and that it is acceptable to you. If it meets with your approval, kindly countersign this letter and return it to me.

We look forward to a successful endeavor with Valere.

Nov. 4, 1996	/s/ Richard G. Power
Date	Richard G. Power Executive Director THE SAGE GROUP
Nov. 4, 1996	/s/ Robert Capetola
Date	Robert Capetola President/CEO Acute Therapeutics, Inc.

[LETTERHEAD OF COOK PHARMACEUTICAL SOLUTIONS]

First Amendment to the
ACUTE THERAPEUTICS INC.
and COOK IMAGING CORPORATION
dba COOK PHARMACEUTICAL SOLUTIONS
Clinical Product Development Agreement effective January 3, 1997

This First Amendment to the Clinical Product Development Agreement ("First Amendment") is entered into this 16th day of January, between Acute Therapeutics, Inc. ("CLIENT"), a Pennsylvania corporation, and Cook Imaging Corporation dba Cook Pharmaceutical Solutions ("COOK"), an Indiana corporation,

WITNESSETH:

WHEREAS, CLIENT and COOK entered into a certain Clinical Product Development Agreement ("Agreement") effective January 3, 1997 and a Manufacturing Project Manual effective January 3, 1997 ("Manual") regarding KL4 Pulmonary Lung Surfactant whereby COOK agreed to provide development services to CLIENT;

WHEREAS, CLIENT has requested an amendment to the Agreement and Manual so as to include development of different strength batches of KL4 Pulmonary Lung Surfactant;

WHEREAS, COOK has agreed to CLIENTS's request to amend the Agreement and Manual to include COOK's performance of the development and production of the batches outlined in Attachment I.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the receipt and sufficiency of which hereby are acknowledged by the parties, the parties agree as follows:

1. Attachment I to this First Amendment shall be incorporated into and become part of the Agreement and Manual as though fully set forth therein.

2. All terms and conditions set forth in the Agreement and Manual regarding KL4 Pulmonary Lung Surfactant shall also apply and be legally binding.

3. This Amendment shall be binding and in full effect for a period of twelve (12) months from February 12, 1998.

4. Notwithstanding anything contained in the Agreement or Manual to the contrary, COOK will not be responsible for batches rejected due to equipment/process complications due to the complexity of the process. CLIENT will pay full price for rejected batches unless due solely to the wilful misconduct of COOK.

5. COOK reserves the right, in its sole discretion, to move scheduled manufacturing dates if necessary, without prior notice to CLIENT.

6. COOK will ship CLIENT's equipment (F.O.B. Bloomington) to CLIENT or CLIENT's designate fifteen (15) days following COOK's release of the final batch. If CLIENT fails to designate a shipping destination within the fifteen (15) day period, then CLIENT will accrue a [***], payable in advance and not prorated.

7. Except as specifically amended hereby, the Agreement and the Manual shall remain in full force and effect.

8. CLIENT shall be responsible for obtaining and maintaining sufficient quantities of Bulk Drug Substance and Drug Product reserve samples as defined in Good Manufacturing Practices regulations 21 CFR, Section 211.170.

9. CLIENT shall be responsible for supplying COOK with sufficient quantities of Palmitic Acid, DPPC, KL4, and POPG to complete the manufacturing campaign outlined in Attachment I.

10. Simultaneously with the execution of this Agreement, CLIENT shall pay COOK [***] to secure the manufacturing dates.

11. COOK may terminate the Agreement as hereby amended with or without cause, upon ten (10) days notice to CLIENT.

12. Notwithstanding anything contained herein to the contrary, shall be liable to the other for any incidental or consequential damage arising in connection with this Agreement or the Product sold hereunder. Cook's sale obligation shall be to refund purchase price and indemnify.

13. The filled product will be inspected and packaged within two weeks after the fill date so that it may be immediately shipped to CLIENT under quarantine. If CLIENT fails to take delivery under quarantine, then CLIENT will accrue a [***] (or any quantity thereunder), payable in advance and not prorated.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by their duly authorized officers.

ACUTE THERAPEUTICS INC.

COOK IMAGING CORPORATION
dba COOK PHARMACEUTICAL SOLUTIONS

By: /s/ Robert J. Capetola	By: /s/ Jerry C. Arthur
Name: Robert J. Capetola	Name: Jerry C. Arthur
Title: President/CEO	Title: President
Date: 2/14/98	Date: February 12, 1998

[***] -- Confidential treatment requested.

ATTACHMENT I

TO

First Amendment to the
ACUTE THERAPEUTICS INC. and COOK IMAGING CORPORATION
Clinical Product Development Agreement effective January 3,1997

DEVELOPMENT ACTIVITIES AND PRICING

Development of the Drug Product for use in Clinical Studies will consist of the following:

Timing						
Strength (mg/mL)	Fill Date	Components (mL/mm)	Batch Size(L)	Theoretical Yield	Batch Number	Project Code
	[***]				M800065	129
	[***]				800060	0129-004
	[***]				800061	0129-003
	[***]				800062	0129-003
	[***]				800063	0129-003
	[***]				800064	0129-004

Storage - o Finished product: [***]

Prior to initial manufacture, the following must occur at COOK:

1. Revision of batch records.

2. Equipment set-up, calibration, and maintenance.

3. Confirmations for the steam-in-place validations of the TFE, supply, and receiving vessel(s).

4. Minimum of one media fill to qualify the set-up of the equipment and the filling process.

Required from CLIENT prior to initial manufacture:

1. MSDS and C of A for each raw material supplied by CLIENT.

2. Name of shipper to be used and name/address of recipient.

3. Reference standards for [***]. They must be complete with C of As, chromatograms, NMR, MS, etc.

4. Methods (preferably validated methods) and specifications for in-process. CLIENT is responsible for keeping COOK supplied with the most current methods and specifications.

5. Bulk drug substance and excipients must arrive at COOK no later than three (3) weeks prior to the fill date.

6. Batch records must be approved by CLIENT two (2) weeks prior to the date of manufacture or the date will be forfeited and CLIENT will pay a 20% cancellation fee.

[***] -- Confidential treatment requested.

Raw Materials & Components
[***]

NOTE: COOK will store any remaining bulk drug substance for fifteen (15) days after the fill date (unless other runs are scheduled) at which time all the inventory will be sent back to CLIENT, F.O.B. Bloomington.

[***] -- Confidential treatment requested.

Formulation -

[***]

Filling -

1. The product will be maintained at [***] during filling.

2. The product will be aseptically processed.

3. Upon completion, the product will be stored at [***].

Chemistry/Microbiology (see also Stability) -

1. Cleaning assay (TOC; already in place).

2. Incoming release of components and excipients per CIC procedures.

3. Incoming release of bulk drug substances by:

   a. IR (except KL4, which is done by HPLC)

   b. Verification of Consumer Products Testing's C of A

4. In-process testing:

   [***]

5. Final release testing (including sterility) will be performed by CLIENT or CLIENT's designate.

Inspection - o Product will be 100% visually inspected per COOK procedures.

Labeling - o COOK to supply labels for and label vials, boxes, and cases.

Packaging - o COOK will package all batches in boxes of seven (7) vials. Entire batch will be packaged and shipped to CLIENT or CLIENT's designate. COOK will not sublot and package.

Shipping - o Shipments are F.O.B. Bloomington at [***] via Caliber Logistics

Disposal - o Disposal of product and process waste will be performed by COOK. Any disposal costs incurred by COOK will be charged back to Client plus 10% for COOK handling.

[***] -- Confidential treatment requested.

Documentation provided by COOK -

1. Master batch record for review and approval by COOK and CLIENT.

2. Product specific validation summaries (must be approved by CLIENT prior to use).

3. Executed batch records.

4. QA certification letter (to accompany clinical samples; see Jennifer Walls)

Project Price

Tasks	Cost
Media fill (to qualify processing & filling)	[***]
First 144 L GMP batch	[***]
Second 40 L GMP batch	[***]
Third 40 L GMP batch	[***]
Fourth 40 L GMP batch	[***]
Fifth 144 L GMP batch	[***]
New die cut for 200 mL boxes	[***]
TOTAL	[***]
Technology transfer	[***]

Payment Plan

Deposit (due by February 15, 1998)	[***]
Due within thirty (30) days after the fill of the first batch	[***]
Due within thirty (30) days after the fill of the second batch	[***]
Due within thirty (30) days after the fill of the third batch	[***]
Due within thirty (30) days after the fill of the fourth batch	[***]
Due within thirty (30) days after the fill of the fifth batch	[***]
TOTAL	[***]

[***] -- Confidential treatment requested.

[LETTERHEAD OF COVANCE]

Covance Clinical Research Unit Inc.
Madison, WI

MASTER CLINICAL DEVELOPMENT SERVICES AGREEMENT

This Clinical Development Services Agreement dated as of 1 December 1997, is between - Discovery Laboratories, Inc. ("Sponsor") and Covance Clinical Research Unit ("Covance").

1. Protocol/Pricing Schedule

   a. Covance will perform a study or studies ("Study") for Sponsor in accordance with a detailed protocol document ("Protocol") that will be provided by Sponsor or prepared by Covance with the Sponsor's input and approved by Sponsor. The Protocol will specify the Study design, objectives, number of subjects, measurements, estimated duration of the Study, and all other relevant matters. Covance will perform its services for the Sponsor in connection with the Study on the terms specified in the pricing schedule attached hereto as Exhibit A (the "Pricing Schedule"). The Pricing Schedule will set forth the pricing and payment terms for the Study and is deemed a part of this Agreement and is incorporated herein by reference.

   b. If requested by Sponsor, Covance will consult with Sponsor to assist Sponsor in developing the Study design in a manner consistent with current regulatory guidelines. Covance does not warrant the Protocol or Study design, or that the Study results, will satisfy the requirements of any regulatory agencies at the time of submission of study results to such agencies.

2. Study Materials

   Sponsor will provide Covance with sufficient amounts of drug with which to perform the Study, as well as such sufficient and comprehensive data as may be required by Covance concerning the stability of the test material end storage and safety requirements.

3. Principal Investigator

   Covance will appoint a "Principal Investigator" to be responsible for the Study.

[LETTERHEAD OF COVANCE]

4. Compliance with Government Regulations

   a. Covance will perform the Study in accordance with the Protocol. Covance will also comply in all material respects with all current government regulatory requirements concerning Good Clinical Practices as considered to be appropriate at the time of study initiation.

   b. Should such government regulatory requirements be changed, Covance will make every reasonable effort to satisfy the new requirements. In the event that compliance with such new regulatory requirements necessitates a change in the Protocol for the Study, Covance will submit to Sponsor a revised Pricing Schedule for Sponsor's acceptance prior to making any changes in the Protocol or Study.

5. Sponsor Visits to Facilities

   Sponsor's representatives may visit Covance's clinic with reasonable frequency, upon reasonable notice, during normal business hours to observe the progress of the Study. Covance will assist Sponsor in scheduling such visits.

6. Confidential Information/Legal Proceedings

   a. Covance will not disclose to any business or institution not affiliated with Covance, without Sponsor's written permission, any information pertaining to Sponsor's Study or this Agreement unless such disclosure is required by any law, rule, regulation, order, decision, decree, subpoena, or other legal process ("Law"). Disclosures to Institutional Review Boards are understood to be required by Law. If such disclosure is requested by Law, Covance will notify sponsor of this request promptly, and, if possible, prior to any disclosure to permit Sponsor to oppose such disclosure by appropriate legal action.

   b. If Covance shall be obliged to provide, assistance, including testimony, or records regarding any Sponsor Study in any legal or administrative proceeding, then Sponsor shall reimburse Covance its out-of-pocket costs and an hourly fee for its employees or representatives.

7. Work Product

   a. All reports, including case report forms, will be prepared in Covance's standard format unless otherwise specified in the Protocol.

b. Raw data in paper, magnetic or other form, will be retained by Covance in compliance with regulatory requirements and the study price includes the cost of meeting these requirements. Upon expiration of any regulatory requirements to maintain such data or after 15 years, whichever is later, Sponsor shall upon Covance's request direct that such data be delivered to Sponsor or be retained by Covance for a standard storage fee and Covance will comply with such direction.

8. Test Article

Upon completion of the Study, unless required by Law and so notified by the Sponsor in writing, any remaining samples of test or control materials will be returned to Sponsor, at Sponsor's expense, for retention in compliance with regulatory requirements. If so notified by the Sponsor, Covance will retain samples of test or control materials for a standard storage fee.

9. Inventions and Patents

At Sponsor's request, Covance will assign to Sponsor the rights to any patentable invention discovered by Covance's employees exclusively as a result of performing Sponsor's Study and pertaining to the Test Article, provided Sponsor requests such assignment within 90 days of notification of such invention and further provided that if such invention relates to testing methods or processes, Sponsor shall grant to Covance and its affiliates a [***] to practice such methods or processes in perpetuity. If Sponsor requests and at Sponsor's expense, Covance will provide Sponsor with reasonable assistance to obtain patents covering such inventions.

10. Independent Contractor

Covance shall perform the Study as an independent contractor and shall have complete and exclusive control over its employees and agents.

11. Insurance

Covance shall secure and maintain in full force and effect throughout the performance of the Study insurance coverage for (a) Workmen's Compensation, (b) General Liability, and (c) Automobile Liability in amounts appropriate to the conduct of Covance's business in Covance's sole and exclusive judgement. Certificates evidencing such insurance will be made available for examination upon request by Sponsor.

[***] -- Confidential treatment requested.

12. Remedies/Indemnities

a. In the event of a material error by Covance in the performance of the Study that renders the Study invalid, Covance's sole obligation to Sponsor shall be for Covance, at its option, to either (a) repeat the Study at Covance's own cost, or (b) refund to Sponsor the contract price paid. UNDER NO CIRCUMSTANCES SHALL SPONSOR BE ENTITLED TO INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR COVANCE'S NONPERFORMANCE OR IMPROPER PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, STUDY, OR PROTOCOL.

b. Covance shall indemnify Sponsor from any claims or expense incurred by Sponsor arising solely out of Covance's willful or negligent acts giving rise to any personal injury, death, or property damage occurring during the conduct of the Study. Such indemnity shall not extend to any loss or expense resulting from any claim arising out of Sponsor's use or marketing of any substance that is the subject of the Study.

c. Sponsor shall indemnify Covance and its affiliates and their respective officers, directors, employees, agents and independent contractors, (including the University of Wisconsin-Madison and University of Wisconsin-Madison personnel) the "Covance GROUP" from any loss, damage, cost or expense (including reasonable attorney's fees) (collectively, a "Loss") arising from any claim, demand, assessment, action, suit or proceeding (a "Claim") as a result of (i) Covance's performance of or involvement with the Study or its obligations under this Agreement or the Protocol or (ii) Sponsor's tortuous conduct or inaction provided that neither willful nor negligent acts by the Covance GROUP were responsible for such Loss. In addition, and without limiting the foregoing, Sponsor shall indemnify Covance GROUP from any Loss from any Claim arising out of Sponsor's use or marketing of any substance tested by Covance.

d. Upon receipt of notice of any Claim which may give rise to a right of indemnity from the other party hereto, the party seeking indemnification (the "Indemnified Party") shall give written notice thereof to the other party, (the Indemnifying Party") with a claim for indemnity. Such Claim for indemnity shall indicate the nature of the Claim and the basis therefore. Promptly after a Claim is made for which the Indemnified Party seeks indemnity, the Indemnified Party shall permit the Indemnifying Party, at its option and expense, to assume the complete defense of such Claim, provided that (i) the Indemnified Party will have the right to participate in the defense of any such Claim at its own cost and expense, (ii) the Indemnifying Party will conduct the defense of any Claim with due regard for the business interests and potential related liabilities of the Indemnified Party and (iii)

the Indemnifying Party will, prior to making any settlement, consult with the Indemnified Party as to the terms of such settlement. The Indemnified Party shall have the right, at its election, to release and hold harmless the Indemnifying Party from its obligations hereunder with respect to such Claim and assume the complete defense of the same in return for payment by the Indemnifying Party to the Indemnified Party of the amount of the Indemnifying Party's settlement offer. The indemnifying Party will not, in defense of any such Claim, except with the consent of the Indemnified Party, consent to the entry of any judgment or enter into any settlement which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect thereof. After notice to the Indemnified Party of the Indemnifying Party's election to assume the defense of such Claim, the Indemnifying Party shall be liable to the Indemnified Party for such legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof at the request of the Indemnifying Party. As to those Claims with respect to which the Indemnifying Party does not elect to assume control of the defense, the Indemnified Party will afford the Indemnifying Party an opportunity to participate in such defense, as the Indemnifying Party's own cost and expense, and will not settle or otherwise dispose of any of the same without the consent of the Indemnifying Party.

13. Generic Drug Enforcement Act of 1992

Covance Clinical Research Unit Inc.: (a) represents that it has never been, and its employees have never been debarred or convicted of a crime for which a person can be debarred under 21 USC Sec. 335a ("335a"); nor threatened to be debarred or indicted for a crime or otherwise engaged in conduct for which a person can be debarred under 335a; (b) agrees that it will promptly notify Sponsor in the event of any such debarment, conviction, threat or indictment occurring during the term of this Agreement or three (3) years following its termination or expiration; and (c) agrees not to employ any person in connection with any of the work to be performed under this Agreement who has been debarred or convicted of a crime for which a person can be debarred.

14. Force Majeure

Either party shall be excused from performing its obligations under this Agreement if its performance is delayed or prevented by any cause beyond such party's control, including, without limitation, acts of God, fire, explosion, weather, disease, war, insurrection, civil strife, riots, government action, or power failure. Performance shall be excused only to the extent of and during the reasonable continuance of such disability. Any deadline or time for performance specified in the Protocol that falls due during or subsequent to the occurrence of any of the disabilities referred to herein shall be automatically extended for a period of time equal to the period of such disability.

Covance will notify Sponsor as soon as practicable if, by reason of any of the disabilities referred to herein, Covance is unable to meet any deadline or time for performance specified in the Protocol. In the event that any part of the Study is rendered invalid as a result of such disability, Covance will, upon written request from Sponsor and at Sponsor's sole cost and expense, repeat that part of the Study affected by the disability.

15. Allocation of Resources

If delays in performance of the Study are experienced because of Sponsor's inability to supply Covance with materials or information required to perform the Study, Covance reserves the right to reallocate resources otherwise reserved for performance of the Study without incurring liability to Sponsor.

16. Use of Names

Sponsor shall not use Covance's name or the names of Covance's employees in any advertising or sales promotional material or in any publication without prior written permission of Covance. Covance will not use Sponsor's name or the names of Sponsor's employees in any advertising or sales promotional material or in any publication without prior written permission of the Sponsor.

17. Termination

a. Sponsor shall have the right at any time to terminate any Study prior to completion by giving written notice to Covance. In the event of termination by the Sponsor, Sponsor shall pay Covance upon receipt of Covance's invoice the amount specified as set forth in Exhibit A.

b. Covance shall have the right to terminate the Study prior to completion for any of the following reasons:

(1) Sponsor's breach of the Agreement.

(2) Covance's good faith determination that it is not safe to continue the Study.

In the event of termination by Covance due to (1) and/or (2) above, Sponsor shall pay Covance upon receipt of Covance's invoice the amount specified as set forth in Exhibit A.

c. The termination of this Agreement shall not relieve either party of its obligation to the other in respect of (i) maintaining the confidentiality of information, (ii)

obtaining consents for advertising purposes and publications, (iii) indemnification, and (iv) compensation for services performed.

18. Assignment

Covance shall not assign the clinic portion of this Agreement without the prior written consent of Sponsor, which consent shall not be unreasonably withheld.

19. Notice

All notices given under this Agreement shall be in writing and shall be delivered personally, sent by telegram, telefax, or mailed to the parties at the addresses set forth below, or such other addresses as the parties may designate in writing.

20. Amendments

Any amendments or revisions to this Agreement, the Pricing Schedule or the Protocol must be proposed in writing by either party and accepted in writing by the other party before they shall become effective and binding.

21. Waiver

No waiver of any term, provision, or condition of this Agreement, the Pricing Schedule or the Protocol whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision, or condition or of any other term, provision, or condition of this Agreement.

22. Arbitration

a. All disputes between the parties which are not resolved by means of direct negotiations between them and which arise out of this Agreement, the Pricing Schedule or the Protocol shall be finally settled by arbitration in accordance with this Section. The arbitration shall be held in or around Madison, Wisconsin as determined by Covance, and shall be conducted in accordance with the rules of the American Arbitration Association by two arbitrators appointed, one by each party to this Agreement. If the arbitrators appointed cannot agree on the resolution of the dispute within 60 days after the dispute is submitted to them, they shall thereupon appoint a third arbitrator, and if they fail to agree upon a third arbitrator within 30

days after a deadlock is declared by either arbitrator, a third arbitrator will be appointed by the American Arbitration Association upon the request of either such arbitrator.

b. Any decision by the third arbitrator and either one of the other arbitrators shall be binding upon the parties and may be entered as a final judgement in any court having jurisdiction. The arbitration shall be conducted completely in the English language. The cost of any arbitration proceeding shall be borne by the parties as the arbitrators shall determine if the parties have not otherwise agreed. The arbitrators shall render their final decision in writing in English to the parties, which decision shall explain the reasons therefor.

23. Entirety

This Agreement, together with the Pricing Schedule and the Protocol, is the entire understanding between Sponsor and Covance. It replaces, supersedes and renders void any and all predecessor and contemporaneous negotiations, agreements, representations, understandings and commitments between the parties.

24. Governing Law

This Agreement is a Wisconsin contract. It shall be governed, construed, and interpreted in accordance with the laws of Wisconsin.

In witness whereof, the parties have executed this Agreement.

DISCOVERY LABORATORIES, INC.

By: /s/ David R. Crockford — 12/04/97
Date

Title: Vice President

COVANCE CLINICAL RESEARCH UNIT

By: /s/ Kenneth E. Moritz — 12-1-97
Authorized Signature — Date
Kenneth E. Moritz

Title: Contracts Administrator/
Senior Client Manager

Covance Clinical Research Unit

EXHIBIT A
PRICING SCHEDULE

Pricing Schedule dated as of 1 December 1997, is between Client ("Sponsor") and Covance Clinical Research Unit ("Covance").

WITNESSETH

WHEREAS, Sponsor and Covance have entered into that certain Master Clinical Development Services Agreement dated as of 1 December 1997, (as amended or modified from time to time, the "Master Clinical Development Services Agreement"; terms defined therein an used herein as defined therein unless otherwise defined herein);

WHEREAS, Covance has agreed to perform the Study for the Sponsor on the terms of the Clinical Development Services Agreement, the Protocol and this Pricing Schedule;

WHEREAS, this Pricing Schedule is the Pricing Schedule referred to in the Clinical Development Services Agreement;

WHEREAS, Covance will perform such Study on the price specified in this Pricing Schedule.

NOW, THEREFORE, the Sponsor and Covance hereby agree to the following price and payment schedule in connection with Study and Protocol identified below.

STUDY NO.: 8475 PROTOCOL NO.: ST-630-01A

TITLE: A Phase IA, Double-Blind, Placebo-Controlled, Rising Single-and Multiple-Dose, Safety, Tolerance and Pharmacokinetic Study of ST-630 Softgel Capsules Administered at 0.0625, 0.125, 0.25, 0.375, or 0.5 (mu)g in Normal Healthy, Volunteers

PRICE: $393,554

PAYMENT SCHEDULE:

At signing of the Agreement	[***]
Following successful completion of Group A	[***]
Following successful completion of Group B	[***]
Following successful completion of Group C	[***]
Following successful completion of Group D	[***]

[***] - Confidential treatment requested.

Following successful completion of Group E [***]
Following completion and approval of the CTR [***]

Price quoted is predicated on Covance receiving all necessary test material and other data required to conduct the Study outlined in this proposal within 30 days of Covance's signing of this Pricing Schedule.

Termination Terms:

If the study is terminated after initiation but prior to completion of 5 groups, the following fees will be charged:

[***]

Postponement Terms:

If the study is postponed within 30 days of 4 December 1997, Sponsor is responsible for payment of all variable costs incurred to date, as well as, any costs associated with additional advertising, recruiting, and screening efforts to ensure enrollment of a full panel plus a fee of 5% of the full study price.

IN WITNESS WHEREOF, the undersigned have executed this Pricing Schedule as of the date first above written.

Discovery Laboratories, Inc.

By: /s/ David R. Crockford

Name: DAVID R. CROCKFORD

Title: Vice President

Covance Clinical Research Unit

By: /s/ Kenneth E. Moritz

Authorized Signature

Title: Contract Administrator/

Senior Client Manager

[***] - Confidential treatment requested.

Budget

Prepared for Discovery Laboratories, Inc.
by Covance Clinical Research Unit Inc.
Protocol No. ST-630-01A - Study No. 8475
30 Volunteers, 5 Groups of 6
1 December 1997

FIXED COST FOR STUDY		TOTAL
Advertising		[***]
Recruiting/Screening		[***]
IRB		[***]
Project Management		[***]
Quality Assurance		[***]
Clinical Confinement (Includes all meals)	30 Volunteers x 5 Nights 15 Alternates x 1 Night	[***]
State Unemployment Insurance		[***]
Archiving		[***]
Supplies and Shipping		[***]
FIXED COSTS PER GROUP (X5)		
Physician [***]		[***]
Clinical Procedures [***]		[***]
Data Entry [***]		[***]
Report Writing [***]		[***]
VARIABLE COSTS		
Volunteer Stipends - On-Study		[***]
[***] x 30 Volunteers [***] x 15 Alternates		
Labs and ECG		[***]
Screening	75 Volunteers x 1 Timepoint	
On-Study	30 Volunteers x Study Timepoints 15 Alternates x 1 Timepoint	
	Clinical Cost Total	[***]
Data Management Costs		[***]
Costs Incurred for Protocol and IND Development		[***]
Monitoring		[***]
	Total Study Cost	[***]

Price quoted is contingent on final protocol and is valid for 30 days.

Additional medical expenses (i.e., consultations) will be billed to the Sponsor on a case by case basis.

[***] - Confidential treatment requested.

SUPPLY AGREEMENT

THIS AGREEMENT is made as of this 10th day of December, 1997, by and between Acute Therapeutics, Inc. (a corporation organized and existing under the laws Delaware, with its principal office at 3359 Durham Road, Doylestown, PA 18901; hereinafter "ATI"), and PolyPeptide Laboratories (a corporation organized and existing under the laws of Delaware, with principal manufacturing facilities at 365 Maple Avenue, Torrance, California 90503; hereinafter "PPL").

WITNESSETH

WHEREAS, ATI is active in the pharmaceutical business and is the owner of all rights to certain proprietary technical information, patents and patent applications relating to the KL(4)-peptide Substance (hereinafter "Substance"); and

WHEREAS, ATI desires to contract with PPL for the processing of the KL(4)-peptide (hereinafter "Substance"); and

WHEREAS, PPL possesses the requisite expertise, personnel and facilities for the manufacture and supply of the Substance to ATI;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and conditions herein contained, ATI and PPL agree as follows:

1. DESCRIPTION OF WORK

PPL shall supply ATI's requirements for the conversion of insoluble Substance to soluble Substance (using a procedure supplied by ATI and attached as Exhibit A) for use in the production of clinical product for human use. Such Substance shall meet the specifications in Exhibit B (hereinafter "Specifications"). Subject to PPL's prior written consent, such consent not to be unreasonably withheld, ATI may, as needed, change the Specifications.

2. QUANTITIES

ATI will provide PPL with [***] of insoluble Substance, which PPL will process to Soluble Substance in six (6) lots of approximately [***] each. ATI and PPL shall cooperate in scheduling the production of these lots.

3. QUALITY

3.1. ATI or its agent shall have the right, but not the obligation, to inspect PPL's quality control procedures and records and to obtain specimens for analysis of the Substance from PPL's production to confirm quality. ATI's employees may perform inspections of PPL's manufacturing facilities. ATI employees who inspect PPL's facilities shall comply with PPL regulations and rules.

[***] - Confidential treatment requested.

3.2. ATI will approve initial testing documents, the master batch record, and any revisions to these documents thereafter.

3.3. For each batch of the Substance produced by PPL, ATI shall undertake testing for compliance with the Specifications. PPL will supply ATI with a pre-shipment sample of each finished lot along with a Certificate of Analysis from PPL, which will be shipped to ATI in accord with instructions provided by ATI. Upon receipt of the pre-shipment sample, ATI will engage a testing facility who will perform the analysis according to ATI's instructions. Upon completion of its testing, ATI shall submit to PPL a certificate of analysis listing testing results and all agreed upon records for each lot of the Substance produced.

3.4. ATI or it's agent shall have thirty (30) days upon receipt of the pre-shipment sample to determine whether or not it conforms to the Specifications. ATI shall promptly give PPL written notice of any respect in which the Substance fails to conform to Specifications. If ATI fails to notify PPL of any nonconformity within such 30-day period, ATI shall be deemed to have accepted the Substance. At this point PPL will arrange to ship all the Substance of the same batch to ATI in accord with instructions provided by ATI. If ATI notifies PPL of any nonconformity, payment of the invoice for the nonconforming batch shall be held in abeyance until the dispute is resolved.

3.5. Pursuant to Section 3.4, if ATI shall claim that any lot(s) of the Substance fails to meet the Specifications, PPL reserves the right to retest such lot(s) at its own expense at an outside facility mutually agreed by both parties. In the event that the outside party's test results indicates that the lot(s) meets the Specifications, further action shall be negotiated.

3.6. In the event of a rejection of a batch of the Substance, PPL will

cease further production of the Substance until such time as the results of an investigation have been communicated to ATI, and PPL has concurred with the corrective action to be taken. Should ATI desire to have additional lots of the Substance manufactured while the investigation is in process, ATI will be responsible for the fees for service performed by PPL whether the batch is accepted or not.

3.7. ATI will provide a lot number and expiry period for each lot manufactured by PPL.

3.8. ATI is responsible for release of the final Substance.

3.9. ATI is responsible for the Stability Testing Program.

3.10. ATI is responsible for maintaining Retention Samples.

3.11. PPL will provide the name and phone number(s) of a contact person(s) who may be called at any hour when PPL is manufacturing the Substance or when the Substance is in transit outside of PPL.

4. PRICE

The prices to be paid by ATI for quantities of the Substance purchased pursuant to Section 3 will be $[***] per batch of Substance as agreed in writing and will be firm for the six (6) batches ($[***] for the entire project).

5. TERM OF AGREEMENT

5.1 This Agreement shall become effective on the date first stated above and, except as otherwise provided herein, shall be in effect until the six (6) lots of soluble Substance have been produced.

5.2. Either party may terminate this Agreement for a material breach by the other party by giving the breaching party written notice, specifying the breach relied on, and giving the breaching party thirty (30) days to cure such breach. If the default has not been cured at the end of the thirty (30) day period, then, upon notice thereof to the breaching party by the other, this Agreement shall terminate. Termination for breach will have no effect on performance obligations or amounts to be paid which have accrued up to the effective date of such Termination.

5.3. In event of termination, transition will be conducted in such a manner as to not cause inconvenience to either party.

6. PAYMENT TERMS

6.1. PPL will issue an invoice at such time as the PPL Quality Control Department has completed its testing, found the Substance suitable to be shipped and has shipped the test result documents to ATI. The purchase price for the Substance will be paid to PPL no later than thirty (30) days after the date of PPL's invoice to ATI.

6.2. All prices of the Substance shall be on the basis of F.O.B. on the dock at PPL's plant in Torrance, California.

7. FACILITIES

7.1. PPL represents that it has obtained all approvals required by Regulatory Authorities (hereinafter "RA") for its manufacturing facilities and that its manufacturing facilities conform, and will in the future conform, to current Good Manufacturing Practices established by the RA from time to time. No material change in PPL's manufacturing or testing procedures shall be made without prior approval of ATI, for such testing procedures which are specific to the Substance.

[***] - Confidential treatment requested.

7.2. All documents and updates with regard to those activities covered by this Agreement which are required by any RA shall be provided by PPL, and PPL shall submit to all inquiries and inspections by such RA. All documents provided by PPL to any RA shall be made available to ATI, in advance if feasible, and in no case shall such documents be made available for inspection by ATI later than two (2) working days after such documents are provided to any RA. PPL shall promptly notify ATI of all RA inspections concerning those activities covered by this Agreement and in no case shall the written notification be more than seven (7) days after the inspection has begun.

8. INDEMNIFICATION

8.1. ATI hereby holds harmless and indemnifies PPL against any and all claims, losses, liabilities, lawsuits, proceedings, costs and expenses, including, without limitation, reasonable attorneys' fees, (hereinafter collectively referred as "Claim" or "Claims") resulting from, arising out of or in connection with PPL's performance under this Agreement except to the extent that such Claims are the result of PPL's action, inaction or negligence in its performance under this Agreement. If any Claim shall be made against PPL as to which this indemnification applies, PPL shall immediately inform ATI of such Claim which will be brought against PPL and/or ATI and in such case PPL shall not take any step nor conduct any legal proceeding before consulting and obtaining ATI's written approval. At PPL's request, ATI and/or its insurers shall assume direction and control of the defense against such Claim, including, without limitation, the settlement thereof at the sole option of ATI or its insurer. PPL may, at its option and expense, have its own counsel participate in any proceeding which is under the direction and control of ATI. PPL shall cooperate with ATI and its insurer in the disposition of any such matters. In addition, PPL may at any time relieve ATI of its responsibilities under Section 8.1 as to any other Claim.

8.2. PPL hereby holds harmless and indemnifies ATI against any and all claims resulting from, arising out of or in connection with the action, inaction or negligence of PPL in its performance under this Agreement. If any Claims shall be made against ATI as to which this indemnification applies, ATI shall immediately inform PPL of such Claim which will be brought against ATI and/or PPL and in such case ATI shall not take any step nor conduct any legal proceeding before consulting and obtaining PPL's written approval. At ATI's request, PPL and/or its insurers shall assume direction and control of the defense against such Claim, including, without limitation, the settlement thereof at the sole option of PPL or its insurer. ATI may, at its option and expense, have its own counsel participate in any proceeding which is under the direction and control of PPL. ATI shall cooperate with PPL and its insurer in the disposition of any such matters. In addition, ATI may at any time relieve PPL of its responsibilities under Section 8.2 as to any other Claim.

9. CONFIDENTIALITY

9.1. Except as hereinafter provided, information provided by one party to the other party shall be treated as confidential (hereinafter "Confidential Information") by the other party. Confidential Information shall not include:

a) Information which was known to the receiving party, prior to receipt from the delivering party;

b) Information which was in the public domain or generally known to the trade at the time of receipt from the delivering party;

c) Information which, other than by breach of this Agreement, enters the public domain or becomes generally known to the trade;

d) Information which is disclosed to the receiving party by a third party who is free to make such disclosure;

e) Information which is independently developed by the receiving party without use of the delivering party's Confidential Information; or

f) Information which is required to be disclosed by law, regulatory, administrative or judicial order.

9.2. Each party's Confidential Information shall be kept confidential for a period not less than seven (7) years by the other party and shall not be disclosed by such other party other than to its officers, employees and agents who are engaged in its operations relating to the Substance and who have the need to know such Confidential Information.

9.3. The provisions of Section 9 shall survive termination of this Agreement for any reason.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performance when any such failure or delay shall be caused (directly or indirectly) by fires, flood, earthquakes, accidents, explosions, sabotage, strikes, or other labor disturbances (regardless of the reasonableness of the demands of labor), civil commotions, riots, invasions, wars, intervening governmental regulations or orders, shortages of labor, fuel, power, or raw material, inability to obtain equipment or supplies, inability to obtain or delays in transportation, acts of God, or any cause (whether similar or dissimilar to the foregoing) beyond the reasonable control of ATI or PPL, as the case may be.

11. INDEPENDENT CONTRACTOR

Neither party shall have the right to control the activities of the other in performance of this Agreement and each shall perform as an independent contractor and nothing herein shall be construed to be inconsistent with that relationship or status. Under no circumstances shall the employees or agents of one party be considered employees or agents of the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership, or formal business organization of any kind.

12. NOTICES

Any and all notices or other communications required or permitted under this Agreement must be in written form and be deemed to have been given upon receipt of telefax to the notified party (followed by hard copy of documents) addressed to the party to be notified as listed below or to such other, address as either party shall have heretofore specified in a notice to the other in the manner herein provided.

Contact Addresses:

ATI: Acute Therapeutics, Inc.
3359 Durham Road
Doylestown, PA 18901
Attn: Dr. Harry G. Brittain

PPL: PolyPeptide Laboratories, Inc.
365 Maple Avenue
Torrance, California 90503
Attn: Dr. Jane Salik

13. ASSIGNMENT OF AGREEMENT

Neither this Agreement nor any rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which shall not be unreasonably withheld. Any subsequent assignee, purchaser, or transferee shall be bound by the terms of this Agreement.

14. DEBARRED PERSONS STATEMENT

PPL shall not use in any capacity persons or the services of persons that are debarred, on the Debarment List, or that have been convicted of actions that could lead to debarment as described in Section 306(a) and (b) of The Federal Food, Drug and Cosmetic Act or its amendments.

15. GOVERNING LAW

This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Pennsylvania.

16. ARBITRATION

At the request of either party any controversy or claim arising out of, or relating to, this Agreement shall be settled by arbitration either in Los Angeles, CA, or in Philadelphia, PA, in accordance with the then current arbitration rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) shall be binding on the parties and may

be entered by either party in the court or forum, state or federal, having jurisdiction. Each party will bear half of the costs.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties and is intended as a final expression of the agreement and as a complete statement of terms and conditions thereof, and shall not be amended except in writing signed by an authorized representative of each party and specifically referring to this Agreement. If there is any inconsistency between this document and any other writings which are referred to or are incorporated herein, the terms and conditions of this document shall take precedence. This Agreement supersedes any previous agreements or arrangements between the parties and any customary practice of the parties at variance with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives.

ACUTE THERAPEUTICS, INC.	POLYPEPTIDE LABORATORIES, INC.
/s/ Robert Capetola	/s/ Jane Salik
Authorized signature	Authorized signature
Robert Capetola	Jane Salik
Printed Name	Printed Name
12/10/97	12/12/97
Date	Date

Exhibit A

[***]

[***] - Confidential treatment requested.

Exhibit B

Specifications for the Soluble KL(4) Peptide Substance

[***]

[***] - Confidential treatment requested.

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of November 1, 1996 by and between Acute Therapeutics, Inc. a Delaware corporation (the "Company"), and Harry Brittain, Ph.D. ("Executive").

WHEREAS, the Company and the Executive desire that the Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of the Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of three (3) years commencing on November 1, 1996 (the "Commencement Date") and continuing until November 1, 1999 (the "Employment Period") subject, however, to prior termination as hereinafter provided in Section 6.

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as Vice President for Pharmaceutical Development. Executive shall be responsible for analytical formulation, chemical development and manufacturing technology transfer.

b. Location of Employment. Executive's

principal place of business shall be at Company's office located at 6097 Hidden Valley Drive, Doylestown, Pennsylvania 18901.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During his employment with the Company, Executive shall devote substantially all of his business time, attention and efforts to the high quality performance of his duties to the Company.

b. No Other Employment. During his employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors.

c. Non-Competition During Employment. During the term of this Agreement, and for eighteen months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity (i) compete with Acute Therapeutics, Inc. in the business or research areas of surfactant replacement therapy and other areas which Acute Therapeutics, Inc. may enter while he remains employed, or (ii) directly or indirectly solicit or employ any employees of the Company.

4. Compensation and Benefits.

a. Base Compensation. During the term of this Agreement, the Company shall pay to Executive base annual compensation of One Hundred Forty Two Thousand dollars ($142,000), less all required withholdings.

b. Relocation Payment. Executive shall receive a one-time payment of Fifteen Thousand dollars ($15,000) solely to cover any relocation expenses.

c. Benefits. During his employment with the Company, the Company shall provide reasonable medical and disability benefits to Executive while Executive is a full-time employee of the Company. In addition, the Company will provide to Executive term life insurance on behalf of Executive's beneficiaries in the amount of Executive's annual salary for the

term of this Agreement.

d. Stock Option. The Board of Directors of the Company has granted to Executive, on the date hereof, an incentive stock option to purchase 16,000 shares of Common Stock, $.001 par value of the Company, at an exercise price of $0.32 per share, pursuant to the terms of the Notice of Grant of Stock Option attached hereto as Exhibit B.

e. Incentive Bonus. Executive shall be eligible for an incentive bonus at the discretion of the Chief Executive Officer of the Company.

5. Termination of Employment.

a. Termination for Good Cause. The Company may terminate Executive's employment at any time for "Good Cause," as herein defined. For the purposes of this Agreement, "Good Cause" includes, but is not limited to, gross misconduct, gross neglect of duties, acts involving moral turpitude, material breach by Executive of this Agreement or the Confidentiality Agreement or any act or omission involving fraud, embezzlement, or misappropriation of any property or proprietary information of the Company by Executive which is not cured by Executive within fifteen (15) days after receipt of written notice from the Company.

b. Termination without Good Cause. If Executive's employment is terminated by the Company without Good Cause, the following provisions shall apply:

i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

ii) Executive shall be entitled to receive severance payments equal to his base compensation, payable on normal Company payroll dates, for a six month period, subject to setoff for other employment or consulting income received by Executive.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing his duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this paragraph 5.d., Executive or his estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the

laws of the State of New York.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or two days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or addresses as either party shall designate to the other in accordance with this paragraph 6.e.

f. Entire Agreement. This Agreement, including

the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ACUTE THERAPEUTICS, INC.

By: Robert Capetola, Ph.D.
Its: President

/s/ Robert J. Capetola

Address: 6097 Hidden Valley Drive
Doylestown, Pennsylvania 18901

EXECUTIVE:

Harry Brittain, Ph.D.

By: /s/ Harry S. Brittain

Address: 88 Courter Avenue

Maplewood NJ 07040

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of November 18, 1996 by and between Acute Therapeutics, Inc. a Delaware corporation (the "Company"), and Laurence Katz, Ph.D. ("Executive").

WHEREAS, the Company and the Executive desire that the Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of the Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of three (3) years commencing on November 18, 1996 (the "Commencement Date") and continuing until November 18, 1999 (the "Employment Period") subject, however, to prior termination as hereinafter provided in Section 6.

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as Vice President of Project Administration and Clinical Administration. Executive shall be responsible for execution of clinical site selection, protocol development and management of Clinical Research Associates and interfacing with Contact Research

Organizations.

b. Location of Employment. Executive's principal place of business shall be at Company's office located at 6097 Hidden Valley Drive, Doylestown, Pennsylvania 18901.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During his employment with the Company, Executive shall devote substantially all of his business time, attention and efforts to the high quality performance of his duties to the Company.

b. No Other Employment. During his employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors.

c. Non-Competition During Employment. During the term of this Agreement, and for eighteen months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity (i) compete with Acute Therapeutics, Inc. in the business or research areas of surfactant replacement therapy and other areas which Acute Therapeutics, Inc. may enter while he remains employed, or (ii) directly or indirectly solicit or employ any employees of the Company.

4. Compensation and Benefits.

a. Base Compensation. During the term of this Agreement, the Company shall pay to Executive base annual compensation of One Hundred Forty Two Thousand dollars ($142,000), less all required withholdings.

b. Benefits. During his employment with the Company, the Company shall provide reasonable medical and disability benefits to Executive while Executive is a full-time employee of the Company. In addition, the Company will provide to Executive term life insurance on behalf of Executive's beneficiaries in the amount of Executive's annual salary for the term of this Agreement.

c. Stock Option. The Board of Directors of the Company has granted to Executive, on the date hereof, an

incentive stock option to purchase 16,000 shares of Common Stock, $.001 par value of the Company, at an exercise price of $0.32 per share, pursuant to the Notice of Grant of Stock Option attached hereto as Exhibit B.

d. Incentive Bonus. Executive shall be eligible for an incentive bonus at the discretion of the Chief Executive Officer of the Company.

5. Termination of Employment.

a. Termination for Good Cause. The Company may terminate Executive's employment at any time for "Good Cause," as herein defined. For the purposes of this Agreement, "Good Cause" includes, but is not limited to, gross misconduct, gross neglect of duties, acts involving moral turpitude, material breach by Executive of this Agreement or the Confidentiality Agreement or any act or omission involving fraud, embezzlement, or misappropriation of any property or proprietary information of the Company by Executive which is not cured by Executive within fifteen (15) days after receipt of written notice from the Company.

b. Termination without Good Cause. If Executive's employment is terminated by the Company without Good Cause, the following provisions shall apply:

i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

ii) Executive shall be entitled to receive severance payments equal to his base compensation, payable on normal Company payroll dates, for a six month period, subject to setoff for other employment or consulting income received by Executive.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing his duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this paragraph 5.c., Executive or his estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of New York.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or two days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or addresses as either party shall designate to the other in accordance with this paragraph 6.e.

f. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ACUTE THERAPEUTICS, INC.

By: Robert Capetola, Ph.D.
Its: President

/s/ Robert J. Capetola

Address: 6097 Hidden Valley Drive
Doylestown, Pennsylvania 18901

EXECUTIVE:

Laurence Katz, Ph.D.

By: /s/ Laurence Katz

Address: 64 Haymeet Circle

Neshanic Station, NJ 08853

EXHIBIT 10.55

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of January 2, 1997 by and between Acute Therapeutics, Inc. a Delaware corporation (the "Company"), and Lisa Mastroinni ("Executive").

WHEREAS, the Company and the Executive desire that the Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of the Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of three (3) years commencing on January 2, 1997 (the "Commencement Date") and continuing until January 2, 2000 (the "Employment Period") subject, however, to prior termination as hereinafter provided in Section 6.

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as Director of Clinical Evaluation. Executive shall be responsible for protocol development, initiation of clinical sites, execution of clinical protocols, finalizing clinical trial sites and overall quality of clinical data management.

b. Location of Employment. Executive's principal place of business shall be at Company's office located at 3359 Durham Road, Doylestown, Pennsylvania 18901.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During her employment with the Company, Executive shall devote substantially all of her business time, attention and efforts to the high quality performance of her duties to the Company.

b. No Other Employment. During her employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors.

c. Non-Competition During Employment. During the term of this Agreement, and for eighteen months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity (i) compete with Acute Therapeutics, Inc. in the business or research areas of surfactant replacement therapy and other areas which Acute Therapeutics, Inc. may enter while she remains employed, or (ii) directly or indirectly solicit or employ any employees of the Company.

4. Compensation and Benefits.

a. Base Compensation. During the term of this Agreement, the Company shall pay to Executive base annual compensation of Eighty Thousand dollars ($80,000), less all required withholdings.

b. Benefits. During her employment with the Company, the Company shall provide reasonable medical and disability benefits to Executive while Executive is a full-time employee of the Company. In addition, the Company will provide to Executive term life insurance on behalf of Executive's beneficiaries in the amount of Executive's annual salary for the term of this Agreement.

c. Stock Option. The Board of Directors of the Company has granted to Executive, on the date hereof, an

incentive stock option to purchase 4,000 shares of Common Stock, $.001 par value of the Company, at an exercise price of $___ per share, pursuant to the terms of the Notice of Grant of Stock Option attached hereto as Exhibit B.

d. Incentive Bonus. Executive shall be eligible for an incentive bonus at the discretion of the Chief Executive Officer of the Company.

5. Termination of Employment.

a. Termination for Good Cause. The Company may terminate Executive's employment at any time for "Good Cause," as herein defined. For the purposes of this Agreement, "Good Cause" includes, but is not limited to, gross misconduct, gross neglect of duties, acts involving moral turpitude, material breach by Executive of this Agreement or the Confidentiality Agreement or any act or omission involving fraud, embezzlement, or misappropriation of any property or proprietary information of the Company by Executive which is not cured by Executive within fifteen (15) days after receipt of written notice from the Company.

b. Termination without Good Cause. If Executive's employment is terminated by the Company without Good Cause, the following provisions shall apply:

i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

ii) Executive shall be entitled to receive severance payments equal to her base compensation, payable on normal Company payroll dates, for a three month period, subject to setoff for other employment or consulting income received by Executive.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing her duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this paragraph 5.c., Executive or her estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of New York.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of her rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or two days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or addresses as either party shall designate to the other in accordance with this paragraph 6.e.

f. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ACUTE THERAPEUTICS, INC.

By: Robert Capetola, Ph.D.
Its: President

/s/ Robert J. Capetola

Address: 6097 Hidden Valley Drive
Doylestown, Pennsylvania 18901

EXECUTIVE:

Lisa Mastroinni

By: /s/ Lisa M. Mastroinni

Address: 215 Summit Rd.

Elizabeth, NJ 07208

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into as of November 4, 1996 by and between Acute Therapeutics, Inc. a Delaware corporation (the "Company"), and Christopher J. Schaber ("Executive").

WHEREAS, the Company and the Executive desire that the Executive be employed by the Company and that the terms and conditions of such employment be defined;

NOW, THEREFORE, in consideration of the employment of the Executive by the Company, the Company and Executive agree as follows:

1. Term of the Agreement. The Company shall employ Executive and Executive shall accept employment for a period of three (3) years commencing on November 12, 1996 (the "Commencement Date") and continuing until November 11, 1999 (the "Employment Period") subject, however, to prior termination as hereinafter provided in Section 6.

2. Executive's Duties and Obligations.

a. Duties. Executive shall serve as Vice President of Regulatory Affairs and Quality Assurance. Executive shall be responsible for direct interface with regulatory authorities worldwide, including the United States Food and Drug Administration, as well as quality assurance oversight for all

clinical development supplies and manufacturing.

b. Location of Employment. Executive's principal place of business shall be at Company's office located at 6097 Hidden Valley Drive, Doylestown, Pennsylvania 18901.

c. Proprietary Information and Inventions Agreement. Upon commencement of employment with the Company, Executive shall execute the Company's standard form of Intellectual Property and Confidential Information Agreement (the "Confidentiality Agreement") a copy of which is attached to this Agreement as Exhibit A.

3. Devotion of Time to Company's Business

a. Full-Time Efforts. During his employment with the Company, Executive shall devote substantially all of his business time, attention and efforts to the high quality performance of his duties to the Company.

b. No Other Employment. During his employment with the Company, Executive shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Company's Executive Committee or Board of Directors.

c. Non-Competition During Employment. During the term of this Agreement, and for eighteen months after its termination, Executive shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity (i) compete with Acute Therapeutics, Inc. in the business or research areas of surfactant replacement therapy and other areas which Acute Therapeutics, Inc. may enter while he remains employed, or (ii) directly or indirectly solicit or employ any employees of the Company.

4. Compensation and Benefits.

a. Base Compensation. During the term of this Agreement, the Company shall pay to Executive base annual compensation of One Hundred Twenty Five Thousand dollars ($125,000), less all required withholdings.

b. Benefits. During his employment with the Company, the Company shall provide reasonable medical and disability benefits to Executive while Executive is a full-time employee of the Company. In addition, the Company will provide to Executive term life insurance on behalf of Executive's beneficiaries in the amount of Executive's annual salary for the term of this Agreement. Executive shall receive an annual payment of $9,000 per year for the length of this Agreement solely to cover tuition expenses for the Ph.D. program in which

Executive is enrolled.

c. Stock Option. The Board of Directors of the Company has granted to Executive, on the date hereof, an incentive stock option to purchase 1,600 shares of Common Stock, $.001 par value of the Company, at an exercise price of $0.32 per share, pursuant to the terms of the Notice of Grant of Stock Option attached hereto as Exhibit B.

d. Incentive Bonus. Executive shall be eligible for an incentive bonus at the discretion of the Chief Executive Officer of the Company.

5. Termination of Employment.

a. Termination for Good Cause. The Company may terminate Executive's employment at any time for "Good Cause," as herein defined. For the purposes of this Agreement, "Good Cause" includes, but is not limited to, gross misconduct, gross neglect of duties, acts involving moral turpitude, material breach by Executive of this Agreement or the Confidentiality Agreement or any act or omission involving fraud, embezzlement, or misappropriation of any property or proprietary information of the Company by Executive which is not cured by Executive within fifteen (15) days after receipt of written notice from the Company.

b. Termination without Good Cause. If Executive's employment is terminated by the Company without Good Cause, the following provisions shall apply:

i) Executive shall be entitled to any unpaid compensation accrued through the last day of Executive's employment;

ii) Executive shall be entitled to receive severance payments equal to his base compensation, payable on normal Company payroll dates, for a six month period, subject to setoff for other employment or consulting income received by Executive.

c. Death or Disability. This Agreement shall terminate if Executive dies or is mentally or physically "Disabled" as herein defined. For the purposes of this Agreement, "Disabled" shall mean a mental or physical condition that renders Executive incapable of performing his duties and obligations under this Agreement for three (3) or more consecutive months or for a total of six (6) months during any twelve (12) consecutive months; provided, that during such period the Company shall give Executive at least thirty (30) days' written notice that it considers the time period for disability to be running. If this Agreement is terminated under this paragraph 5.d., Executive or his estate shall be entitled to any unpaid compensation accrued through the last day of Executive's employment but shall not be entitled to any severance benefits.

6. Miscellaneous.

a. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of New York.

b. Amendments. No amendment or modification of the terms or conditions of this Agreement shall be valid unless in writing and signed by the parties hereto.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be construed, if possible, so as to be enforceable under applicable law, else, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Executive shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or two days after deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown below such party's signature, or at such other address or

addresses as either party shall designate to the other in accordance with this paragraph 6.e.

f. Entire Agreement. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties with respect to the employment of Executive.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

ACUTE THERAPEUTICS, INC.

By: Robert Capetola, Ph.D.
Its: President

/s/ Robert J. Capetola

Address: 6097 Hidden Valley Drive
Doylestown, Pennsylvania 18901

EXECUTIVE:

Christopher J. Schaber

By: /s/ Chris Schaber

Address: 4 Stirrup Way

Burlington, NJ 08016

EXHIBIT 10.57

MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement"), is made and entered into as of the 5th day of March, 1998, by and between Discovery Laboratories, Inc., a Delaware corporation ("Discovery"), and Acute Therapeutics, Inc., a Delaware corporation ("ATI").

RECITALS

A. Discovery, ATI and ATI Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Discovery ("Acquisition Subsidiary"), have entered into an Agreement and Plan of Merger and Reorganization dated as of the date hereof (the "Merger Agreement"), pursuant to which ATI will become a wholly-owned subsidiary of Discovery through a merger of Acquisition Subsidiary into ATI, upon the terms and subject to the conditions set forth in the Merger Agreement (the "Merger"). Capitalized terms used in this Agreement and not otherwise defined herein shall have the same meanings as in the Merger Agreement.

B. Discovery is a development stage pharmaceutical company engaged in the development of proprietary pharmaceuticals to treat post-menopausal osteoporosis, cystic fibrosis and other diseases. ATI is a development stage pharmaceutical company engaged in the development of acute care pharmaceuticals to treat Acute Respiratory Distress Syndrome, Meconium Aspiration Syndrome and Idiopathic Respiratory Distress Syndrome.

C. The closing under the Merger Agreement (the "Closing") is scheduled to occur following satisfaction of all of the conditions to Closing set forth in the Merger Agreement but no later than July 15, 1998.

D. Discovery and ATI wish to provide for a smooth and efficient transition and integration of the businesses of Discovery and ATI, pending the closing of the transactions provided for in the Merger Agreement. In furtherance of this transition, Discovery has requested and ATI has agreed that the ATI management personnel (the "ATI Management Team") will manage the operations of both Discovery and ATI through the effective date of the Merger (the "Effective Date"), with each member of the ATI Management Team assuming responsibilities on behalf of, and a title at, Discovery comparable to the responsibilities and title held by such individual at ATI.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, IT IS AGREED AS FOLLOWS:

I. Management Services:

A. Subject to the terms and conditions set forth in this Agreement, Discovery hereby engages ATI to provide, and ATI hereby accepts such engagement and agrees to provide, operational, transition and integration management services to Discovery. ATI shall provide such services by making available to Discovery each member of the ATI Management Team whose entry into an employment agreement with Discovery is a condition to any party's obligations under the Merger Agreement. During the term of this Agreement, the ATI Management Team shall be responsible for the overall management of the operations of Discovery and shall report to, and shall be subject to the policies established by, Discovery's Board of Directors. Notwithstanding the foregoing, no member of the ATI Management Team shall have the authority by virtue of this Agreement to participate in any meeting of the Board of Directors of Discovery or any committee thereof except upon invitation. Moreover, Discovery does not delegate to ATI under this Agreement any powers, duties or responsibilities which it is prohibited by law from delegating.

B. Each member of the ATI Management Team shall have duties and responsibilities on behalf of Discovery comparable to the duties and responsibilities of such individual at ATI. Each such individual shall have the same title at Discovery as he or she has at ATI, with the additional designation "Acting," as set forth on Schedule A hereto.

C. During the term of this Agreement, management and supervisory personnel of Discovery shall report to Robert J. Capetola, Ph.D., who will serve as the Acting President and Chief Executive Officer of Discovery.

II. Option Grants. The ATI Management Team shall be granted, on the date of this Agreement, options to purchase an aggregate of 126,500 shares of Discovery Common Stock (allocated as per attached Schedule B), which shall vest in accordance with Schedule B. Notwithstanding Schedule B, if the Merger has not occurred by July 15, 1998, due to the failure of Discovery or its stockholders to perform any of their obligations under the Merger Agreement, all such options shall be immediately vested in full.

III. Term and Termination. The term of this Agreement ("Term") shall commence on the date of this Agreement and shall terminate on the earliest to occur of (i) the Effective Date or (ii) termination of the Merger Agreement.

IV. Compensation. If the Merger is consummated, no compensation shall be payable to ATI or the ATI Management Team other than the options granted pursuant to Section II hereof. If the Merger is not consummated on or prior to July 15, 1998 due to the failure of Discovery or its stockholders to perform any of their obligations under the Merger Agreement, Discovery shall pay to ATI on the date of termination or July 15, 1998, whichever occurs first (the "Date of Termination"), 50% of the salary expense attributable to the ATI Management

Team from the date of this Agreement through the Date of Termination and all the options granted pursuant to Section II hereof shall be immediately vested in full.

V. Indemnification.

A. Benefits Indemnification. Except as specifically provided in Section IV hereof, Discovery and ATI shall each be liable for any wages or benefits earned or accrued by each of its employees and owing to them under applicable law, their respective policies and procedures or otherwise and each of Discovery and ATI shall indemnify, defend and hold harmless each other party and its respective employees from and against any and all costs, expenses and liabilities with respect thereto (the "Benefits Indemnity"). The parties specifically acknowledge and agree that in the event of the termination of this Agreement other than upon the Closing, such Benefits Indemnity shall survive the termination of this Agreement.

B. Director and Officer Indemnification. The ATI Management Team shall be indemnified by Discovery with respect to their actions as acting officers of Discovery during the term of this Agreement to the same extent that Discovery's officers and directors are indemnified by Discovery.

VI. Assignment. This Agreement and the duties hereunder shall not be assigned or delegated in whole or in part by either party, it being understood and agreed that this Agreement is personal to Discovery and ATI.

VII. Notices. All notices required or permitted hereunder shall be given in writing and shall be delivered in the manner and at the addresses set forth in the Merger Agreement.

VIII. Relationship of the Parties. The relationship of the parties shall be that of independent contractors and all acts performed by ATI during the Term by ATI shall be deemed to be performed in its capacity as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to give rise to or create a partnership or joint venture between Discovery, its successors and assigns on the one hand, and ATI, its successors and assigns on the other hand. With respect to situations that involve a potential conflict of interest between Discovery and ATI in the course of ATI's duties under this Agreement, unless otherwise specifically agreed between Discovery and ATI, the employees of ATI shall be deemed to act only on behalf of ATI and the employees of Discovery shall be deemed to act only on behalf of Discovery.

IX. Entire Agreement, Governing Law. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of their successors, and shall be interpreted, construed, governed and enforced in accordance with the laws of the State of New York, without regard to conflicts of law principles of such state. This Agreement may not be modified or amended except by written

instrument signed by both of the parties hereto.

X. Captions. The captions used herein are for convenience of reference only and shall not be construed in any manner to limit or modify any of the terms hereof.

XI. Severability. In the event one or more of the provisions contained in this Agreement is deemed to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be impaired thereby.

XII. Cumulative; No Waiver. A right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be cumulative of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of an event of default hereunder. The failure of either party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties hereof may be exercised from time to time and as often as may be deemed expedient by the parties thereto, as the case may be.

XIII. Authorization for Agreement. Each of Discovery and ATI represents and warrants that the execution and performance of this Agreement by Discovery and ATI have been duly authorized by all necessary resolutions and corporate action, and this Agreement constitutes the valid and enforceable obligations of Discovery and ATI in accordance with its terms.

XIV. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Agreement.

XV. No Effect on Merger Agreement. Each of the parties hereby acknowledges and agrees that entry into this Agreement, and the performance of their respective obligations hereunder, shall have no effect on the Merger Agreement including, without limitation, the

satisfaction of the conditions thereto or any rights of the parties with respect to termination thereof.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be duly executed, as of the day and year first above written.

DISCOVERY LABORATORIES, INC.

/s/ James S. Kuo

By: James S. Kuo, M.D.
Its: Chairman of the Board

ACUTE THERAPEUTICS, INC.

/s/ Robert J. Capetola

By: Robert J. Capetola, Ph.D.
Its: President and Chief Executive Officer

SCHEDULE A

ATI MANAGEMENT TEAM

Name	Title
Harry G. Brittain, Ph.D.	Acting Vice President of Pharmaceutical Development
Robert J. Capetola, Ph.D.	Acting President and Chief Executive Officer
Cynthia Davis	Acting Controller
Laurence B. Katz, Ph.D.	Acting Vice President of Project Administration and Clinical Administration
Lisa Mastroianni	Acting Director of Clinical Evaluation
Christopher Schaber	Acting Vice President of Regulatory Affairs and Quality Assurance
Huei Tsai, Ph.D.	Acting Vice President of Biometrics
Thomas Wiswell, M.D.	Acting Vice President of Clinical Research
Joan Marie Brown	

SCHEDULE B

Name	Options to be Issued*
Harry G. Brittain, Ph.D.	14,813
Joan Marie Brown	670
Robert J. Capetola, Ph.D.	43,010**
Cynthia Davis	4,428
Laurence B. Katz, Ph.D.	14,813
Lisa Mastroianni	4,326
Christopher Schaber	14,813
Huei Tsai, Ph.D.	14,813
Thomas Wiswell, M.D.	14,813
Total	126,500

* All options, other than those granted to Robert J. Capetola, will vest in three equal annual installments, the first installment of which will vest on the first year anniversary of the Closing of the Merger; notwithstanding the foregoing, if the Merger has not occurred by July 15, 1998 due to the failure of Discovery or its stockholders to perform any of their obligations under the Merger Agreement, all such options shall be immediately vested in full.

** These option vest in full on the date of grant.

EXHIBIT 10.58

[LETTERHEAD OF LEHMAN BROTHERS]

November 10, 1997

Acute Therapeutics, Inc.
3359 Durham Road
Doylestown, Pennsylvania 18901

Attention: Robert J. Capetola, Ph.D.
President and Chief Executive Officer

Dear Sirs:

November 10, 1997

This letter agreement (this "Agreement") will confirm the understanding and agreement between Lehman Brothers Inc. ("Lehman Brothers") and Acute Therapeutics, Inc. (the "Company") as follows:

1. The Company hereby engages Lehman Brothers on an exclusive basis to provide financial advisory services to the Company concerning the strategic development of the Company's business, including general advice with respect to financings, acquisitions, divestitures, joint ventures or other corporate transactions which the Company is currently contemplating entering into or which it may consider at a future date.

   Lehman Brothers will, if requested by the Company, advise the Company generally with respect to financing as well as structuring of any of the transactions described above.

2. As compensation for the services rendered by Lehman Brothers hereunder, the Company shall pay Lehman Brothers as follows:

   (a) A retainer fee of $100,000, payable in equal quarterly payments, in any combination of cash and common stock of the Company (at a valuation to be mutually agreed between the Company and Lehman Brothers), provided that at least 50% of the payment is in cash, the first payment being due upon the signing of this Agreement. This retainer will be credited against any transaction fee payable pursuant to paragraph 2(b).

   (b) If Lehman Brothers provides any additional investment banking services to the Company in connection with any particular transaction, then the Company shall pay to Lehman Brothers additional fees to be mutually agreed upon based on Lehman Brothers' customary fees for the services rendered.

3. The Company shall reimburse Lehman Brothers upon request for its reasonable expenses (including, without limitation, professional and legal fees and disbursements) incurred in connection with its engagement hereunder.

4. The Company shall:

   (a) indemnify Lehman Brothers and hold it harmless against any and all losses, claims, damages or liabilities to which Lehman Brothers may become subject arising in any manner out of or in connection with the rendering of services by Lehman Brothers hereunder or the rendering of additional services by Lehman Brothers as requested by the Company that are related to the services rendered hereunder, unless it is finally judicially determined that such losses, claims, damages or liabilities resulted directly from the gross negligence or willful misconduct of Lehman Brothers; and

   (b) reimburse Lehman Brothers promptly for any legal or other expenses reasonably incurred by it in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, or otherwise relating to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with the rendering of services by Lehman Brothers hereunder or the rendering of additional services by Lehman Brothers as requested by the Company that are related to the services rendered hereunder (including, without limitation, in connection with the enforcement of this Agreement and the indemnification obligations set forth herein); provided, however, that in the event a final judicial determination is made to the effect specified in subparagraph 4(a) above, Lehman Brothers will remit to the Company any amounts reimbursed under this subparagraph 4(b).

   The Company agrees that the indemnification and reimbursement commitments set forth in this paragraph 4 shall apply if either the Company or Lehman Brothers is a formal party to any such lawsuits, investigations, claims or other proceedings and that such

commitments shall extend upon the terms set forth in this paragraph to any controlling person, affiliate, director, officer, employee or agent of Lehman Brothers (each, with Lehman Brothers, an "Indemnified Person"). The Company further agrees that, without Lehman Brothers' prior written consent, it will not enter into any settlement of a lawsuit, claim or other proceeding arising out of the transactions contemplated by this Agreement (whether or not Lehman Brothers or any other Indemnified Person is an actual or potential party to such lawsuit, claim or proceeding) unless such settlement includes an explicit and unconditional release from the party bringing such lawsuit, claim or other proceeding of all Indemnified Persons.

Promptly after receipt by Lehman Brothers or any Indemnified Person of notice of any pending or threatened litigation, Lehman Brothers or such other Indemnified Person will promptly notify the

Company in writing of such matted; provided, however, that the failure to provide such prompt notice to the Company shall not relieve the Company of any liability which it may have to the Indemnified Persons under this paragraph 4 unless such failure has materially prejudiced the defense of such litigation and shall not in any event relieve the Company of any liability it may have to the Indemnified Persons other than under this paragraph 4. In the event any action is brought against Lehman Brothers, the Company shall be entitled to participate therein and to assume the defense thereof, with counsel reasonably satisfactory to Lehman Brothers; provided, however, that if Lehman Brothers reasonably determines that the defenses available to it are not available to the Company and/or may not be consistent with the best interests of the Company, Lehman Brothers shall have the right to assume its own defense at the Company's expense and shall so signify by promptly notifying the Company of its decision. Such decision shall not relieve the Company of any liability which it may have to Indemnified Persons under this paragraph 4.

5. The Company and Lehman Brothers agree that if any indemnification or reimbursement sought pursuant to the preceding paragraph 4 is judicially determined to be unavailable for a reason other than the gross negligence or willful misconduct of Lehman Brothers, then, whether or not Lehman Brothers is the Indemnified Person, the Company and Lehman Brothers shall contribute to the losses, claims, damages, liabilities and expenses for which such indemnification or reimbursement is held unavailable (i) in such proportion as is appropriate to reflect the relative benefits to the Company on the one hand, and Lehman Brothers on the other hand, in connection with the transactions to which such indemnification or reimbursement relates, or (ii) if the allocation provided by clause (i) above is judicially determined not to be permitted, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative faults of the Company on the one hand, and Lehman Brothers on the other hand, as well as any other equitable considerations; provided, however, that in no event shall the amount to be contributed by Lehman Brothers pursuant to this paragraph exceed the amount of the fees actually received by Lehman Brothers hereunder.

6. Except as contemplated by the terms hereof or as required by applicable law or pursuant to an order entered or subpoena issued by a court of competent jurisdiction, Lehman Brothers shall keep confidential all material non-public information provided to it by the Company, and shall not disclose such information to any third party, other than such of its employees and advisors as Lehman Brothers determines to have a need to know. Lehman Brothers shall give the Company prior notice of any disclosure required by law or pursuant to an order or subpoena under this paragraph 6.

7. Except as required by applicable law, any advice to be provided by Lehman Brothers under this Agreement shall not be disclosed publicly or made available to third parties without the prior

approval of Lehman Brothers, and accordingly suck advice shall not be relied upon by any person or entity other than the Company.

8. The term of Lehman Brothers' engagement hereunder shall extend from the date hereof through October 31, 1998, unless terminated earlier as set forth below. Subject to the provisions of paragraphs 2 through 7 and paragraphs 9 through 12, which shall survive any termination or expiration of this Agreement, either party may terminate Lehman Brothers' engagement hereunder at any time by giving the other party at least 10 days' prior written notice. In the event that Lehman Brothers' engagement hereunder is terminated or expires, Lehman Brothers shall be entitled to fees pursuant to paragraph 2(b) only with respect to a transaction of the types contemplated to be covered by this agreement that is (i) with a party introduced to the Company by Lehman Brothers during the term of this agreement and (ii) is consummated within one year after such termination or expiration.

9. The Company agrees that Lehman Brothers has the right to place advertisements in financial and other newspapers and journals at its own expense describing its services to the Company hereunder, provided that Lehman Brothers will submit a copy of any such advertisements to the Company for its approval, which approval shall not be unreasonably withheld.

10. Nothing in this Agreement, expressed or implied, is intended to confer or does confer on any person or entity other than the parties hereto or their respective successors and assigns, and to the extent expressly set forth herein, the Indemnified Persons, any rights or remedies under or by reason of this Agreement or as a result of the services to be rendered by Lehman Brothers hereunder. The Company further agrees that neither Lehman Brothers nor any of its controlling persons, affiliates, directors, officers, employees or agents shall have any liability to the Company or any person asserting claims on behalf of or in right of the Company for any losses, claims, damages, liabilities or expenses arising out of or relating to this Agreement or the services to be rendered by Lehman Brothers hereunder, unless it is finally judicially determined that such losses, claims, damages, liabilities or expenses resulted directly from the gross negligence or willful misconduct of Lehman Brothers.

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

12. This Agreement may not be amended or modified except in writing signed by each of the parties and shall be governed by and construed and enforced in accordance with the laws of the State of New York. Any right to trial by jury with respect to any lawsuit, claim or other proceeding arising

out of or relating to this Agreement or the services to be rendered by Lehman Brothers hereunder is expressly and irrevocably waived.

If the foregoing correctly sets forth the understanding and agreement between Lehman Brothers and the Company, please so indicate in the space provided for that purpose below, whereupon this letter shall constitute a binding agreement as of the date hereof.

LEHMAN BROTHERS INC.

By: /s/ [ILLEGIBLE]

Vice Chairman

AGREED:

ACUTE THERAPEUTICS, INC.

By: /s/ Robert J. Capetola

Name:

Title:

EXHIBIT 21.1

Subsidiaries of Registrant

1. Acute Therapeutics, Inc.

5

YEAR	
	DEC-31-1997
	DEC-31-1997
	6,297,000
	4,957,000
	0
	0
	0
	11,444,000
	222,000
	41,000
	11,655,000
	565,000
	0
	2,039,000
	2,000
	3,000
	21,464,000
	11,655,000
	0
	0
	0
	9,877,000
	0
	0
	0
	(9,164,000)
	0
	0
	0
	0
	0
	(9,164,000)
	(3.42)
	(3.42)

EPS Basic and Diluted is (3.42). The Company calculates Earnings Per Share pursuant to FASB 128.