

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2007.

OR

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 000-27748

**OPKO Health, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

75-2402409

(I.R.S. Employer  
Identification No.)

4400 Biscayne Blvd., Suite 1180  
Miami, FL 33137

(Address of Principal Executive Offices)

(305) 575-6015

(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a nonaccelerated filer (as defined in Rule 12b-2 of the Exchange Act). Check one:

Large accelerated filer

Accelerated filer

Nonaccelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act):  
YES  NO

As of November 9, 2007, the registrant had 163,214,203 shares of common stock outstanding.

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## PART I. FINANCIAL INFORMATION

### CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This report contains “forward-looking statements,” as that term is defined under Private Securities Litigation Reform Act of 1995, or PSLRA. Forward-looking statements include statements about our expectations, beliefs or intentions regarding our product development efforts, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those listed below as well as the risks and uncertainties detailed in our Current Report on Form 8-K dated March 27, 2007 and described from time to time in our reports filed with the Securities and Exchange Commission. We intend that all forward-looking statements be subject to the safe-harbor provisions of PSLRA. These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance. We do not undertake any obligation to update, and we do not have a policy of updating or revising, these forward-looking statements.

Risks and uncertainties, the occurrence of which could adversely affect our business, include the following:

- We have a history of operating losses and we do not expect to become profitable in the near future.
- Our technologies are in an early stage of development and are unproven.
- Our research and development activities may not result in commercially viable products.
- We are highly dependent on the success of our lead product candidate, bevasiranib, and we cannot give any assurance that it will receive regulatory approval or be successfully commercialized.
- The results of previous clinical trials may not be predictive of future results, and our current and planned clinical trials may not satisfy the requirements of the FDA or other non-United States regulatory authorities.
- We will require substantial additional funding, which may not be available to us on acceptable terms, or at all.
- If our competitors develop and market products that are more effective, safer or less expensive than our future product candidates, our commercial opportunities will be negatively impacted.
- The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our collaboration partners from obtaining approvals for the commercialization of some or all of our product candidates.
- Failure to recruit and enroll patients for clinical trials may cause the development of our product candidates to be delayed.
- Even if we obtain regulatory approvals for our product candidates, the terms of approvals and ongoing regulation of our products may limit how we manufacture and market our product candidates, which could materially impair our ability to generate anticipated revenues.

- Even if we receive regulatory approval to market our product candidates, the market may not be receptive to our products.
- If we fail to attract and retain key management and scientific personnel, we may be unable to successfully develop or commercialize our product candidates.
- As we evolve from a company primarily involved in development to a company also involved in commercialization, we may encounter difficulties in managing our growth and expanding our operations successfully.
- If we fail to acquire and develop other products or product candidates at all or on commercially reasonable terms, we may be unable to diversify or grow our business.
- We currently have a limited marketing staff and sales and distribution organization. If we are unable to develop our sales and marketing and distribution capability on our own or through collaborations with marketing partners, we will not be successful in commercializing our product candidates.
- If we are unable to obtain and enforce patent protection for our products, our business could be materially harmed.
- If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.
- We license patent rights to certain of our technology from third-party owners. If such owners do not properly maintain or enforce the patents underlying such licenses, our competitive position and business prospects will be harmed.
- Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.
- Medicare prescription drug coverage legislation and future legislative or regulatory reform of the health care system may affect our ability to sell our products profitably.
- Acquisitions may disrupt our business, distract our management and may not proceed as planned, and we may encounter difficulty in integrating acquired businesses into our operations.

Item 1. Financial Statements:

Our results of operations for the first nine months of 2007 include Froptix' operating results for the full nine month period and Acuity's operating results subsequent to March 27, 2007. As a result of the reverse merger between Froptix and eXegenics, historical comparative results are those of Froptix. Froptix was incorporated on June 23, 2006 and did not have significant operations for most of the period from inception (June 23, 2006) through September 30, 2006. Refer to Note 1.

OPKO Health, Inc.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(A Development Stage Company)  
(in thousands except share data)  
(unaudited)

	<u>September 30,</u> <u>2007</u>	<u>December 31,</u> <u>2006</u>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 4,670	\$ 116
Prepaid expenses and other current assets	1,018	—
<b>Total current assets</b>	<b>5,688</b>	<b>116</b>
Property and equipment, net	275	—
Investment in Ophthalmic Technologies, Inc. (OTI)	4,874	—
Other assets	22	—
<b>Total assets</b>	<b>\$ 10,859</b>	<b>\$ 116</b>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of notes payable, net unamortized discount of \$56 and capital lease obligations	\$ 3,319	\$ —
Accounts payable	1,349	95
Accrued expenses	1,741	—
<b>Total current liabilities</b>	<b>6,409</b>	<b>95</b>
Line of credit with a related party, net of unamortized discount of \$371	7,629	—
Long-term capital lease obligations	9	—
<b>Total liabilities</b>	<b>14,047</b>	<b>95</b>
Commitments and contingencies		
Shareholders' (deficit) equity:		
Series A Preferred stock — \$0.01 par value, 4,000,000 shares authorized; 869,366 and 0 shares issued and outstanding (liquidation value of \$2,336 and \$0) at September 30, 2007 and December 31, 2006, respectively	9	—
Series C Preferred Stock \$0.01 par value, 500,000 shares authorized; no shares issued or outstanding	—	—
Common stock — \$0.01 par value, 500,000,000 shares authorized; 163,192,608 and 61,775,002 shares issued and outstanding, respectively	1,632	618
Additional paid-in capital	255,639	280
Deficit accumulated during development stage	(260,468)	(877)
<b>Total shareholders' (deficit) equity</b>	<b>(3,188)</b>	<b>21</b>
<b>Total liabilities and shareholders' (deficit) equity</b>	<b>\$ 10,859</b>	<b>\$ 116</b>

*The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.*

OPKO Health, Inc.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(A Development Stage Company)  
(in thousands except share data)  
(unaudited)

	Three Months Ended September 30, 2007	Three Months Ended September 30, 2006	Nine Months Ended September 30, 2007	Period From Inception (June 23, 2006) to September 30, 2006	Cumulative Period From Inception (June 23, 2006) to September 30, 2007
Revenue	\$ —	\$ —	\$ —	\$ —	\$ —
Operating expenses (reversal):					
Selling, general and administrative	2,722	9	8,151	9	8,526
Research and development	(4,496)	1	7,010	251	7,519
Write-off of acquired in- process research and development	—	—	243,761	—	243,761
Total operating expenses (reversal)	(1,774)	10	258,922	260	259,806
Operating income (loss)	1,774	(10)	(258,922)	(260)	(259,806)
Other (expense) income, net	(202)	3	(379)	3	(372)
Income (loss) before income taxes and investment loss from OTI	1,572	(7)	(259,301)	(257)	(260,178)
Income taxes	—	—	—	—	—
Net income (loss) before investment loss from OTI	1,572	(7)	(259,301)	(257)	(260,178)
Loss from investment in OTI	(91)	—	(126)	—	(126)
Net income (loss)	1,481	(7)	(259,427)	(257)	(260,304)
Preferred stock dividend	(41)	—	(164)	—	(164)
Net income (loss) attributable to common shareholders	\$ 1,440	\$ (7)	\$ (259,591)	\$ (257)	\$ (260,468)
Income (loss) per share, basic	\$ 0.01	\$ (0.00)	\$ (2.24)	\$ (0.01)	
Income (loss) per share, diluted	\$ 0.01	\$ (0.00)	\$ (2.24)	\$ (0.01)	
Weighted average number of shares outstanding - basic	162,793,526	51,731,927	116,034,500	47,593,373	
Weighted average number of shares outstanding - diluted	205,149,747	51,731,927	116,034,500	47,593,373	

*The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.*

OPKO Health, Inc.  
CONDENSED CONSOLIDATED STATEMENTS SHAREHOLDERS' (DEFICIT) EQUITY  
(A Development Stage Company)  
(in thousands except share data)  
For the cumulative period from inception (June 23, 2006) to September 30, 2007  
(unaudited)

	Series A Preferred Stock		Series C Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Total
	Shares	Dollars	Shares	Dollars	Shares	Dollars	Capital	Deficit	
Issuance of capital stock to founders of Fropix, \$0.01 per share	—	\$ —	—	\$ —	61,775,002	\$ 618	20	\$ —	638
Stock-based compensation expense	—	—	—	—	—	—	260	—	260
Net loss for the period from inception (June 23, 2006) to December 31, 2006	—	—	—	—	—	—	—	(877)	(877)
Balance at December 31, 2006	—	—	—	—	61,775,002	618	280	(877)	21
Stock-based compensation expense	—	—	—	—	—	—	5,684	—	5,684
Issuance of common and preferred stock and options and warrants for net monetary assets at \$0.43 per share	1,081,750	11	—	—	36,607,023	366	15,626	—	16,003
Issuance of equity securities to acquire Acuity Pharmaceuticals, Inc. at \$2.65 per share	—	—	457,584	5	14,778,997	148	234,470	—	234,623
Issuance of common stock upon automatic conversion of Series C preferred stock	—	—	(457,584)	(5)	45,758,400	457	(452)	—	—
Exercise of stock options	—	—	—	—	343,062	4	68	—	72
Exercise of common warrants	—	—	—	—	3,717,740	37	(37)	—	—
Conversion of Series A preferred stock	(212,384)	(2)	—	—	212,384	2	—	—	—
Preferred stock dividend	—	—	—	—	—	—	—	(164)	(164)
Net loss for the nine months ended September 30, 2007	—	—	—	—	—	—	—	(259,427)	(259,427)
Balance at September 30, 2007	869,366	\$ 9	—	\$ —	163,192,608	\$ 1,632	\$ 255,639	\$ (260,468)	\$ (3,188)

*The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements.*

OPKO Health, Inc.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(A Development Stage Company)  
(in thousands)  
(unaudited)

	<b>Nine Months Ended September 30, 2007</b>	<b>Period from inception (June 23, 2006) to September 30, 2006</b>	<b>Cumulative period from inception (June 23, 2006) to September 30, 2007</b>
Cash flows from operating activities:			
Net loss	\$ (259,427)	\$ (257)	\$ (260,304)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	17	—	17
Write-off of in-process research and development	243,761	—	243,761
Amortization of debt discount related to notes payable	154	—	154
Loss from investment in OTI	126	—	126
Stock compensation — employees and vendors	5,684	1	5,943
Changes in:			
Prepaid expenses and other current assets	(431)	(39)	(431)
Other assets	(22)	—	(22)
Accounts payable	(720)	8	(625)
Accrued expenses	(236)	—	(236)
Net cash used in operating activities	<u>(11,094)</u>	<u>(287)</u>	<u>(11,617)</u>
Cash flows from investing activities:			
Investment in OTI	(5,000)	—	(5,000)
Acquisition of a business, net of cash	1,135	—	1,135
Capital expenditures	(208)	—	(208)
Net cash used in investing activities	<u>(4,073)</u>	<u>—</u>	<u>(4,073)</u>
Cash flows from financing activities:			
Issuance of common stock for cash	—	639	639
Proceeds from stock option exercises	72	—	72
Borrowings under line of credit with related party	4,000	—	4,000
Repayments of notes payable and capital lease obligations	(635)	—	(635)
Proceeds from sale of common stock, net	16,284	—	16,284
Net cash provided by financing activities	<u>19,721</u>	<u>639</u>	<u>20,360</u>
Net change in cash	4,554	352	4,670
Cash and cash equivalents at beginning of period	116	—	—
Cash and cash equivalents at end of period	<u>\$ 4,670</u>	<u>\$ 352</u>	<u>\$ 4,670</u>

*The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these statements .*



**OPKO Health, Inc.**  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(A Development-Stage Company)

**Note 1 Business and Organization**

We are a specialty healthcare company focused on the discovery, development, and commercialization of proprietary pharmaceuticals, drug delivery technologies, diagnostic systems and instruments for the treatment, diagnosis and prevention of ophthalmic diseases. We continue to seek to expand our current operations by acquiring additional ophthalmic businesses and therapeutic and diagnostic technologies, as well as exploring opportunities in other medical markets that have operational characteristics similar to ophthalmology, such as dermatology. We are a Delaware corporation, headquartered in Miami, Florida with clinical operations in Morristown, New Jersey.

On February 9, 2007, *eXegenics, Inc.* completed the sale of 19,440,491 shares of its common stock for \$8.0 million, constituting 51% of its issued and outstanding shares of capital stock on a fully diluted basis, to a small group of investors led by The Frost Group, LLC, or the Frost Group, a related party. On March 27, 2007, pursuant to the terms of a Merger Agreement and Plan of Reorganization, Froptix Corporation, or Froptix, a development stage research and development company, controlled by the Frost Group, and Acuity Pharmaceuticals, Inc., or Acuity, a development stage research and development company and *eXegenics* were part of a three-way merger. Per that agreement, *eXegenics* issued new capital stock to acquire all of the issued and outstanding capital stock of Froptix and Acuity. On June 8, 2007, we changed our name to OPKO Health, Inc., from *eXegenics, Inc.* Through March 26, 2007, *eXegenics* was a public shell company whose assets consisted of cash and nominal other assets.

Froptix was the accounting acquirer in the three-way merger referenced above. The three-way merger has been accounted for as:

- a reverse merger between Froptix and *eXegenics* (a public shell company). For accounting purposes Froptix has been treated as the continuing registrant. As a result, all post merger comparative historical financials statements filed by us will be those of Froptix. Froptix was incorporated on June 23, 2006. Further, Froptix' historical shareholders' equity prior to the merger has been retroactively restated (recapitalized) for the equivalent number of shares received in the reverse merger. Earnings and loss per share calculations have also been retroactively restated to give effect to the recapitalization for all periods presented. Lastly, the merger between Froptix and *eXegenics* has been accounted for as a capital transaction equivalent to the issuance of capital stock by Froptix for the net monetary assets of *eXegenics*.
- an asset acquisition of Acuity by Froptix.

The Merger Agreement provided for the merger of Froptix with and into e-Acquisition Company I-A, LLC, with e-Acquisition Company I-A, LLC surviving as our wholly-owned subsidiary (referred to as the "Froptix Merger") and the merger of Acuity with and into e-Acquisition Company II-B, LLC, with e-Acquisition Company II-B, LLC surviving as our wholly-owned subsidiary (referred to as the "Acuity Merger" and, with the Froptix Merger, the "Mergers"). In connection with the consummation of the Mergers (1) e-Acquisition Company I-A, LLC changed its name to Froptix, LLC, (2) e-Acquisition Company II-B, LLC changed its name to Acuity Pharmaceuticals, LLC and again changed its name to OPKO Ophthalmologics, LLC and (3) OPKO became the parent company of these two wholly-owned operating subsidiaries. At the closing of the Mergers, the former shareholders of Froptix and Acuity received shares of our common stock and preferred stock as well as warrants to purchase our common stock in exchange for all of their shares of Froptix and Acuity.

As a result, at the closing of the Mergers, we issued (a) an aggregate of 61,775,002 shares of our common stock to the former holders of Froptix common stock, (b) an aggregate of 14,778,997 shares of our common stock to the former holders of Acuity common stock and Acuity Series A preferred stock, and (c) an aggregate of 457,584 shares of our Series C preferred stock, convertible into 45,758,400 shares of our common stock, to the former holders of Acuity Series B preferred stock. We also granted 21,144,128 warrants to purchase shares of our common stock to former shareholders of Froptix and Acuity and 15,810,131 options to purchase our common stock to former option holders of Froptix and Acuity. All of the options granted the former holder of the Froptix options were cancelled during the third quarter of 2007.

*Acuity Asset Acquisition.* On March 27, 2007, the Company purchased Acuity's assets in a stock for stock transaction. We valued our common stock issued to Acuity shareholders at the average closing price of the common stock on the date of acquisition and the two days prior to the transaction.

The following table summarizes the estimated fair value of the net assets acquired at the date of acquisition:

<b>(in thousands)</b>	
Current assets (including cash of \$1,135)	\$ 1,350
Property and equipment	85
In-process research and development	243,761
Accounts payable and accrued expenses	(3,154)
Line of credit and term loan	<u>(7,419)</u>
<b>Total purchase price</b>	<b>\$ <u>234,623</u></b>

The portion of the purchase price allocated to in-process research and development of \$243.8 million was immediately expensed. The purchase price includes \$1.5 million of costs incurred by *eXegenics* to acquire Acuity, including \$1.3 million of costs associated with the issuance of warrants to the Frost Group as a result of the increase of the credit line with Acuity. Refer to Note 4. The purchase consideration issued and the purchase price allocation are preliminary pending completion and review of related valuation procedures. As a result the amounts above are subject to change.

*Treatment of Warrants and Options.* In connection with the Mergers, we assumed the obligations under outstanding warrants previously granted by Acuity to purchase 1,247,271 shares of Acuity common stock and 325,000 shares of Acuity Series B preferred stock and, in connection therewith, we issued warrants to purchase 7,214,730 shares of our common stock and warrants to purchase 16,866 shares of Series C preferred stock to such Acuity warrant holders, convertible into 1,686,600 shares of our common stock.

Immediately before the closing of the Mergers, Froptix had outstanding options to purchase 65 shares of Froptix common stock and Acuity had outstanding options to purchase 2,191,619 shares of Acuity common stock and options to purchase 141,000 shares of Acuity Series B preferred stock. Pursuant to the terms of the Merger Agreement, the Company assumed all of the outstanding obligations under such options and, accordingly, the Company anticipates issuing 15,810,131 shares of its common stock and 7,317 shares of its Series C preferred stock, convertible into 731,700 shares of our common stock, upon the exercise of such options in lieu of shares of common stock of Froptix or common stock and/or preferred shares of Acuity.

The following table includes the pro forma results for the three months ended September 30, 2006 of the combined companies as though the acquisition of Acuity had been completed as of June 23, 2006.

<b>(in thousands, except per share amounts)</b>	<b>Pro forma</b>		
	<b>As reported</b>	<b>adjustments</b>	<b>Pro forma</b>
Revenue	\$ —	\$ —	\$ —
Net loss	\$ (7)	\$ (2,276)	\$ (2,283)
Basic and diluted loss per share	\$ (0.00)	\$ (0.03)	\$ (0.03)

The following table includes the pro forma results for the period from inception (June 23, 2006) to September 30, 2006 of the combined companies as though the Mergers had been completed as of June 23, 2006.

<b>(in thousands, except per share amounts)</b>	<b>As reported</b>	<b>Pro forma adjustments</b>	<b>Pro forma</b>
Revenue	\$ —	\$ —	\$ —
Net loss	\$ (257)	\$ (2,519)	\$ (2,776)
Basic and diluted loss per share	\$ (0.01)	\$ (0.04)	\$ (0.04)

The following table includes the pro forma results for the nine months ended September 30, 2007 of the combined companies as though the Mergers had been completed as of January 1, 2007.

<b>(in thousands, except per share amounts)</b>	<b>As reported</b>	<b>Pro forma adjustments</b>	<b>Pro forma</b>
Revenue	\$ —	\$ —	\$ —
Net loss	\$ (259,591)	\$ (6,792)	\$ (266,383)
Basic and diluted loss per share	\$ (2.24)	\$ (0.05)	\$ (2.12)

On January 11, 2007, the Frost Group extended a \$7.0 million line of credit to Acuity. As part of the merger transaction on March 27, 2007, the Frost Group increased its line of credit to Acuity to \$12 million and consented to the transfer of Acuity's repayment obligation to OPKO.

## **Note 2 Development Stage Risks and Liquidity**

We have been in the development stage since inception and have not generated any revenues. We have not achieved profitable operations and we expect to incur substantial losses in future periods. Accordingly, the accompanying financial statements have been prepared using the accounting formats prescribed by SFAS No. 7 "Accounting and Reporting by Development Stage Enterprises." The successful completion of our development program and our transition to commercial operations, if at all, is dependent upon obtaining necessary regulatory approvals from the United States Food and Drug Administration ("FDA") prior to selling our products within the United States, and foreign regulatory approvals must be obtained to sell our products internationally. There can be no assurance that our products will receive regulatory approvals, and a substantial amount of time may pass before we achieve a level of sales adequate to support our operations, if at all. We will also incur substantial expenditures in connection with the development and regulatory approval process for our products and we will need to raise significant additional capital during the developmental period. Obtaining marketing approval will be directly dependent on our ability to implement the necessary regulatory steps required to obtain marketing approval in the United States and other countries and the success of our clinical trials. We cannot predict the outcome of these activities. Additionally, there is no assurance that profitable operations, if ever achieved, could be sustained on a continuing basis. In addition, development activities and clinical and preclinical testing and commercialization of our proprietary technology will require significant additional financing. Our deficit accumulated during the development stage through September 30, 2007 was \$260.5 million, and we expect to incur substantial losses in future periods.

Our future operations are dependent on the timely and successful completion of our ongoing research and development, the development of competitive therapies by other biotechnology and pharmaceutical companies, other treatment modalities for our targeted diseases, and ultimately, regulatory approval and market acceptance of our proposed future products.

The cash and cash equivalents on hand and our available credit line at September 30, 2007 will not be sufficient to meet our anticipated cash requirements for operations and debt service for at least the next 12 months and we will require additional funding during the first half of 2008. We intend to finance future operations with a combination of private placements; payments from potential strategic research and development, licensing and/or marketing arrangements; public offerings; debt financing; and revenues from future product sales, if any. We have not generated positive cash flows from operations, and there are no assurances that we will be successful in obtaining an adequate level of financing for the development and commercialization of our planned products. Our ability to continue as a going concern is dependent upon the infusion of additional capital in the future and there is no assurance that additional capital will be available to the Company on acceptable terms, or at all.

### Note 3 Summary of Significant Accounting Policies

*Basis of Presentation.* The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. However, in the opinion of management, all adjustments (consisting of only normal recurring adjustments) considered necessary to present fairly the Company's results of operations, financial position and cash flows have been made. The results of operations for the three and nine months ended September 30, 2007 and cash flows for the nine months ended September 30, 2007, are not necessarily indicative of the results of operations and cash flows that may be reported for the remainder of 2007 or for future periods. The interim consolidated financial statements should be read in conjunction with the consolidated financial statements and the Notes to Consolidated Financial Statements included in our Current Report on Form 8-K filed as a result of the Merger on March 27, 2007. Refer to Note 1.

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

*Cash and Cash Equivalents.* We consider all non-restrictive, highly liquid short-term investments purchased with a maturity of three months or less on the date of purchase to be cash equivalents.

*Property and Equipment.* Property and equipment are recorded at cost. Depreciation is provided using the straight-line method over the estimated useful lives of the assets, generally five to ten years. Expenditures for repairs and maintenance are charged to expense as incurred, while betterments are capitalized.

*Impairment of Long-Lived Assets.* In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. As of September 30, 2007, we believe that no impairment charge on long-lived assets is required.

*Research and Development.* Research and product development costs are charged to expense as incurred. We record expense for in-process research and development as those that had not reached technological feasibility and which had no alternative use.

*Income Taxes.* Income taxes are accounted for under the asset-and-liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

*Loss Per Common Share.* Basic and diluted earnings or loss per common share is based on the net loss increased by dividends on preferred stock divided by the weighted average number of common shares outstanding during the period. In the periods in which their effect would be anti-dilutive, no effect has been given to outstanding options, warrants or convertible preferred stock in the diluted computation. As of September 30, 2007, we have 163,192,608 common shares outstanding, in addition, we have options, warrants and convertible preferred stock outstanding at September 30, 2007 that, if converted or exercised would result in 46,364,091 incremental shares of common stock being outstanding resulting in 209,556,699 potential common shares outstanding. The year to date diluted loss per share does not include the weighted average impact of the outstanding option and warrants of 4,944,296 for the nine months ended September 30, 2007 because their inclusion would have been anti-dilutive.

*Share-Based Compensation.* We follow the provisions of Financial Accounting Standards Board (“FASB”) Statement of Financial Accounting Standards (“Statement”) No. 123 (revised 2004), *Share-Based Payment* (“SFAS 123R”), which requires that a company measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. That cost is recognized in the statement of operations over the period during which an employee is required to provide service in exchange for the award. SFAS 123R also requires that excess tax benefits, as defined, realized from the exercise of stock options be reported as a financing cash inflow rather than as a reduction of taxes paid in cash flow from operations. Refer to Note 5. Stock-based compensation arrangements to non-employees are accounted for in accordance with SFAS No. 123R and Emerging Issues Task Force Issue No. 96-18 (EITF 96-18), “Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services,” which requires that these equity instruments are recorded at their fair value on the measurement date. The measurement of stock-based compensation is subject to periodic adjustment as the underlying equity instruments vest.

*Comprehensive income or loss.* Our comprehensive income or loss has no components other than net income or loss for all periods presented.

*New accounting pronouncements:* In July 2006, the Financial Accounting Standards Board, or FASB, issued Interpretation Number, or FIN, No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 applies to all tax positions within the scope of SFAS No. 109, applies a “more likely than not” threshold for tax benefit recognition, identifies a defined methodology for measuring benefits and increases the disclosure requirements for companies. FIN 48 is mandatory for years beginning after December 15, 2006; accordingly, we have adopted FIN 48 effective January 1, 2007. Refer to Note 6.

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

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, or SFAS No. 159, which gives companies the option to measure eligible financial assets, financial liabilities and firm commitments at fair value (i.e., the fair value option), on an instrument-by-instrument basis, that are otherwise not permitted to be accounted for at fair value under other accounting standards. The election to use the fair value option is available when an entity first recognizes a financial asset or financial liability or upon entering into a firm commitment. Subsequent changes in fair value must be recorded in earnings. SFAS No. 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. We are currently evaluating the impact the adoption of SFAS No. 159 may have on our financial position and the results of operations.

In June 2007, the Emerging Issues Task Force, or EITF, issued EITF 07-3 *Accounting for Advance Payments for Goods or Services to be Received for Use in Future Research and Development Activities*. This EITF establishes that prepayments made related to research and development goods and services should be capitalized and recognized as expense when the goods are received or the services have been performed. The prepaid assets must be assessed for recoverability to ensure the prepaid goods or services will continue to be used. EITF 07-3 is effective for new contracts entered into in fiscal years beginning after December 15, 2007, including interim periods within those fiscal years. We are currently evaluating the impact the adoption of EITF 07-3 may have on our financial position and the results of operations.

#### **Note 4 Debt**

On January 11, 2007, Acuity entered into an agreement with the Frost Group whereby the Frost Group provided a subordinated secured line of credit of up to \$7.0 million to Acuity. The Frost Group members include a trust controlled by Dr. Phillip Frost, who is the Company's Chief Executive Officer and Chairman of the board of directors, Dr. Jane H. Hsiao, who is the Vice Chairman of the board of directors and Chief Technical Officer, Steven D. Rubin who is Executive Vice President - Administration and a director of the Company and Rao Uppaluri who is the Chief Financial Officer of the Company. In exchange for entering into this agreement, Acuity agreed to grant to the Frost Group a warrant to purchase up to 125,000 shares of Acuity Series B Preferred Stock, par value \$0.01 per share, for an exercise price of \$2.00 per share, which upon consummation of the Merger converted into 6,478 shares of our Series C Preferred stock and a warrant to purchase up to 15,625 shares of Acuity Common Stock, for an exercise price of \$0.01 per share, which converted upon the Merger to 81,085 warrants to purchase shares of our Common Stock. On June 22, 2007, the Series C preferred stock automatically converted to 647,800 shares of our common stock.

In connection with the consummation of the Mergers, we assumed the rights and obligations of Acuity under this line of credit. We also amended and restated this line of credit to provide additional available borrowing capacity. Under this amended and restated line of credit, the line of credit was increased to \$12.0 million and we assumed Acuity's existing obligation to repay \$4.0 million outstanding under the prior line of credit. In September 2007, we drew down an additional \$4.0 million for a total of \$8.0 million borrowed and \$4.0 million available to be borrowed. We are obligated to pay interest upon maturity, compounded quarterly on borrowings under the line of credit at a 10% annual rate, which is due on July 11, 2009. The line of credit is collateralized by all of our personal property, except intellectual property. In connection with the assumption and amendment of the line of credit, we granted warrants to purchase 4,000,000 shares of our common stock to the Frost Group. The fair value of the warrants was determined to be \$12.4 million using the Black-Scholes option valuation model. Because the issuance of the warrants and the increase in the line of credit were conditioned upon the completion of the Mergers, the value of the warrants has been allocated on a relative fair value basis to the cost of the Acuity acquisition (\$1.3 million), the cost of the reverse merger between Fropix and *eXegenics* (\$11.0 million) and debt commitment fee (\$0.1 million).

We assumed the rights and obligations of Acuity's \$4.0 million term loan with Horizon Financial, Inc., in connection with the Mergers. The term loan bears interest at 12.23%, which is payable monthly commencing September 15, 2005. The principal is payable in 12 equal monthly installments commencing August 2007. Principal on the term loan matures as follows: \$1.7 million during 2007 and which \$0.6 million has been repaid through September 30, 2007 and \$2.3 million during 2008. The term loan is collateralized by all personal property of Acuity, except intellectual property, and contains certain negative covenants that limit the payment of cash dividends, redemption of equity securities, changes in ownership, and the creation or extinguishment of debt. In connection with the issuance of the term note, Acuity issued warrants to purchase 200,000 shares of Series B preferred stock at \$2.00 per share, which upon the Mergers converted to 10,379 shares of our Series C preferred stock and warrants to purchase 25,000 shares of common stock at \$0.01 per share, which converted to 129,736 shares of our common stock upon consummation of the Merger. On June 22, 2007, the Series C preferred stock automatically converted to 1,037,900 shares of our common stock.

#### **Note 5 Stock-Based Compensation**

As of September 30, 2007, we had three stock-based compensation plans, our 1996 Stock Option Plan, our 2000 Stock Option Plan and our 2007 Equity Incentive Plan. We also assumed the option plans of Acuity and Fropix in the merger discussed in Note 1 (collectively the "Plans"). Options granted under the 1996 Stock Option Plan, 2000 Stock Option Plan and the plans assumed from Fropix and Acuity are exercisable for a period of up to 10 years from date of grant. Options granted under the 2007 Equity Incentive Plan are exercisable for a period up to 7 years. Vesting periods range from immediate to 4 years. The compensation expense recognized in the statements of operations for the three and nine months ended September 30, 2007 for our stock-based compensation plans was a reversal of expense of \$6.3 million and an accrual of \$5.7 million, respectively. During the three and nine months ended September 30, 2007, \$0.7 million and \$3.4 million was included as a component of general and administrative expenses, respectively. The three and nine months ended September 30 also included a reversal of \$7.0 million and an expense of \$2.3 million were classified as a component of research and development expenses, respectively.

The fair value of the unvested Acuity option awards was determined at the Merger date and will be expensed over the remaining requisite service period of the options. Unvested options granted to non-employees are marked to market each reporting period in accordance with EITF 96-18. The fair value of stock option awards was estimated using the Black-Scholes option valuation model and the assumptions noted in the following table:

	<b>Three Months Ended</b>	<b>Nine Months Ended</b>
	<b>September 30, 2007</b>	<b>September 30, 2007</b>
Expected life	4.00 to 9.42 years	3.48 to 9.72 years
Expected volatility	73%	73% to 76%
Risk-free interest rate	4.00% to 5.10%	4.00% to 5.16%
Dividend yield	0%	0%

The expected life of the stock options was calculated using the shortcut method allowed by the provisions of SFAS No. 123R and interpreted by Staff Accounting Bulletin No. 107 (SAB 107). The expected volatility was based on a peer group of publicly-traded stock which we believe will be representative of the volatility over the expected term of the options. The risk-free interest rate is based on the rates paid on securities issued by the U.S. Treasury with a term approximating the expected life of the option. The dividend yield is based on the projected annual dividend payment per share, divided by the stock price at the date of grant; however, we have not, and do not expect to declare such dividends.

A summary of the stock option activity under our Plans during the nine months ended September 30, 2007 is presented below:

	<b>Shares</b>	<b>Exercise price</b>	<b>Weighted</b>
		<b>per</b>	<b>average</b>
		<b>share</b>	<b>exercise price</b>
Outstanding at December 31, 2006	4,436,878	\$ 0.01	\$ 0.01
Assumed from <i>eXegenics</i> at merger	305,000	0.32 - 0.89	0.64
Assumed from Acuity at merger	11,373,253	0.04 - 0.56	0.14
Cancelled/Forfeited	(19,785)	0.05 - 0.06	0.05
Outstanding at March 31, 2007	16,095,346	0.01 - 0.89	0.11
Granted	3,845,000	3.54 - 4.88	4.81
Exercised	(79,215)	0.05 - 0.84	0.80
Canceled/Forfeited	(525,811)	0.04 - 0.06	0.05
Outstanding at June 30, 2007	19,335,320	\$ 0.01 - \$4.88	\$ 1.04
Granted	270,000	3.80 - 4.87	4.09
Exercised	(276,136)	0.04 - 1.67	0.21
Canceled/Forfeited	(4,504,743)	0.01 - 4.88	0.02
Outstanding at September 30, 2007	<u>14,824,441</u>	\$ 0.04 - \$4.88	\$ 1.42

As of September 30, 2007 there was approximately \$15.8 million of total unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a remaining weighted-average vesting period of 3.1 years. As of September 30, 2007, approximately 8.0 million options to purchase our common stock were exercisable. In addition, at September 30, 2007, 11.0 million outstanding options were in the money with an aggregate intrinsic value of approximately \$42.0 million.

In addition to the common stock options there were 7,317 options to purchase Series C preferred stock at an exercise price of \$32.00 issued as replacement options to an Acuity employee at the Merger, which, upon conversion of the Series C Preferred stock on June 22, 2007 converted to 731,700 options to purchase our common stock. The common stock options were 100% vested and exercisable as of September 30, 2007. The intrinsic value of the options on September 30, 2007 was \$3.0 million.

On May 11, 2007, we entered into a Settlement Agreement with our former President. Under the terms of the Settlement Agreement, our former President will receive a severance payment equivalent to one year's salary of \$325,000, paid monthly, and reimbursement of up to \$65,000 in relocation expenses. In addition, all outstanding equity awards which would have vested by May 31, 2008, were automatically vested. As a result of this acceleration, during the second quarter of 2007 we recorded \$1.5 million of additional compensation expense that would have been recognized over the period from June 1, 2007 through May 31, 2008.

In July 2007, we terminated a consulting agreement prior to the vesting of approximately 4.4 million options to purchase our common stock. As a result, during the third quarter of 2007, we reversed compensation expense, included in research and development which was accrued during the previous 12 months of approximately \$8.1 million.

#### **Note 6 Income Taxes**

Prior to January 1, 2007, we recognized income taxes with respect to uncertain tax positions based upon SFAS No. 5, "*Accounting for Contingencies*", or SFAS No. 5. Under SFAS No. 5, we would record a liability associated with an uncertain tax position if the liability was both probable and estimable. Prior to January 1, 2007, the liabilities recorded under SFAS No. 5 including interest and penalties related to income tax exposures, would have been recognized as incurred within "income taxes" in our condensed consolidated statements of operations. We recorded no such liabilities in 2006.

Effective January 1, 2007, we adopted FIN 48, "*Accounting for Uncertainty in Income Taxes*." FIN 48 clarifies the accounting for uncertainty in income taxes recognized in financial statements in accordance with SFAS No. 109, "*Accounting for Income Taxes*." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 requires that we determine whether the benefit of our tax positions are more likely than not to be sustained upon audit, based on the technical merits of the tax position. For tax positions that are more likely than not to be sustained upon audit, we recognize the greatest amount of the benefit that is more likely than not to be sustained in our condensed consolidated financial statements. For tax positions that are not more likely than not to be sustained upon audit, we do not recognize any portion of the benefit in our condensed consolidated financial statements. The provisions of FIN 48 also provide guidance on derecognition, classification, interest and penalties, accounting in interim periods, and disclosure.

Our policy for interest and penalties under FIN 48, related to income tax exposures, was not impacted as a result of the adoption of the recognition and measurement provisions of FIN 48. Therefore, we continue to recognize interest and penalties as incurred within "*income taxes*" in our condensed consolidated statements of operations, when applicable.

There was no change to our accumulated deficit as of January 1, 2007 as a result of the adoption of the recognition and measurement provisions of FIN 48.

#### ***Uncertain Income Tax Positions***

We file income tax returns in the U.S. federal jurisdiction and with various states. We are subject to tax audits in all jurisdictions for which we file tax returns. Tax audits by their very nature are often complex and can require several years to complete. There are currently no tax audits that have commenced with respect to income returns in any jurisdiction.

*Federal:* Under the tax statute of limitations applicable to the Internal Revenue Code, we are no longer subject to U.S. federal income tax examinations by the Internal Revenue Service for years before 2003. However, because we are carrying forward income tax attributes, such as net operating losses and tax credits from 2002 and earlier tax years, these attributes can still be audited when utilized on returns filed in the future.

*State:* Under the statutes of limitation applicable to most state income tax laws, we are no longer subject to state income tax examinations by tax authorities for years before 2003 in states in which we have filed income tax returns. Certain states may take the position that we are subject to income tax in such states even though we have not filed income tax returns in such states and, depending on the varying state income tax statutes and administrative practices, the statute of limitations in such states may extend to years before 2003.



As a result of our January 1, 2007 implementation of FIN 48, the total amount of gross tax benefits, excluding the offsetting full valuation allowance, that became unrecognized, was approximately \$0.3 million. There were no accrued interest and penalties resulting from such unrecognized tax benefits. As of September 30, 2007, the total amount of gross unrecognized tax benefits was approximately \$0.3 million, and accrued interest and penalties on such unrecognized tax benefits was \$0.

The net unrecognized tax benefits that, if recognized, would impact the effective tax rate as of September 30, 2007 and December 31, 2006, were \$0 and \$0, respectively.

We do not anticipate that any significant increase or decrease to the gross unrecognized tax benefits will be recorded during the remainder of 2007.

#### *Other Income Tax Disclosures*

Consistent with 2006, we anticipate recording a full valuation allowance against all of our deferred tax assets during 2007. As a result of this valuation allowance, we expect our full year effective tax rate to be at or about zero.

Under Section 382 of the Internal Revenue Code, certain significant changes in ownership may restrict the future utilization of our tax loss carryforwards. The annual limitation is equal to the value of our stock immediately before the ownership change, multiplied by the long-term tax-exempt rate (i.e., the highest of the adjusted federal long-term rates in effect for any month in the three-calendar-month period ending with the calendar month in which the change date occurs). We are undergoing a study to determine whether we or any of our predecessors have undergone an ownership change under Section 382. It is possible that such a study could conclude that some or all of our net operating loss and credit carryforwards will be limited to utilization. Because we currently have recorded full valuation allowances against such tax attributes, we do not expect the results of such a study to have a material impact on our financial statements.

#### **Note 7 Supplemental Cash Flow Information**

Supplemental cash flow information is summarized as follows:

<b>(in thousands)</b>	<b>Nine Months Ended September 30, 2007</b>	<b>Period from June 23, 2006 (inception) to September 30, 2007</b>
Interest paid	\$ 245	\$ 245

#### **Note 8 Related Party Transactions**

In June 2007, we paid the \$125,000 filing fee payable to the Federal Trade Commission in connection with filings to be made by us and Dr. Frost, our Chairman and Chief Executive Officer, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). The filings permit Dr. Frost and his affiliates to acquire additional voting securities upon expiration of the HSR waiting period which expired on July 12, 2007.

In November 2007, we entered into an office lease with Frost Real Estate Holdings, LLC, an entity affiliated with Dr. Phillip Frost, the Company's Chairman of the Board and Chief Executive Officer. The Lease is for approximately 8,300 square feet of space in an office building in Miami, Florida, where the Company's principal executive offices are located. We had previously been leasing this space from Frost Real Estate Holdings on a month-to-month basis while the parties were negotiating the lease. The Lease provides for payments of approximately \$18,000 per month in the first year increasing annually to \$24,000 per month in the fifth year, plus applicable sales tax. The rent is inclusive of operating expenses, property taxes and parking. The rent for the first year has been reduced to reflect a \$30,000 credit for the costs of tenant improvements.

As part of the Mergers, we assumed a line of credit with the Frost Group from Acuity. Refer to Note 4.

#### **Note 9 Commitments and Contingencies**

We are a party to litigation in the ordinary course of business. We do not believe that any such litigation will have a material adverse effect on our business, financial condition or results of operations.

We have received notice of an action pursuant to which one of our warrant holders is demanding that the Company issue warrants to purchase 259,472 shares of our common stock at \$0.0019 per share pursuant to the terms of a warrant agreement with Acuity Pharmaceuticals (the "Warrant"). We are currently evaluating what number, if any, additional warrants are required to issue to the warrant holder based on the terms of the Warrant. We currently estimate that the number of warrants we may be required to issue ranges from 0 to 259,472, but we are unable to reasonably estimate the amount of the potential liability, if any, within this range of estimates.

## **Note 10 Description of Equity Securities**

Our authorized capital stock consists of 500,000,000 shares of common stock, par value \$.01 per share, and 10,000,000 shares of preferred stock, par value \$.01 per share.

### **Common Stock**

Of the authorized common stock, 163,214,203 shares were outstanding as of November 9, 2007 and are held by approximately 406 record holders. Subject to the prior rights of the holders of any shares of preferred stock currently outstanding or which may be issued in the future, the holders of the common stock are entitled to receive dividends from our funds legally available therefore when, as and if declared by our board of directors, and are entitled to share ratably in all of our assets available for distribution to holders of common stock upon the liquidation, dissolution or winding-up of our affairs subject to the liquidation preference, if any, of any then outstanding shares of preferred stock. Holders of our common stock do not have any preemptive, subscription, redemption or conversion rights. Holders of our common stock are entitled to one vote per share on all matters which they are entitled to vote upon at meetings of stockholders or upon actions taken by written consent pursuant to Delaware corporate law. The holders of our common stock do not have cumulative voting rights, which means that the holders of a plurality of the outstanding shares can elect all of our directors. All of the shares of our common stock currently issued and outstanding are fully-paid and nonassessable. No dividends have been paid to holders of our common stock since our incorporation, and no cash dividends are anticipated to be declared or paid in the reasonably foreseeable future.

### **Preferred Stock**

Our board of directors has the authority, without further action by the holders of the outstanding common stock, to issue preferred stock from time to time in one or more classes or series, to fix the number of shares constituting any class or series and the stated value thereof, if different from the par value, as to fix the terms of any such series or class, including dividend rights, dividend rates, conversion or exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price and the liquidation preference of such class or series. We presently have one series of preferred stock outstanding, designated as Series A convertible preferred stock (the "Series A preferred stock"). We have no present plans to issue any other series or class of preferred stock. The designations, rights and preferences of the Series A preferred stock are set forth in the certificate of designations of Series A convertible preferred stock, which has been filed with the Secretary of State of the State of Delaware.

### **Series A Preferred Stock**

Of the authorized preferred stock, 4,000,000 shares have been designated Series A preferred stock, 869,366 of which are currently issued and outstanding and held by 60 stockholders as of November 9, 2007. Dividends are payable on the Series A preferred stock in the amount of \$.25 per share, payable annually in arrears. At the option of our board of directors, dividends will be paid either (i) wholly or partially in cash or (ii) in newly issued shares of Series A preferred stock valued at \$2.50 per share to the extent cash dividend is not paid.

Holders of Series A preferred stock have the right to convert their shares, at their option exercisable at any time, into shares of our common stock on a one-for-one basis subject to anti-dilution adjustments. These anti-dilution adjustments are triggered in the event of any subdivision or combination of our outstanding common stock, any payment by us of a stock dividend to holders of our common stock or other occurrences specified in the certificate of designations relating to the Series A preferred stock. We may elect to convert the Series A preferred stock into common stock or a substantially equivalent preferred stock in the case of a merger or consolidation in which we do not survive, a sale of all or substantially all of our assets or a substantial reorganization of us.

Each share of Series A preferred stock is entitled to one vote on all matters on which the common stock has the right to vote. Holders of Series A preferred stock are also entitled to vote as a separate class on any proposed adverse change in the rights, preferences or privileges of the Series A preferred stock and any increase in the number of authorized shares of Series A preferred stock. In the event of any liquidation or winding up of the Company, the holders of the Series A preferred stock will be entitled to receive \$2.50 per share plus any accrued and unpaid dividends before any distribution to the holders of the common stock and any other class of series of preferred stock ranking junior to it.

We may redeem the outstanding shares of Series A preferred stock for \$2.50 per share (plus accrued and unpaid dividends), at any time.

### **Series C Preferred Stock**

Of the authorized preferred stock, 500,000 shares were designated Series C preferred stock. On June 22, 2007, 457,584 Series C preferred stock were issued and outstanding and held by 30 stockholders. Cumulative dividends were payable on the Series C preferred stock in the amount of \$1.54 per share when declared by the board of directors. On June 22, 2007, all of the shares of Series C preferred stock automatically converted into shares of common stock, on a one-hundred-for-one basis (subject to adjustment as noted above), as our common stock traded above the \$3.83 conversion per share price on the American Stock Exchange for ten consecutive days.

### **Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation, our By-Laws and Delaware Law**

#### **Delaware Statute.**

We are subject to Section 203 of the Delaware General Corporation law, which prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, our board of directors approves either the business combination or the transaction that resulted in the stockholder’s becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of our outstanding voting stock, excluding shares held by directors, officers and certain employee stock plans; or
- on or after the consummation date, the business combination is approved by our board of directors and by the affirmative vote at an annual or special meeting of stockholders holding of at least two-thirds of our outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203, a “business combination” includes, among other things, a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an “interested stockholder” is generally a person who, together with affiliates and associates of such person:

- owns 15% or more of outstanding voting stock; or
- is an affiliate or associate of ours and was the owner of 15% or more of our outstanding voting stock at any time within the prior three years.

#### **Certificate of Incorporation and Bylaw Provisions.**

Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that, among others, could have the effect of delaying, deferring, or discouraging potential acquisition proposals and could delay or prevent a change of control of us. The provisions in our certificate of incorporation and bylaws that may have such effect include:

- *Preferred Stock.* As noted above, our board of directors, without stockholder approval, has the authority under our certificate of incorporation to issue preferred stock with rights superior to the rights of the holders of common stock. As a result, we could issue preferred stock quickly and easily, which could adversely affect the rights of holders of our common stock and could be issued with terms calculated to delay or prevent a change of control or make removal of management more difficult.
- *Election and Removal of Directors.* Directors may be removed by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock of the corporation entitled to vote thereon, voting together as a single class.

*Stockholder Meetings.* Under our certificate of incorporation and bylaws, special meetings of our stockholders may be called only by the vote of a majority of the entire board. Our stockholders may not call a special meeting of the stockholders.

*Requirements for Advance Notification of Stockholder Nominations and Proposals.* Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof.

## Note 11 Acquisition

On April 13, 2007, pursuant to a definitive Share Purchase Agreement (the "Purchase Agreement"), we invested \$5.0 million in Ophthalmic Technologies, Inc., or OTI, an Ontario corporation for one-third of OTI's share capital on a fully diluted basis and an exclusive option to purchase the remaining shares of OTI in exchange for the issuance of between 3.13 million and 2.82 million shares of our common stock, depending upon the average per share closing price of our common stock for the ten (10) trading dates ended on the second business day prior to the exercise of the option. The \$5.0 million is being used by OTI for working capital. We have elected to exercise the option to acquire the remaining shares of OTI and are currently negotiating definitive transaction documents relating to the acquisition.

We have accounted for the investment in OTI under the equity method of accounting. The initial \$5 million investment was allocated between the investment in OTI and the option to purchase the remainder of OTI. The option was valued based on the estimated exercise price of the option and the estimated market value of the outstanding shares of OTI. The table below reconciles the investment in OTI:

<b>(in thousands)</b>	<b>Initial investment</b>	<b>(Decrease) during the investment period</b>	<b>Balance at September 30, 2007</b>
Option to purchase remaining shares of OTI	\$ 618	\$ —	\$ 618
Investment in OTI	4,382	(126)	4,256
Total	<u>\$ 5,000</u>	<u>\$ (126)</u>	<u>\$ 4,874</u>

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

### **OVERVIEW**

*You should read this discussion together with the Financial Statements, related Notes and other financial information included elsewhere in this report and in our Current Report on Form 8-K dated March 27, 2007 (the "Form 8-K"). The following discussion contains assumptions, estimates and other forward-looking statements that involve a number of risks and uncertainties, including those discussed under "Risk Factors," in Part II, Item 1A of this report. These risks could cause our actual results to differ materially from those anticipated in these forward-looking statements.*

We are a specialty healthcare company focused on the discovery, development, and commercialization of proprietary pharmaceuticals, drug delivery technologies, diagnostic systems and instruments for the treatment, diagnosis and prevention of ophthalmic diseases. We are still a development stage company and have generated significant losses since our inception in June 2006. Our lead pharmaceutical product candidate in clinical development is bevasiranib for the treatment of wet age-related macular degeneration ("Wet AMD"). We intend to expand our current operations by acquiring additional ophthalmic businesses and therapeutic and diagnostic technologies, as well as exploring opportunities in other medical markets that have operational characteristics similar to ophthalmology, such as dermatology.

We expect to incur substantial losses as we continue the development of our product candidates, particularly bevasiranib, continue our other research and development activities and establish a sales and marketing infrastructure in anticipation of the commercialization of our product candidates. We currently have limited commercialization capabilities, and it is possible that we may never successfully commercialize any of our pharmaceutical product candidates. To date, we have devoted substantially all of our efforts towards research and development. As of September 30, 2007, we had an accumulated deficit of \$260.5 million. Since we do not generate revenue from any of our pharmaceutical product candidates, we expect to continue to generate losses in connection with the continued clinical development of bevasiranib and the research and development activities relating to our technology and other product candidates. Such research and development activities are budgeted to expand over time and will require further resources if we are to be successful. As a result, we believe that our operating losses are likely to be substantial over the next several years. We will need to obtain additional funds to further develop our research and development programs, and there can be no assurance that additional capital will be available to us on acceptable terms, or at all.

On June 8, 2007, we changed our name to OPKO Health, Inc., or OPKO, from *eXegenics, Inc.*, or *eXegenics*. On March 27, 2007, we were part of a three-way merger between Fropix Corporation, or Fropix, a research and development company, *eXegenics*, a shell public company, and Acuity Pharmaceuticals, Inc., or Acuity, a research and development company. This transaction was accounted for as a reverse merger between Fropix and *eXegenics*, with the combined company then acquiring Acuity. *eXegenics, Inc.*, formerly known as Cytoclonal Pharmaceuticals Inc., was previously involved in the research, creation, and development of drugs for the treatment and/or prevention of cancer and infectious diseases, however, *eXegenics* had been a public shell company without any operations since 2003.

On April 13, 2007, we invested \$5.0 million in Ophthalmic Technologies, Inc., or OTI, an Ontario corporation pursuant to a definitive Share Purchase Agreement (the "Purchase Agreement") with OTI and its shareholders. In exchange for the \$5.0 million investment, OTI issued common shares of OTI to us to cause us to hold one-third OTI's share capital on a fully diluted basis and we received an exclusive option to purchase the remaining shares of OTI in exchange for the issuance of between 3.13 million and 2.82 million shares of our common stock, depending upon the average per share closing price of our common stock for the ten (10) trading dates ended on the second business day prior to the exercise of the option. The \$5.0 million is being used by OTI for working capital. We have elected to exercise the option to acquire the remaining shares of OTI and are negotiating definitive transaction documents relating to the acquisition.

## RESULTS OF OPERATIONS

### FOR THE THREE MONTHS ENDED SEPTEMBER 30, 2007 AND 2006

The results of operations for the three months ended September 30, 2007 include the operating results for the full three month period. As a result of the reverse merger, historical comparative results are those of Fropitix only.

*Selling, General and Administrative Expense.* General and administrative expense for the three months ended September 30, 2007 was \$2.7 million compared to \$9,000 of expense for the comparable period of 2006. General and administrative expense primarily included personnel costs, including stock-based compensation and professional fees. During 2007, we anticipate general and administrative expense to increase to reflect the increased costs of being an operating public company. We incurred costs related to building a commercial infrastructure during the three months ended September 30, 2007 in preparation of completing the acquisition of OTI and anticipate incurring additional costs throughout the remainder of 2007. We were formed on June 23, 2006 and as a result, did not incur significant expenses during the comparable period of 2006.

*Research and Development Expense.* Research and development expense for the three months ended September 30, 2007 includes a reversal of \$8.1 million of equity based compensation expense as a result of the termination of a consulting agreement. Under SFAS 123R, when an equity based compensation award is forfeited prior to vesting, all compensation expense recorded in previous periods is reversed in the period of forfeiture. As a result, research and development expense in the three month period ended September 30, 2007 reflects this reversal and is an offset to expense of \$4.5 million. Research and development expenses primarily related to personnel costs, including stock-based compensation as well as costs related to the initiation of our Phase III clinical trial for bevasiranib in July 2007. For the comparable period of 2006, we incurred \$1,000 of expense.

*Other Income and Expenses.* Other expense was \$0.2 million, net of \$0.1 million of interest income. Other income primarily consists of interest earned on our cash and cash equivalents and interest expense reflects the interest incurred on the debt we assumed from Acuity as part of the Merger as well as \$4.0 million drawn down from our line of credit.

### FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2007 AND PERIOD FROM INCEPTION (JUNE 23, 2006) THROUGH SEPTEMBER 30, 2006

The results of operations for the first nine months of 2007 include Fropitix' operating results for the full nine month period, and Acuity's operating results subsequent to March 27, 2007. As a result of the reverse merger, historical comparative results are those of Fropitix only. Fropitix was incorporated on June 23, 2006 and as a result, did not have significant operations for most of the first eight days and three months ended September 30, 2006.

*Selling, General and Administrative Expense.* Selling, general and administrative expense for the first nine months of 2007 was \$8.2 million. General and administrative expense primarily included personnel costs, including stock-based compensation and professional fees. During 2007, we anticipate general and administrative expense to increase to reflect the costs of being an operating public company. We incurred costs related to building a commercial infrastructure during the nine months ended September 30, 2007 in preparation of the acquisition of OTI and expect these activities to continue to increase throughout 2007.

*Research and Development Expense.* Research and development expense for the first nine months of 2007 was \$7.0 million. Research and development expense primarily related to personnel costs, including stock-based compensation as well as costs related to the initiation of the Phase III clinical trial for bevasiranib. During the third quarter of 2007, a reversal of equity based compensation expense of \$8.1 million was recorded as a result of the termination of a consulting agreement prior to the vesting of any of the equity based awards issued under the consulting agreement. Originally, this expense was accrued \$0.3 million during 2006 and \$7.8 million during the first six months of 2007.

Research and development expense during 2007 will primarily relate to our bevasiranib program including costs to prepare for our Phase III clinical study for bevasiranib. We initiated enrollment of our Phase III clinical trial for bevasiranib in July 2007. We currently expect the total cost of this trial to be approximately \$25 million, although this estimate could vary significantly as the Phase III clinical trial progresses.

*Write-off of Acquired In-Process Research and Development.* On March 27, 2007, we acquired Acuity in a stock for stock transaction. We valued our common stock issued to Acuity shareholders at the average closing price of the common stock on the date of the transaction and two days prior to the transaction. We recorded the assets and liabilities at fair value, and as a result, we recorded acquired in-process research and development expense and recorded a charge of \$243.8 million.

*Other Income and Expenses.* Other expense was \$0.4 million, net of \$0.2 million of interest income. Other income primarily consists of interest earned on our cash and cash equivalents and interest expense reflects the interest incurred during the period from March 27, 2007 September 30, 2007 on the debt we assumed from Acuity as part of the merger as well as \$4.0 million drawn down from our line of credit.

## **LIQUIDITY AND CAPITAL RESOURCES**

At September 30, 2007, we had cash and cash equivalents of approximately \$4.7 million. Cash used in operations primarily reflects our net loss, offset by our non-cash operating expenses including the write-off of in-process research and development acquired in the Merger and stock based compensation expense. Since our inception, we have not generated revenue and our primary source of cash has been from the private placement of stock and through credit facilities available to us.

On April 13, 2007, we invested \$5.0 million in Ophthalmic Technologies, Inc., or OTI, an Ontario corporation pursuant to a definitive Share Purchase Agreement (the "Purchase Agreement") with OTI and its shareholders. In exchange for the \$5.0 million investment, OTI issued common shares of OTI to us to cause us to hold one-third of the equity in OTI on a fully diluted basis. The \$5.0 million will be used by OTI for working capital. In addition to the one-third interest, we also received an exclusive right to purchase the remaining outstanding shares of OTI for \$10 million, payable by issuance of our common stock subject to a collar limiting the number of shares to be issued to be between 2.8 and 3.1 million shares. We have elected to exercise the option to acquire the remaining shares of OTI and are negotiating definitive transaction documents relating to the acquisition.

We assumed the rights and obligations of Acuity's \$4.0 million term loan with Horizon Financial, Inc., in connection with the Mergers. The term loan bears interest at 12.23%, which is payable monthly commencing September 15, 2005. The principal is payable in 12 equal monthly installments commencing August 2007. Principal on the term loan matures as follows: \$1.7 million during 2007, of which, \$0.6 million has been through September 30, 2007 and \$2.3 million during 2008. The term loan is collateralized by all personal property of the Acuity, except intellectual property, and contains certain negative covenants that limit the payment of cash dividends, redemption of equity securities, change in ownership, and the creation or extinguishment of debt. In connection with the issuance of the term note, Acuity issued warrants to purchase 200,000 shares of Series B at \$2.00 per share which converted to 1,037,900 shares and 235,932 shares, respectively; of our common stock upon consummation of the Mergers in addition to warrants to purchase 25,000 shares of common stock at \$0.01 per share, which converted to 129,736 warrants to purchase our common stock upon consummation of the Mergers.

In connection with the consummation of the Mergers, we assumed the rights and obligations of Acuity under the line of credit Acuity had with the Frost Group. We also amended and restated the Frost Group line of credit to provide additional available borrowing capacity. Under this amended and restated line of credit, we gained access to \$8.0 million in available borrowings and we assumed Acuity's existing obligation to repay \$4.0 million outstanding under the line of credit. In September 2007 we drew down an additional \$4.0 million for a total of \$8.0 million borrowed and \$4.0 million available to be borrowed. We are obligated to pay interest upon maturity, capitalized quarterly on outstanding borrowings under the line of credit at a 10% annual rate, which is due June 11, 2009. In connection with the assumption and amendment of the line of credit, we granted warrants to purchase 4,000,000 shares of our common stock to the Frost Group. The fair value of the warrants was determined to be \$12.4 million using the Black-Scholes option valuation model. Because the issuance of the warrants and the increase in the line of credit were conditioned upon the completion of the Mergers, the value of the warrants has been allocated on a relative fair value basis to the cost of the Acuity acquisition (\$1.3 million), the cost of the reverse merger between Froptix and OPKO (\$11.0 million) and debt commitment fee (\$0.1 million).

We expect to incur losses from operations for the foreseeable future. We expect to incur increasing research and development expenses, including expenses related to the hiring of personnel and additional clinical trials. We expect that general and administrative expenses will also increase as we expand our finance and administrative staff, add infrastructure, and incur additional costs related to being a public company, including the costs of directors' and officers' insurance, investor relations programs, and increased professional fees.

The cash and cash equivalents on hand and our available credit line at September 30, 2007 will not be sufficient to meet our anticipated cash requirements for operations and debt service for at least the next 12 months and we will require additional funding during the first half of 2008. We intend to finance our future operations with a combination of private placements, payments from potential strategic research and development, licensing and/or marketing arrangements, public offerings, debt financing and revenues from future product sales, if any. There can be no assurance that additional capital will be available to us on acceptable terms, or at all.

## CRITICAL ACCOUNTING POLICIES

We believe the following critical accounting policies affect management's more significant judgments and estimates used in the preparation of our financial statements.

*Impairment of Long-Lived Assets.* In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. As of September 30, 2007, management believes that no revision of the remaining useful lives or write-down of long-lived assets is required.

*Stock-Based Compensation.* As of June 23, 2006 (the date of inception) we, adopted SFAS No. 123(R), *Share-Based Payments* SFAS No. 123(R) replaces SFAS No. 123, *Accounting for Stock-Based Compensation*, and supersedes APB No. 25. SFAS No. 123(R) requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. We adopted the modified prospective transition method provided for under SFAS No. 123(R). Under this transition method, compensation cost recognized in 2006 associated with stock options includes (i) amortization related to all stock option awards granted/modified on or subsequent to January 1, 2006, based on the estimated grant date fair value using the Black-Scholes option-pricing model, and (ii) amortization of the intrinsic value recorded as deferred compensation for options granted prior to January 1, 2006 being accounted for under APB Opinion No. 25. Option awards granted prior to adoption of SFAS No. 123(R) continue to follow the provisions of APB Opinion No. 25 and FIN 44 until modified and or settled.

Prior to the adoption of SFAS No. 123(R), we presented all tax benefits resulting from the exercise of stock options as operating cash flows in the statements of cash flows. SFAS No. 123(R) requires that cash flows resulting from tax deductions in excess of the cumulative compensation cost recognized for options exercised (excess tax benefits) be classified as financing cash flows. We have sufficient net operating loss carryforwards to generally eliminate cash payments for income taxes. Therefore, no cash has been retained as a result of excess tax benefits relating to share based payments made to directors and employees.

## NEW ACCOUNTING PRONOUNCEMENTS

In July 2006, the Financial Accounting Standards Board, or FASB, issued Interpretation Number, or FIN, No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 applies to all tax positions within the scope of SFAS No. 109, applies a "more likely than not" threshold for tax benefit recognition, identifies a defined methodology for measuring benefits and increases the disclosure requirements for companies. FIN 48 is mandatory for years beginning after December 15, 2006; accordingly, we have adopted FIN 48 effective January 1, 2007. Refer to Note 6.



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

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, or SFAS No. 159, which gives companies the option to measure eligible financial assets, financial liabilities and firm commitments at fair value (i.e., the fair value option), on an instrument-by-instrument basis, that are otherwise not permitted to be accounted for at fair value under other accounting standards. The election to use the fair value option is available when an entity first recognizes a financial asset or financial liability or upon entering into a firm commitment. Subsequent changes in fair value must be recorded in earnings. SFAS No. 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. We are currently evaluating the impact the adoption of SFAS No. 159 may have on our financial position and the results of operations.

In June 2007, the Emerging Issues Task Force, or EITF, issued EITF 07-3 *Accounting for Advance Payments for Goods or Services to be Received for Use in Future Research and Development Activities*. This EITF establishes that prepayments made related to research and development goods and services should be capitalized and recognized as expense when the goods are received or the services have been preformed. The prepaid assets must be assessed for recoverability to ensure the prepaid goods or services will continue to be used. EITF 07-3 is effective for new contracts entered into in fiscal years beginning after December 15, 2007, including interim periods within those fiscal years. We are currently evaluating the impact the adoption of EITF 07-3 may have on our financial position and the results of operations.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

In the normal course of doing business we are exposed to the risks associated with foreign currency exchange rates and changes in interest rates. We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or “other than trading” instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price or equity price risk.

Our exposure to market risk relates to our cash and investments and to our borrowings. We maintain an investment portfolio of money market funds and qualified purchaser funds. The securities in our investment portfolio are not leveraged, and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a change in market interest rates would have a significant negative impact on the value of our investment portfolio.

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

### Item 4. Controls and Procedures

An evaluation was carried out by management under the supervision and with the participation of the Company’s Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company’s “Disclosure Controls and Procedures” as of September 30, 2007. They have concluded as of September 30, 2007, that our Disclosure Controls and Procedures were effective at providing reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 are recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission’s rules and forms. Disclosure Controls and Procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in such reports is accumulated and communicated to the Company’s management, as appropriate to allow timely decisions regarding required disclosure.

No significant changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) occurred during the quarter ended September 30, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

We are a party to litigation in the ordinary course of business. We do not believe that any such litigation will have a material adverse effect on our business, financial condition or results of operations.

### Item 1A. Risk Factors

The occurrence of any of the events discussed below could significantly and adversely affect our business, prospects, results of operations, financial condition and cash flows:

#### **We have a history of operating losses and we do not expect to become profitable in the near future.**

We are a development-stage specialty healthcare company with a limited operating history. We are not profitable and have incurred losses since our inception. We do not anticipate that we will generate revenue from the sale of pharmaceutical products for the foreseeable future. We have not yet submitted any pharmaceutical products for approval or clearance by regulatory authorities and we do not currently have rights to any pharmaceutical product candidates that have been approved for marketing. We continue to incur research and development and general and administrative expenses related to our operations and, to date, we have devoted most of our financial resources to research and development, including our pre-clinical development activities and clinical trials. We expect to continue to incur losses from our pharmaceutical operations for the foreseeable future, and we expect these losses to increase as we continue our research activities and conduct development of, and seek regulatory approvals and clearances for, our product candidates, and prepare for and begin to commercialize any approved or cleared products. If our product candidates fail in clinical trials or do not gain regulatory approval or clearance, or if our product candidates do not achieve market acceptance, we may never become profitable. In addition, if we are required by the U.S. Food and Drug Administration, or the FDA, to perform studies in addition to those we currently anticipate, our expenses will increase beyond expectations and the timing of any potential product approval may be delayed. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods.

#### **Our technologies are in an early stage of development and are unproven.**

We are engaged in the research and development of pharmaceutical products, drug delivery technologies and diagnostic systems and instruments for the treatment and prevention of ophthalmic diseases. The effectiveness of our technologies is not well-known in, or accepted generally by, the clinical medical community. There can be no assurance that we will be able to successfully employ our technologies as therapeutic, diagnostic or preventative solutions for any ophthalmic disease. Our failure to establish the efficacy or safety of our technologies would have a material adverse effect on our business.

In addition, we have a limited operating history. Our operations to date have been primarily limited to organizing and staffing our company, developing our technology and undertaking pre-clinical studies and clinical trials of our product candidates. We have not yet obtained regulatory approvals for any of our pharmaceutical product candidates. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history.

**Our product research and development activities may not result in commercially viable products.**

Most of our product candidates are in the very early stages of development and are prone to the risks of failure inherent in drug and medical device product development. We will likely be required to complete and undertake significant additional clinical trials to demonstrate to the FDA that our product candidates are safe and effective to the satisfaction of the FDA and other non-United States regulatory authorities or for their intended uses, or are substantially equivalent in terms of safety and effectiveness to an existing, lawfully marketed non-premarket approved device. Clinical trials are expensive and uncertain processes that often take years to complete. Failure can occur at any stage of the process, and successful early positive results do not ensure that the entire clinical trial or later clinical trials will be successful. Product candidates in clinical-stage trials may fail to show desired efficacy and safety traits despite early promising results.

**We are highly dependent on the success of our lead product candidate, bevasiranib, and we cannot give any assurance that it will receive regulatory approval or be successfully commercialized.**

Bevasiranib has been studied in a Phase II clinical drug trial for the treatment of Wet AMD, and we are presently studying bevasiranib in Phase III clinical trials. Our Phase III clinical trials may not be successful, and bevasiranib may never receive regulatory approval or be successfully commercialized. Our clinical development program for bevasiranib may not receive regulatory approval if we fail to demonstrate that it is safe and effective in clinical trials and, consequently, fail to obtain necessary approvals from the FDA, or similar non-United States regulatory agencies, or if we have inadequate financial or other resources to advance bevasiranib through the clinical trial process. Even if bevasiranib receives regulatory approval, its approved labeling may be insufficient to permit adequate marketing. We may not be successful in marketing it for a number of other reasons, including the introduction by our competitors of more clinically-effective or cost-effective alternatives or failure in our sales and marketing efforts. Any failure to obtain approval of bevasiranib and successfully commercialize it would have a material and adverse impact on our business.

**The results of pre-clinical trials and previous clinical trials may not be predictive of future results, and our current and planned clinical trials may not satisfy the requirements of the FDA or other non-United States regulatory authorities.**

Positive results from pre-clinical studies and early clinical trial experience should not be relied upon as evidence that later-stage or large-scale clinical trials will succeed. We will be required to demonstrate with substantial evidence through well-controlled clinical trials that our product candidates either (i) are safe and effective for use in a diverse population of their intended uses or (ii) with respect to Class I or Class II devices only, are substantially equivalent in terms of safety and effectiveness to devices that are already marketed under section 510(k) of the Food, Drug and Cosmetic Act. Success in early clinical trials does not mean that future clinical trials will be successful because product candidates in later-stage clinical trials may fail to demonstrate sufficient safety and efficacy to the satisfaction of the FDA and other non-United States regulatory authorities despite having progressed through initial clinical trials.

Further, our drug candidates may not be approved or cleared even if they achieve their primary endpoints in Phase III clinical trials or registration trials nor may our device candidates be approved or cleared, as the case may be, even though clinical or other data are, in our view, adequate to support a device approval or clearance. The FDA or other non-United States regulatory authorities may disagree with our trial design and our interpretation of data from pre-clinical studies and clinical trials. In addition, any of these regulatory authorities may change requirements for the approval or clearance of a product candidate even after reviewing and providing comment on a protocol for a pivotal clinical trial that has the potential to result in FDA approval. In addition, any of these regulatory authorities may also approve or clear a product candidate for fewer or more limited indications or uses than we request or may grant approval or clearance contingent on the performance of costly post-marketing clinical trials. In addition, the FDA or other non-United States regulatory authorities may not approve the labeling claims necessary or desirable for the successful commercialization of our product candidates.

In addition, the results of our clinical trials may show that our product candidates may cause undesirable side effects, which could interrupt, delay or halt clinical trials, resulting in the denial of regulatory approval by the FDA and other regulatory authorities.

In light of widely publicized events concerning the safety risk of certain drug products, regulatory authorities, members of Congress, the Government Accounting Office, medical professionals and the general public have raised concerns about potential drug safety issues. These events have resulted in the withdrawal of drug products, revisions to drug labeling that further limit use of the drug products and establishment of risk management programs that may, for instance, restrict distribution of drug products. The increased attention to drug safety issues may result in a more cautious approach by the FDA to clinical trials. Data from clinical trials may receive greater scrutiny with respect to safety, which may make the FDA or other regulatory authorities more likely to terminate clinical trials before completion, or require longer or additional clinical trials that may result in substantial additional expense and a delay or failure in obtaining approval or approval for a more limited indication than originally sought.

**We will require substantial additional funding, which may not be available to us on acceptable terms, or at all.**

We are advancing and intend to continue to advance multiple product candidates through clinical and pre-clinical development. We will need to raise substantial additional capital to engage in and continue our clinical and pre-clinical development and commercialization activities. Until we can generate a sufficient amount of product revenue to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through public or private equity offerings, debt financings or strategic collaborations. We do not know whether additional funding will be available on acceptable terms, or at all. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more of our clinical trials or research and development programs. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience additional significant dilution, and debt financing, if available, may involve restrictive covenants. To the extent that we raise additional funds through collaboration and licensing arrangements, it may be necessary to relinquish some rights to our technologies or our product candidates or grant licenses on terms that may not be favorable to us. We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time.

**If our competitors develop and market products that are more effective, safer or less expensive than our future product candidates, our commercial opportunities will be negatively impacted.**

The life sciences industry is highly competitive, and we face significant competition from many pharmaceutical, biopharmaceutical, biotechnology and medical device companies that are researching and marketing products designed to address AMD and other ophthalmic diseases and conditions. We are currently developing therapeutics, diagnostic and preventative products that will compete with other drugs, therapies and medical devices that currently exist or are being developed. Products we may develop in the future are also likely to face competition from other drugs, therapies and medical devices. Many of our competitors have significantly greater financial, manufacturing, marketing and drug development resources than we do. Large pharmaceutical companies, in particular, have extensive experience in clinical testing and in obtaining regulatory approvals or clearances for drugs or medical devices. These companies also have significantly greater research and marketing capabilities than we do. Some of the pharmaceutical companies we expect to compete with include Genentech, Allergan, Alcon Laboratories, Regeneron, QLT, Pfizer, Alnylam and Bausch & Lomb. In addition, many universities and private and public research institutions may become active in ophthalmic disease research. Compared to us, many of our potential competitors have substantially greater capital resources, development resources, including personnel and technology, clinical trial experience, regulatory experience, expertise in prosecution of intellectual property rights, manufacturing and distribution experience and sales and marketing experience. The development of other promising drugs for the treatment of Dry AMD, which in certain patients is the precursor to Wet AMD, could materially adversely affect the prospects for bevasiranib and other treatments for Wet AMD.

We believe that our ability to successfully compete will depend on, among other things:

- the results of our clinical trials;
- our ability to recruit and enroll patients for our clinical trials;
- the efficacy, safety and reliability of our product candidates;
- the speed at which we develop our product candidates;
- our ability to commercialize and market any of our product candidates that may receive regulatory approval or clearance;
- our ability to design and successfully execute appropriate clinical trials;
- the timing and scope of regulatory approvals or clearances;
- appropriate coverage and adequate levels of reimbursement under private and governmental health insurance plans, including Medicare;
- our ability to protect intellectual property rights related to our products;
- our ability to have our partners manufacture and sell commercial quantities of any approved products to the market; and
- acceptance of future product candidates by physicians and other health care providers.

If our competitors market products that are more effective, safer, easier to use or less expensive than our future product candidates, if any, or that reach the market sooner than our future product candidates, if any, we may not achieve commercial success. In addition, both the biopharmaceutical and medical device industries are characterized by rapid technological change. Because our research approach integrates many technologies, it may be difficult for us to stay abreast of the rapid changes in each technology. If we fail to stay at the forefront of technological change, we may be unable to compete effectively. Technological advances or products developed by our competitors may render our technologies or product candidates obsolete or less competitive.

**Our product development activities could be delayed or stopped.**

We do not know whether our planned clinical trials will be completed on schedule, or at all, and we cannot guarantee that our planned clinical trials will begin on time or at all. The commencement of our planned clinical trials could be substantially delayed or prevented by several factors, including:

- a limited number of, and competition for, suitable patients with the particular types of ophthalmic disease required for enrollment in our clinical trials or that otherwise meet the protocol's inclusion criteria and do not meet any of the exclusion criteria;
- a limited number of, and competition for, suitable sites to conduct our clinical trials;
- delay or failure to obtain FDA approval or agreement to commence a clinical trial;
- delay or failure to obtain sufficient supplies of the product candidate for our clinical trials;
- requirements to provide the drugs or medical devices required in our clinical trial protocols or clinical trials at no cost or cost, which may require significant expenditures that we are unable or unwilling to make;
- delay or failure to reach agreement on acceptable clinical trial agreement terms or clinical trial protocols with prospective sites or investigators; and
- delay or failure to obtain institutional review board, or IRB, approval to conduct or renew a clinical trial at a prospective or accruing site.

The completion of our clinical trials could also be substantially delayed or prevented by several factors, including:

- slower than expected rates of patient recruitment and enrollment;

- failure of patients to complete the clinical trial;
- unforeseen safety issues;
- lack of efficacy evidenced during clinical trials;
- termination of our clinical trials by one or more clinical trial sites;
- inability or unwillingness of patients or medical investigators to follow our clinical trial protocols; and
- inability to monitor patients adequately during or after treatment.

Our clinical trials may be suspended or terminated at any time by the FDA, other regulatory authorities, the IRB for any given site, or us. Additionally, changes in regulatory requirements and guidance may occur and we may need to amend clinical trial protocols to reflect these changes with appropriate regulatory authorities. Amendments may require us to resubmit our clinical trial protocols to IRBs for re-examination, which may impact the costs, timing or successful completion of a clinical trial. Any failure or significant delay in completing clinical trials for our product candidates could materially harm our financial results and the commercial prospects for our product candidates.

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

The research, testing, manufacturing, labeling, approval, selling, marketing and distribution of drug products or medical devices are subject to extensive regulation by the FDA and other non-United States regulatory authorities, which regulations differ from country to country. We are not permitted to market our product candidates in the United States until we receive approval of a new drug application, or NDA, a clearance letter under the premarket notification process, or 510(k) process, or an approval of a pre-market approval, or PMA, from the FDA. We have not submitted an NDA or PMA application or premarket notification, nor have we received marketing approval or clearance for any of our pharmaceutical product candidates. Obtaining approval of an NDA or PMA can be a lengthy, expensive and uncertain process. With respect to medical devices, while the FDA normally reviews and clears a premarket notification in three months, there is no guarantee that our products will qualify for this more expeditious regulatory process, which is reserved for Class I and II devices, nor is there any assurance that even if a device is reviewed under the 510(k) process that the FDA will review it expeditiously or determine that the device is substantially equivalent to a lawfully marketed non-PMA device. If the FDA fails to make this finding, then we cannot market the device. In lieu of acting on a premarket notification, the FDA may seek additional information or additional data which would further delay our ability to market the product. In addition, failure to comply with FDA, non-United States regulatory authorities or other applicable United States and non-United States regulatory requirements may, either before or after product approval or clearance, if any, subject our company to administrative or judicially imposed sanctions, including, but not limited to the following:

- restrictions on the products, manufacturers or manufacturing process;
- adverse inspectional observations (Form 483), warning letters or non-warning letters incorporating inspectional observations;
- civil and criminal penalties;
- injunctions;
- suspension or withdrawal of regulatory approvals or clearances;
- product seizures, detentions or import bans;
- voluntary or mandatory product recalls and publicity requirements;
- total or partial suspension of production;
- imposition of restrictions on operations, including costly new manufacturing requirements; and
- refusal to approve or clear pending NDAs or supplements to approved NDAs, applications or pre-market notifications.

Regulatory approval of an NDA or NDA supplement, PMA, PMA supplement or clearance pursuant to a pre-market notification is not guaranteed, and the approval or clearance process, as the case may be, is expensive and may, especially in the case of an NDA or PMA application, take several years. The FDA also has substantial discretion in the drug and medical device approval and clearance process. Despite the time and expense exerted, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional pre-clinical studies and clinical trials. The number of pre-clinical studies and clinical trials that will be required for FDA approval or clearance varies depending on the drug or medical device candidate, the disease or condition that the drug or medical device candidate is designed to address, and the regulations applicable to any particular drug or medical device candidate. The FDA can delay, limit or deny approval or clearance of a drug or medical device candidate for many reasons, including:

- a drug candidate may not be deemed safe or effective;
- a medical device candidate may not be deemed to be substantially equivalent to a lawfully marketed non-PMA device, in the case of a premarket notification.
- FDA officials may not find the data from pre-clinical studies and clinical trials sufficient;
- the FDA might not approve our third-party manufacturer's processes or facilities; or
- the FDA may change its approval or clearance policies or adopt new regulations.

The Company may, at some future date, seek approval of one or more drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, § 505(b)(2) which permits a manufacturer to submit an NDA for an existing drug compound for intended uses that have already been approved by the FDA, but with certain different characteristics, such as a different route of administration. Section 505(b)(2) allows a company to reference the clinical data already collected by the NDA of the drug supplemented by clinical trial results that address the change (e.g., route of administration). The Company is not presently involved in clinical trials for a section 505(b)(2) drug or the submission of an NDA for such a drug, but could be in the future. If the Company were to submit an NDA under that section, the Company could be sued for patent infringement by the pharmaceutical company that owns the patent on the existing approved NDA drug. Such a suit would automatically preclude the FDA from processing our NDA for 30 months and possibly longer. Defending such a suit would be costly. If we were to lose the litigation, we could be precluded from marketing the product until the NDA holder's patent expires. Such an adverse result would interfere with our strategic plans and would therefore have adverse financial implications for the company.

**Our product candidates may have undesirable side effects and cause our approved drugs to be taken off the market.**

If a product candidate receives marketing approval and we or others later identify undesirable side effects caused by such products:

- regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication, or field alerts to physicians and pharmacies;

- regulatory authorities may withdraw their approval of the product and require us to take our approved drug off the market;
- we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product;
- we may have limitations on how we promote our drugs;
- sales of products may decrease significantly;
- we may be subject to litigation or product liability claims; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase our commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from its sale.

**Even if we obtain regulatory approvals or clearances for our product candidates, the terms of approvals and ongoing regulation of our products may limit how we manufacture and market our product candidates, which could materially impair our ability to generate anticipated revenues.**

Once regulatory approval has been granted, the approved or cleared product and its manufacturer are subject to continual review. Any approved or cleared product may only be promoted for its indicated uses. In addition, if the FDA or other non-United States regulatory authorities approve any of our product candidates, the labeling, packaging, adverse event reporting, storage, advertising and promotion for the product will be subject to extensive regulatory requirements. We and the manufacturers of our products are also required to comply with current Good Manufacturing Practicing, or cGMP regulations, or the FDA's Quality System Regulation, or QSR regulations, which include requirements relating to quality control and quality assurance as well as the corresponding maintenance of records and documentation. Moreover, device manufacturers are required to report adverse events by filing Medical Device Reports with the FDA, which reports are publicly available. Further, regulatory agencies must approve manufacturing facilities before they can be used to manufacture our products, and these facilities are subject to ongoing regulatory inspection. If we fail to comply with the regulatory requirements of the FDA and other non-United States regulatory authorities, or if previously unknown problems with our products, manufacturers or manufacturing processes are discovered, we could be subject to administrative or judicially imposed sanctions.

In addition, the FDA and other non-United States regulatory authorities may change their policies and additional regulations may be enacted that could prevent or delay regulatory approval or clearance of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to maintain regulatory compliance, we would likely not be permitted to market our future product candidates and we may not achieve or sustain profitability.

**Even if we receive regulatory approval or clearance to market our product candidates, the market may not be receptive to our products.**

Even if our product candidates obtain regulatory approval or clearance, resulting products may not gain market acceptance among physicians, patients, health care payors and/or the medical community. We believe that the degree of market acceptance will depend on a number of factors, including:

- timing of market introduction of competitive products;
- the safety and efficacy of our product compared to other products;
- prevalence and severity of any side effects;



- potential advantages or disadvantages over alternative treatments;
- strength of marketing and distribution support;
- price of our future product candidates, both in absolute terms and relative to alternative treatments;
- availability of coverage and reimbursement from government and other third-party payors;
- potential product liability claims;
- limitations or warnings contained in a product's FDA-approved labeling; and
- changes in the standard of care for the targeted indications for any of our product candidates, which could reduce the marketing impact of any claims that we could make following FDA approval.

In addition, our efforts to educate the medical community and health care payors on the benefits of our product candidates may require significant resources and may never be successful.

**If our future product candidates fail to achieve market acceptance, we may not be able to generate significant revenue or achieve or sustain profitability.**

The coverage and reimbursement status of newly approved or cleared drugs or medical devices is uncertain, and failure of our pharmaceutical products and procedures using our medical devices to be adequately covered by insurance and eligible for adequate reimbursement could limit our ability to market any future product candidates we may develop and decrease our ability to generate revenue from any of our existing and future product candidates that may be approved or cleared.

There is significant uncertainty related to the third-party coverage and reimbursement of newly approved or cleared drugs or medical devices. Normally, surgical devices are not directly covered by insurance; instead, the procedure using the device is subject to a coverage determination by the insurer. The commercial success of our existing and future product candidates in both domestic and international markets will depend in part on the availability of coverage and adequate reimbursement from third-party payors, including government payors, such as the Medicare and Medicaid programs, managed care organizations, and other third-party payors. The government and other third-party payors are increasingly attempting to contain health care costs by limiting both insurance coverage and the level of reimbursement for new drugs or devices and, as a result, they may not cover or provide adequate payment for our existing and future product candidates. These payors may conclude that our future product candidates are less safe, less effective or less cost-effective than existing or later-introduced products. These payors may also conclude that the overall cost of the procedure using one of our devices exceeds the overall cost of the competing procedure using another type of device, and third-party payors may not approve our future product candidates for insurance coverage and adequate reimbursement. The failure to obtain coverage and adequate or any reimbursement for our existing and future product candidates, or health care cost containment initiatives that limit or restrict reimbursement for our existing and future product candidates, may reduce any future product revenue. Even though a drug (not administered by a physician) may be approved by the FDA, this does not mean that a Prescription Drug Plan, or PDP, a private insurer operating under Medicare part D, will list that drug on its formulary or will set a reimbursement level. PDPs are not required to make every FDA-approved drug available on their formularies. If our drug products are not listed on sufficient number of PDP formularies or if the PDPs' levels of reimbursement are inadequate, the Company could be materially adversely affected.

**If we fail to attract and retain key management and scientific personnel, we may be unable to successfully develop or commercialize our product candidates.**

We will need to expand and effectively manage our managerial, operational, financial, development and other resources in order to successfully pursue our research, development and commercialization efforts for our existing and future product candidates. Our success depends on our continued ability to attract, retain and motivate highly qualified management and pre-clinical and clinical personnel. The loss of the services of any of our senior management, including Dr. Phillip Frost, our Chairman of the Board and Chief Executive Officer, could delay or prevent the development and commercialization of our product candidates. We do not maintain "key man" insurance policies on the lives of any of our employees. We will need to hire additional personnel as we continue to expand our research and development activities and build a sales and marketing function.

We have scientific and clinical advisors who assist us in formulating our research, development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us. In addition, these advisors may have arrangements with other companies to assist those companies in developing products or technologies that may compete with ours.

We may not be able to attract or retain qualified management and scientific personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical, medical device and other similar businesses. If we are unable to attract and retain the necessary personnel to accomplish our business objectives, we may experience constraints that will impede significantly the achievement of our research and development objectives, our ability to raise additional capital and our ability to implement our business strategy. In particular, if we lose any members of our senior management team, we may not be able to find suitable replacements in a timely fashion or at all and our business may be harmed as a result.

**As we evolve from a company primarily involved in development to a company also involved in commercialization, we may encounter difficulties in managing our growth and expanding our operations successfully.**

As we advance our product candidates through clinical trials, research and development we will need to expand our development, regulatory, manufacturing, marketing and sales capabilities or contract with third parties to provide these capabilities for us. As our operations expand, we expect that we will need to manage additional relationships with such third parties, as well as additional collaborators and suppliers. Maintaining these relationships and managing our future growth will impose significant added responsibilities on members of our management. We must be able to: manage our development efforts effectively; manage our clinical trials effectively; hire, train and integrate additional management, development, administrative and sales and marketing personnel; improve our managerial, development, operational and finance systems; and expand our facilities, all of which may impose a strain on our administrative and operational infrastructure.

Furthermore, we may acquire additional businesses, products or product candidates that complement or augment our existing business. Integrating any newly acquired business or product could be expensive and time-consuming. We may not be able to integrate any acquired business or product successfully or operate any acquired business profitably, including our OPKO Ophthalmologics and Froptix subsidiaries. Our future financial performance will depend, in part, on our ability to manage any future growth effectively and our ability to integrate any acquired businesses. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company.

**If we fail to acquire and develop other products or product candidates at all or on commercially reasonable terms, we may be unable to diversify or grow our business.**

We intend to continue to rely on acquisitions and in-licensing as the source of our products and product candidates for development and commercialization. The success of this strategy depends upon our ability to identify, select and acquire pharmaceutical products, drug delivery technologies and medical device product candidates. Proposing, negotiating and implementing an economically viable product acquisition or license is a lengthy and complex process. We compete for partnering arrangements and license agreements with pharmaceutical, biotechnology and medical device companies and academic research institutions. Our competitors may have stronger relationships with third parties with whom we are interested in collaborating and/or may have more established histories of developing and commercializing products. As a result, our competitors may have a competitive advantage in entering into partnering arrangements with such third parties. In addition, even if we find promising product candidates, and generate interest in a partnering or strategic arrangement to acquire such product candidates, we may not be able to acquire rights to additional product candidates or approved products on terms that we find acceptable, or at all.

We expect that any product candidate to which we acquire rights will require additional development efforts prior to commercial sale, including extensive clinical testing and approval or clearance by the FDA and other non-United States regulatory authorities. All product candidates are subject to the risks of failure inherent in pharmaceutical or medical device product development, including the possibility that the product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. Even if the product candidates are approved or cleared, we cannot be sure that they would be capable of economically feasible production or commercial success.

**We have no experience or capability manufacturing large clinical-scale or commercial-scale products, and have no manufacturing facility; we therefore rely on third parties to manufacture and supply our product candidates.**

We believe we currently have, or can access, sufficient supplies of bevasiranib to conduct and complete our planned Phase III clinical trials. If our manufacturing partners are unable to produce bevasiranib or our other products in the amounts that we require, we may not be able to establish a contract and obtain a sufficient alternative supply from another supplier on a timely basis and in the quantities we require. We expect to continue to depend on third-party contract manufacturers for the foreseeable future.

Our product candidates require precise, high quality manufacturing. Any of our contract manufacturers will be subject to ongoing periodic unannounced inspection by the FDA and other non-United States regulatory authorities to ensure strict compliance with QSR regulations for devices or cGMPs for drugs, and other applicable government regulations and corresponding standards relating to matters such as testing, quality control and documentation procedures. If our contract manufacturers fail to achieve and maintain high manufacturing standards in compliance with QSR or cGMPs, we may experience manufacturing errors resulting in patient injury or death, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery, delay or prevention of filing or approval of marketing applications for our products, cost overruns or other problems that could seriously harm our business.

Any performance failure on the part of our contract manufacturers could delay clinical development or regulatory approval or clearance of our product candidates or commercialization of our future product candidates, depriving us of potential product revenue and resulting in additional losses. In addition, our dependence on a third party for manufacturing may adversely affect our future profit margins. Our ability to replace an existing manufacturer may be difficult because the number of potential manufacturers is limited and the FDA must approve any replacement manufacturer before it can begin manufacturing our product candidates. Such approval would result in additional non-clinical testing and compliance inspections. It may be difficult or impossible for us to identify and engage a replacement manufacturer on acceptable terms in a timely manner, or at all.

**We currently have limited marketing staff, no pharmaceutical sales or distribution capabilities and have only recently commenced developing medical device sales capabilities in the United States. If we are unable to develop our pharmaceutical sales and marketing and distribution capability and our medical device sales and marketing capabilities in the United States on our own or through collaborations with marketing partners, we will not be successful in commercializing our pharmaceutical product candidates or our medical device product candidates in the United States.**

We currently have no pharmaceutical marketing, sales or distribution capabilities. We have only recently commenced developing medical device sales capabilities in the United States. If our pharmaceutical product candidates are approved, we intend to establish our sales and marketing organization with technical expertise and supporting distribution capabilities to commercialize our product candidates, which will be expensive and time-consuming. Any failure or delay in the development of any of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of our products. With respect to our existing and future pharmaceutical product candidates, we may choose to collaborate with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems. To the extent that we enter into co-promotion or other licensing arrangements, our product revenue is likely to be lower than if we directly marketed or sold our products. In addition, any revenue we receive will depend in whole or in part upon the efforts of such third parties, which may not be successful and are generally not within our control. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize our existing and future product candidates. If we are not successful in commercializing our existing and future product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we may incur significant additional losses.

**Independent clinical investigators and contract research organizations that we engage to conduct our clinical trials may not be diligent, careful or timely.**

We will depend on independent clinical investigators to conduct our clinical trials. Contract research organizations may also assist us in the collection and analysis of data. These investigators and contract research organizations will not be our employees and we will not be able to control, other than by contract, the amount of resources, including time, that they devote to products that we develop. If independent investigators fail to devote sufficient resources to the development of product candidates or clinical trials, or if their performance is substandard, it will delay the approval or clearance and commercialization of any products that we develop. Further, the FDA requires that we comply with standards, commonly referred to as good clinical practice, for conducting, recording and reporting clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial subjects are protected. If our independent clinical investigators and contract research organizations fail to comply with good clinical practice, the results of our clinical trials could be called into question and the clinical development of our product candidates could be delayed. Failure of clinical investigators or contract research organizations to meet their obligations to us or comply with federal regulations and good clinical practice procedures could adversely affect the clinical development of our product candidates and harm our business.

**The success of our business may be dependent on the actions of our collaborative partners.**

We expect to enter into collaborative arrangements with established multinational pharmaceutical and medical device companies which will finance or otherwise assist in the development, manufacture and marketing of products incorporating our technology. We anticipate deriving some revenues from research and development fees, license fees, milestone payments and royalties from collaborative partners. Our prospects, therefore, may depend to some extent upon our ability to attract and retain collaborative partners and to develop technologies and products that meet the requirements of prospective collaborative partners. In addition, our collaborative partners may have the right to abandon research projects and terminate applicable agreements, including funding obligations, prior to or upon the expiration of the agreed-upon research terms. There can be no assurance that we will be successful in establishing collaborative arrangements on acceptable terms or at all, that collaborative partners will not terminate funding before completion of projects, that our collaborative arrangements will result in successful product commercialization or that we will derive any revenues from such arrangements. To the extent that we are unable to develop and maintain collaborative arrangements, we would need substantial additional capital to undertake research, development and commercialization activities on our own.

**If we are unable to obtain and enforce patent protection for our products, our business could be materially harmed.**

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop or license under the patent and other intellectual property laws of the United States and other countries, so that we can prevent others from unlawfully using our inventions and proprietary information. However, we may not hold proprietary rights to some patents required for us to commercialize our proposed products. Because certain United States patent applications are confidential until patents issue, such as applications filed prior to November 29, 2000, or applications filed after such date for which nonpublication has been requested, third parties may have filed patent applications for technology covered by our pending patent applications without our being aware of those applications, and our patent applications may not have priority over those applications. For this and other reasons, we or our third-party collaborators may be unable to secure desired patent rights, thereby losing desired exclusivity. If licenses are not available to us on acceptable terms, we may not be able to market the affected products or conduct the desired activities, unless we challenge the validity, enforceability or infringement of the third-party patent or otherwise circumvent the third-party patent.

Our strategy depends on our ability to rapidly identify and seek patent protection for our discoveries. In addition, we will rely on third-party collaborators to file patent applications relating to proprietary technology that we develop jointly during certain collaborations. The process of obtaining patent protection is expensive and time-consuming. If our present or future collaborators fail to file and prosecute all necessary and desirable patent applications at a reasonable cost and in a timely manner, our business will be adversely affected. Despite our efforts and the efforts of our collaborators to protect our proprietary rights, unauthorized parties may be able to obtain and use information that we regard as proprietary.

The issuance of a patent does not guarantee that it is valid or enforceable. Any patents we have obtained, or obtain in the future, may be challenged, invalidated, unenforceable or circumvented. Moreover, the United States Patent and Trademark Office, or USPTO, may commence interference proceedings involving our patents or patent applications. Any challenge to, finding of unenforceability or invalidation or circumvention of, our patents or patent applications would be costly, would require significant time and attention of our management and could have a material adverse effect on our business. In addition, court decisions may introduce uncertainty in the enforceability or scope of patents owned by biotechnology, pharmaceutical and medical device companies.

Our pending patent applications may not result in issued patents. The patent position of pharmaceutical, biotechnology and medical device companies, including ours, is generally uncertain and involves complex legal and factual considerations. The standards that the USPTO and its foreign counterparts use to grant patents are not always applied predictably or uniformly and can change. There is also no uniform, worldwide policy regarding the subject matter and scope of claims granted or allowable in pharmaceutical, biotechnology or medical device patents. Accordingly, we do not know the degree of future protection for our proprietary rights or the breadth of claims that will be allowed in any patents issued to us or to others. The legal systems of certain countries do not favor the aggressive enforcement of patents, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Therefore, the enforceability or scope of our owned or licensed patents in the United States or in foreign countries cannot be predicted with certainty, and, as a result, any patents that we own or license may not provide sufficient protection against competitors. We may not be able to obtain or maintain patent protection for our pending patent applications, those we may file in the future, or those we may license from third parties, including the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation and Intradigm.

While we believe that our patent rights are enforceable, we cannot assure you that any patents that have issued, that may issue or that may be licensed to us will be enforceable or valid or will not expire prior to the commercialization of our product candidates, thus allowing others to more effectively compete with us. Therefore, any patents that we own or license may not adequately protect our product candidates or our future products.

**If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.**

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, know-how and confidential and proprietary information. To maintain the confidentiality of trade secrets and proprietary information, we will seek to enter into confidentiality agreements with our employees, consultants and collaborators upon the commencement of their relationships with us. These agreements generally require that all confidential information developed by the individual or made known to the individual by us during the course of the individual's relationship with us be kept confidential and not disclosed to third parties. Our agreements with employees also generally provide that any inventions conceived by the individual in the course of rendering services to us shall be our exclusive property. However, we may not obtain these agreements in all circumstances, and individuals with whom we have these agreements may not comply with their terms. In the event of unauthorized use or disclosure of our trade secrets or proprietary information, these agreements, even if obtained, may not provide meaningful protection, particularly for our trade secrets or other confidential information. To the extent that our employees, consultants or contractors use technology or know-how owned by third parties in their work for us, disputes may arise between us and those third parties as to the rights in related inventions.

Adequate remedies may not exist in the event of unauthorized use or disclosure of our confidential information. The disclosure of our trade secrets would impair our competitive position and may materially harm our business, financial condition and results of operations.

**We will rely heavily on licenses from third parties.**

Many of the patents and patent applications in our patent portfolio are not owned by us, but are licensed from third parties. For example, we rely on technology licensed from the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation and Intradigm. Such license agreements give us rights for the commercial exploitation of the patents resulting from the respective patent applications, subject to certain provisions of the license agreements. Failure to comply with these provisions could result in the loss of our rights under these license agreements. Our inability to rely on these patents and patent applications which are the basis of our technology would have a material adverse effect on our business.

**We license patent rights to certain of our technology from third-party owners. If such owners do not properly maintain or enforce the patents underlying such licenses, our competitive position and business prospects will be harmed.**

We have obtained licenses from, among others, the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation and Intradigm that are necessary or useful for our business. In addition, we intend to enter into additional licenses of third-party intellectual property in the future.

Our success will depend in part on our ability or the ability of our licensors to obtain, maintain and enforce patent protection for our licensed intellectual property and, in particular, those patents to which we have secured exclusive rights in our field. We or our licensors may not successfully prosecute the patent applications which are licensed to us. Even if patents issue in respect of these patent applications, we or our licensors may fail to maintain these patents, may determine not to pursue litigation against other companies that are infringing these patents, or may pursue such litigation less aggressively than we would. Without protection for the intellectual property we have licensed, other companies might be able to offer substantially identical products for sale, which could adversely affect our competitive business position and harm our business prospects.

**Some jurisdictions may require us to grant licenses to third parties. Such compulsory licenses could be extended to include some of our product candidates, which may limit our potential revenue opportunities.**

Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, most countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may be limited to monetary relief from an infringement and may be unable to enjoin infringement, which could materially diminish the value of the patent.

**Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.**

Other entities may have or obtain patents or proprietary rights that could limit our ability to manufacture, use, sell, offer for sale or import products or impair our competitive position. In addition, to the extent that a third party develops new technology that covers our products, we may be required to obtain licenses to that technology, which licenses may not be available or may not be available on commercially reasonable terms, if at all. If licenses are not available to us on acceptable terms, we will not be able to market the affected products or conduct the desired activities, unless we challenge the validity, enforceability or infringement of the third-party patent or circumvent the third-party patent, which would be costly and would require significant time and attention of our management. Third parties may have or obtain valid and enforceable patents or proprietary rights that could block us from developing products using our technology. Our failure to obtain a license to any technology that we require may materially harm our business, financial condition and results of operations.

Additionally, RNAi is a relatively new scientific field that has generated many different patent applications from organizations and individuals seeking to obtain important patents in the field. These applications claim many different methods, compositions and processes relating to the discovery, development and commercialization of RNAi therapeutics. Because the field is so new, very few of these patent applications have been fully processed by government patent offices around the world, and there is a great deal of uncertainty about which patents will issue, when, to whom, and with what claims. It is likely that there will be significant litigation and other proceedings, such as interference and opposition proceedings in various patent offices, relating to patent rights in the RNAi field. Others may attempt to invalidate our intellectual property rights. Even if our rights are not directly challenged, disputes among third parties could impact our intellectual property rights.

**If we become involved in patent litigation or other proceedings related to a determination of rights, we could incur substantial costs and expenses, substantial liability for damages or be required to stop our product development and commercialization efforts.**

Third parties may sue us for infringing their patent rights. Likewise, we may need to resort to litigation to enforce a patent issued or licensed to us or to determine the scope and validity of proprietary rights of others. In addition, a third-party may claim that we have improperly obtained or used its confidential or proprietary information. Furthermore, in connection with our third-party license agreements, we generally have agreed to indemnify the licensor for costs incurred in connection with litigation relating to intellectual property rights. The cost to us of any litigation or other proceeding relating to intellectual property rights, even if resolved in our favor, could be substantial, and the litigation would divert our management's efforts. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Uncertainties resulting from the initiation and continuation of any litigation could limit our ability to continue our operations.

If any parties successfully claim that our creation or use of proprietary technologies infringes upon their intellectual property rights, we might be forced to pay damages, potentially including treble damages, if we are found to have willfully infringed on such parties' patent rights. In addition to any damages we might have to pay, a court could require us to stop the infringing activity or obtain a license. Any license required under any patent may not be made available on commercially acceptable terms, if at all. In addition, such licenses are likely to be non-exclusive and, therefore, our competitors may have access to the same technology licensed to us. If we fail to obtain a required license and are unable to design around a patent, we may be unable to effectively market some of our technology and products, which could limit our ability to generate revenues or achieve profitability and possibly prevent us from generating revenue sufficient to sustain our operations.

**Medicare legislation and future legislative or regulatory reform of the health care system may affect our ability to sell our products profitably.**

In the United States, there have been a number of legislative and regulatory initiatives, at both the federal and state government levels, to change the healthcare system in ways that, if approved, could affect our ability to sell our products profitably. For example, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or MMA, extended Medicare, effective January 1, 2006, to cover most outpatient prescription drugs that are not administered by physicians and modified, effective January 1, 2004, the methodology used by Medicare to reimburse for those drugs administered by physicians. Our business could be harmed by the MMA, by the possible effect of this legislation on amounts that private payors will pay and by other healthcare reforms that may be enacted or adopted in the future. To the extent that our products are deemed to be durable medical equipment, they may be subject to distribution under the new Competitive Acquisition regulations, also part of MMA, and this could adversely affect the amount that patients or medical providers can seek from payors. Non-durable medical equipment devices used in surgical procedures are normally paid directly by the hospital or health care provider and not reimbursed separately by third-party payors. As a result, these types of devices are subject to intense price competition that can place a small manufacturer at a competitive disadvantage.

We are unable to predict what additional legislation or regulation, if any, relating to the health care industry or third-party coverage and reimbursement may be enacted in the future or what effect such legislation or regulation would have on our business. Any cost containment measures or other health care system reforms that are adopted could have a material adverse effect on our ability to commercialize our existing and future product candidates successfully.

**Failure to obtain regulatory approval outside the United States will prevent us from marketing our product candidates abroad.**

We intend to market certain of our existing and future product candidates in non-United States markets. In order to market our existing and future product candidates in the European Union and many other non-United States jurisdictions, we must obtain separate regulatory approvals. We have had limited interactions with non-United States regulatory authorities, the approval procedures vary among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval or clearance. Approval or clearance by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one or more non-United States regulatory authority does not ensure approval by other regulatory authorities in other countries or by the FDA. The non-United States regulatory approval process may include all of the risks associated with obtaining FDA approval or clearance. We may not obtain non-United States regulatory approvals on a timely basis, if at all. We may not be able to file for non-United States regulatory approvals and may not receive necessary approvals to commercialize our existing and future product candidates in any market.

**Acquisitions may result in disruptions to our business or distractions of our management and may not proceed as planned.**

We intend to continue to expand our business through the acquisition of companies, technologies, products and services. Acquisitions involve a number of special problems and risks, including, but not limited to:

- difficulty integrating acquired technologies, products, services, operations and personnel with the existing businesses;



- diversion of management's attention in connection with both negotiating the acquisitions and integrating the businesses;
- strain on managerial and operational resources as management tries to oversee larger operations;
- exposure to unforeseen liabilities of acquired companies;
- potential costly and time-consuming litigation, including stockholder lawsuits;
- potential issuance of securities to equity holders of the company being acquired with rights that are superior to the rights of holders of our common stock, or which may have a dilutive effect on our stockholders;
- the need to incur additional debt or use cash; and
- the requirement to record potentially significant additional future operating costs for the amortization of intangible assets.

As a result of these or other problems and risks, businesses we acquire may not produce the revenues, earnings or business synergies that we anticipated, and acquired products, services or technologies might not perform as we expected. As a result, we may incur higher costs and realize lower revenues than we had anticipated. We may not be able to successfully address these problems and we cannot assure you that the acquisitions will be successfully identified and completed or that, if acquisitions are completed, the acquired businesses, products, services or technologies will generate sufficient revenue to offset the associated costs or other harmful effects on our business.

Any of these risks can be greater if an acquisition is large relative to our size. Failure to manage effectively our growth through acquisitions could adversely affect our growth prospects, business, results of operations and financial condition.

**Non-United States governments often impose strict price controls, which may adversely affect our future profitability.**

We intend to seek approval to market certain of our existing and future product candidates in both the United States and in non-United States jurisdictions. If we obtain approval in one or more non-United States jurisdictions, we will be subject to rules and regulations in those jurisdictions relating to our product. In some countries, particularly countries of the European Union, each of which has developed its own rules and regulations, pricing is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a drug or medical device candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our existing and future product candidates to other available products. If reimbursement of our future product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

**Our business may become subject to economic, political, regulatory and other risks associated with international operations.**

Our business is subject to risks associated with conducting business internationally, in part due to a number of our suppliers being located outside the United States. Accordingly, our future results could be harmed by a variety of factors, including:

- difficulties in compliance with non-United States laws and regulations;
- changes in non-United States regulations and customs;
- changes in non-United States currency exchange rates and currency controls;
- changes in a specific country's or region's political or economic environment;

- trade protection measures, import or export licensing requirements or other restrictive actions by United States or non-United States governments;
- negative consequences from changes in tax laws; and
- difficulties associated with staffing and managing foreign operations, including differing labor relations.

**The market price of our common stock may fluctuate significantly.**

The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- the announcement of new products or product enhancements by us or our competitors;
- developments concerning intellectual property rights and regulatory approvals;
- variations in our and our competitors' results of operations;
- changes in earnings estimates or recommendations by securities analysts, if our common stock is covered by analysts;
- developments in the biotechnology, pharmaceutical and medical device industry;
- the results of product liability or intellectual property lawsuits;
- future issuances of common stock or other securities;
- the addition or departure of key personnel;
- announcements by us or our competitors of acquisitions, investments or strategic alliances; and
- general market conditions and other factors, including factors unrelated to our operating performance.

Further, the stock market in general, and the market for biotechnology, pharmaceutical and medical device companies in particular, has recently experienced extreme price and volume fluctuations. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock.

Some or all of the "restricted" shares of our common stock issued to former stockholders of Fropix and Acuity in connection with the acquisition or held by other of our stockholders may be offered from time to time in the open market pursuant to an effective registration statement or Rule 144, and these sales may have a depressive effect on the market for our common stock.

**Trading restrictions imposed on us by applicable regulations and by lockup agreements we have entered into with our principal stockholders may reduce our trading, making it difficult for our stockholders to sell their shares.**

Approximately 68% of the outstanding shares of our common stock (including outstanding shares of our preferred stock on an as converted basis) are subject to lockup agreements which limit sales for a two-year period from March 27, 2007. These factors may result in lower prices for our common stock than might otherwise be obtained and could also result in a larger spread between the bid and ask prices for our common stock. In addition, without a large float, our common stock is less liquid than the stock of companies with broader public ownership and, as a result, the trading prices of our common stock may be more volatile. In the absence of an active public trading market, an investor may be unable to liquidate his investment in our common stock. Trading of a relatively small volume of our common stock may have a greater impact on the trading price of our stock than would be the case if our public float were larger. We cannot predict the prices at which our common stock will trade in the future.

**Directors, executive officers, principal stockholders and affiliated entities own a majority of our capital stock, and they may make decisions that you do not consider to be in the best interests of our stockholders.**

As of November 9, 2007, our directors, executive officers, principal stockholders and affiliated entities beneficially owned, in the aggregate, owned more than 50% of our outstanding voting securities. As a result, if some or all of them acted together, they would have the ability to control the election of our Board of Directors and the outcome of issues requiring approval by our stockholders. This concentration of ownership may also have the effect of delaying or preventing a change in control of our company that may be favored by other stockholders. This could prevent transactions in which stockholders might otherwise recover a premium for their shares over current market prices.

**Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.**

There have been changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act of 2002, new regulations promulgated by the Securities and Exchange Commission and rules promulgated by the American Stock Exchange, the other national securities exchanges and the NASDAQ. These new or changed laws, regulations and standards are subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. Our board members, Chief Executive Officer, Chief Financial Officer and Principal Accounting Officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified board members and executive officers, which could harm our business. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies, we could be subject to liability under applicable laws or our reputation may be harmed.

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

None.

Item 3. Defaults Upon Senior Securities

None.

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

None.

Item 5. Other Information

None.

Item 6. Exhibits.

- |              |  |
|--------------|--|
| Exhibit 10.1 | Office leased Dated November __, 2007 by and between Frost Real Estate Holdings LLC, a Florida limited liability company and OPKO Health, Inc.   |
| Exhibit 31.1 | Certification by Phillip Frost, Chief Executive Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended September 30, 2007. |
| Exhibit 31.2 | Certification by Rao Uppaluri, Chief Financial Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended September 30, 2007.  |
| Exhibit 32.1 | Certification by Phillip Frost, Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended September 30, 2007.  |
| Exhibit 32.2 | Certification by Rao Uppaluri, Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended September 30, 2007.   |

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has caused this Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 14, 2007

**OPKO Health, Inc.**

/s/ Adam Logal

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Adam Logal  
Executive Director of Finance,  
Chief Accounting Officer and Treasurer

**OFFICE LEASE**

**1. Basic Lease Provisions.**

- 1.1. **Parties:** This Lease is made and entered into as of the 13<sup>th</sup> day of November 2007 (the "Effective Date") by and between FROST REAL ESTATE HOLDINGS, LLC, a Florida limited liability company ("Landlord"), and OPKO HEALTH, INC., a Delaware corporation ("Tenant").
- 1.2. **Premises:** Suite Numbers 1500 and 1180, as shown on Exhibit "A" attached hereto (the "Premises").
- 1.3. **Rentable Square Footage of the Premises:** 8,320 Square feet (3,245 SF on 15<sup>TH</sup> Floor-North + 5,075 on 11<sup>th</sup> Floor North). Landlord and Tenant stipulate and agree that the rentable square footage of the Premises is correct.
- 1.4. **Building Address:** 4400 Biscayne Boulevard, Miami, Florida 33137.
- 1.5. **Permitted Use:** General office use in the 15<sup>th</sup> and 11<sup>th</sup> floor office space, subject to the requirements and limitations contained in Section 6.
- 1.6. **Term:** Five (5) years.
- 1.7. **Commencement Date:** August 1, 2007.
- 1.8. **Rent:** Tenant shall make rent payments under this Lease on a "gross" basis (the "Rent"), plus applicable sales tax. The rent shall be increased annually by four and one half percent (4.5%) on each anniversary date as follows:

<b>Lease Period in Months</b>	<b><u>Annual Rent</u></b>
August 1, 2007- July 31, 2008	<b>\$211,280</b>
August 1, 2008- July 31, 2009	<b>\$252,138</b>
August 1, 2009- July 31, 2010	<b>\$263,484</b>
August 1, 2010- July 31, 2011	<b>\$275,341</b>
August 1, 2011- July 31, 2012	<b>\$287,731</b>

- 1.9. **Intentionally Omitted.**
- 1.10. **Security Deposit:** N/A.
- 1.11. **Sales Taxes.** Tenant shall pay to Landlord with the monthly payment of Rent all applicable sales taxes imposed directly upon such rent or this Lease.
- 1.12. **Number of Parking Spaces:** Up to **twenty seven (27)** total spaces of which **twenty (20)** are unreserved and seven (7) are reserved spaces, all in accordance with the terms of Section 24 hereof.
- 1.13. **Real Estate Brokers:** Landlord: None  
Tenant: None
- 1.14. **Attachments to Lease:** Exhibit A - "Premises"; and Exhibit B - "Rules and Regulations.
- 1.15. **Addresses for Notices:**

**Landlord:** Frost Real Estate Holdings, LLC  
4400 Biscayne Boulevard  
Miami, Florida 33137

**Tenant:** Prior to the Commencement Date: N/A

**After the Commencement Date:**

OPKO HEALTH Inc.,

4400 Biscayne Blvd, Suite 1580, Annex 1 & 1100,  
Miami, Florida 33137  
Attention: Kate Inman

1.16. **Interpretation.** The Basic Lease Provisions shall be interpreted in conjunction with all of the other terms and conditions of this Lease. Other terms and conditions of this Lease modify and expand on the Basic Lease Provisions. If there is a conflict between the Basic Lease Provisions and the other terms and conditions of this Lease, the other terms and conditions shall control.

## 2. Premises.

**2.1. Lease of Premises.** Landlord hereby leases the Premises to Tenant, together with the right to use any portions of the Project, as hereinafter defined, that are designated by Landlord for the common use of tenants and others (the "Common Areas"). The "Project" consists of the building of which the Premises is a part (the "Building"), the Common Areas, the land upon which the same are located, along with all other buildings and improvements thereon or hereunder, including all parking facilities.

**2.2. Acceptance.** Tenant agrees to accept the Premises in its "as-is" condition existing as of the Commencement Date.

**3. Term.** This Lease shall be in full force and effect from the Effective Date. The Term and Commencement Date of this Lease are as specified in Sections 1.6 and 1.7, if any. If for any reason Landlord cannot deliver possession of the Premises to Tenant on the Commencement Date, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder; provided, however, in such a case, the Commencement Date shall be extended to the date Landlord delivers possession of the Premises to Tenant.

## 4. Rent.

**4.1. Rent.** Tenant shall pay Landlord the Rent for the Premises on the first day of each calendar month during the Term of this Lease in advance, without notice or demand, deduction, abatement or offset (unless expressly set forth in this Lease). Rent for any partial month during the Term shall be prorated. Rent and all other amounts payable to Landlord hereunder shall be payable to Landlord in lawful money of the United States and Tenant shall be responsible for delivering said amounts to Landlord at the address stated herein or to such other persons or to such other places as Landlord may designate in writing. The Rent payments to be made by Tenant hereunder are made on a "gross" basis and, except as may be expressly stated otherwise herein, Tenant shall not be required to make any additional payments to Landlord for Tenant's share of any real estate taxes on the Premises or the Building, for any insurance on the Premises or the Building, for any common area maintenance charges, for the use of the cafeteria in the Building, for use of the furniture located within the Premises, for the use of the unreserved and reserved parking spaces provided to Tenant herein, or for the services to be provided by Landlord under Section 11.1.

**4.2** Landlord and Tenant acknowledge and agree that Tenant and its employees shall have the right to use the existing cafeteria located within the Building for so long as such cafeteria remains open and available. Notwithstanding the foregoing, Tenant expressly acknowledges and agrees that the cafeteria may be shut down by Landlord at any time during the Term of this Lease and that the Landlord has no obligation to provide a cafeteria under the terms of this Lease.

## 5. Security Deposit. N/A.

## 6. Use.

**6.1. Use.** The 15<sup>th</sup> and 11<sup>th</sup> floor shall be used and occupied only for general office use and other uses compatible with general office use, and for no other purpose. Notwithstanding any permitted use provided for in this Lease, Tenant shall not use the 15<sup>th</sup> and 11<sup>th</sup> floors for any purpose which would violate the Project's certificate of occupancy, any conditional use permit or variance applicable to the Project or violate any covenants, conditions or other restrictions applicable to the Project. No exclusive use has been granted to Tenant hereunder.

**6.2. Compliance with Law.** Landlord warrants to Tenant that, to the best of Landlord's knowledge, the Premises, in the state existing on the Effective Date, does not violate any covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect on such date and may be used for office purposes. Tenant shall, at Tenant's sole expense, promptly comply with all laws, statutes, codes, ordinances, orders, covenants, restrictions or record, rating bureaus or governmental agencies, rules and regulations of any municipal or governmental entity whether in effect now or later, including, the Americans With Disabilities Act and all federal, state and local laws and regulations governing occupational safety and health ("Law(s)") regarding the operation of Tenant's business and the use, condition, configuration and occupation of the Premises. Tenant shall conduct its business and use the Premises in a lawful manner and shall not use or permit the use of the Premises or the Common Areas in any manner that constitutes waste or a nuisance or shall unreasonably disturb other occupants of the Project. Tenant shall obtain, at its sole expense, any permit or other governmental authorization required to operate its business from the Premises. Landlord shall not be liable for the failure of any other tenant or person to abide by the requirements of this Section or to otherwise comply with applicable Laws, and Tenant shall not be excused from the performance of its obligations under this Lease due to such a failure.

## **7. Maintenance, Repairs and Alterations.**

**7.1. Landlord's Obligations.** Landlord shall keep and maintain in good repair and working order and perform maintenance upon the (a) structural elements of the Building; (b) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building in general and the Premises; (c) Common Areas; (d) roof of the Building; (e) exterior windows of the Building; and (f) elevators serving the Building. Landlord shall promptly make repairs for which Landlord is responsible.

### **7.2. Tenant's Obligations.**

(a) Subject to the requirements of Section 7.3, Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease and shall keep the Premises in good condition and repair, reasonable wear and tear excepted. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor coverings; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) electronic, fiber, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (collectively, "Cable"); (f) supplemental air conditioning units, kitchens, including hot water heaters, plumbing, and similar facilities exclusively serving Tenant; and (g) Alterations. If Tenant fails to keep the Premises in good condition and repair, Landlord may, but shall not be obligated to, make any necessary repairs. If Landlord makes such repairs, Landlord shall bill Tenant for the cost of the repairs as additional rent, and said additional rent shall be payable by Tenant within ten (10) days.

(b) On the last day of the Term hereof, or on any sooner termination, Tenant shall remove all Tenant's Property, as hereinafter defined, Cable and all designated Required Removables, as hereinafter defined, from the Premises and quit and surrender the Premises to Landlord, broom clean, in the same condition as received, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's Property, Cable and Required Removables. Tenant shall leave the electrical distribution systems, plumbing systems, lighting fixtures, HVAC ducts and vents, window treatments, wall coverings, carpets and other floor coverings, doors and door hardware, millwork, ceilings and other tenant improvements at the Premises and in good condition, ordinary wear and tear excepted.

### **7.3. Alterations and Additions.**

(a) Tenant shall not make any alterations, repairs, additions or improvements or install any Cable (collectively referred to as "Alteration(s)") in, on or about the Premises or the Project without Landlord's prior written consent, which may be given or withheld in Landlord's reasonable discretion. However, Landlord's consent shall not be required for any Alteration that satisfies all of the following criteria (a "Cosmetic Alteration"): (a) is of a cosmetic nature such as painting, wallpapering, hanging pictures and installing carpeting; (b) is not visible from the exterior of the Premises or the Building; (c) will not affect the base Building; and (d) does not require work to be performed inside the walls or above the ceiling of the Premises. Cosmetic Alterations shall be subject to all the other provisions of this Section 7.3. Prior to starting work, Tenant shall furnish Landlord with plans and specifications; names of contractors reasonably acceptable to Landlord (provided that Landlord may designate specific contractors with respect to base Building); required permits and approvals; evidence of contractor's and subcontractor's insurance in amounts reasonably required by Landlord and naming Landlord as an additional insured; and any security for performance in amounts reasonably required by Landlord. Changes to the plans and specifications must also be submitted to Landlord for its approval. Alterations shall be constructed in a good and workmanlike manner using materials of a quality reasonably approved by Landlord. Upon completion, Tenant shall furnish "as-built" plans for non-Cosmetic Alterations, completion affidavits and full and final waivers of lien. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law. If as a result of any Alteration made by Tenant, Landlord is obligated to comply with any Law and such compliance requires Landlord to make any improvement or Alteration to any portion of the Project, as a condition to Landlord's consent, Landlord shall have the right to require Tenant to pay to Landlord prior to the construction of any Alteration by Tenant, the entire cost of any improvement or Alteration Landlord is obligated to complete by such Law.

(b) All improvements in and to the Premises, including any Alterations, shall remain upon the Premises at the end of the Term without compensation to Tenant, provided that Tenant, at its expense, in compliance with the National Electric Code or other applicable Laws, shall, on or before the expiration of the Term, remove any Cable. In addition, and specifically excepting any improvements made by Landlord prior to the Commencement Date, Landlord, by written notice to Tenant at least thirty (30) days prior to the expiration of the Term, may require Tenant, at its expense, to remove any Alterations that in Landlord's reasonable judgment are not standard office improvements and are of a nature that would require removal and repair costs that are materially in excess of the removal and repair costs associated with standard office improvements (collectively referred to as "Required Removables"). Tenant shall repair any damage caused by the installation or removal of the Cable and Required Removables.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or the Project, or any interest therein. If Tenant shall, in good faith, contest the validity of any such lien, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to not less than one and one half times the amount of such contested lien or claim indemnifying Landlord against liability arising out of such lien or claim. Such bond shall be sufficient in form and amount to free the Project from the effect of such lien. In addition, Landlord may require Tenant to pay Landlord's reasonable attorneys' fees and costs in participating in such action.

**7.4. Failure of Tenant to Remove Property.** If Tenant fails to remove any of Tenant's Property as required by Section 7.2 on or before the expiration or earlier termination of this Lease, Landlord may remove and store Tenant's Property at the expense and risk of Tenant. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's Property



from the Premises or storage, within thirty (30) days after notice, Landlord may deem all or any part of Tenant's Property to be abandoned and title to Tenant's Property shall vest in Landlord.

## 8. Insurance.

**8.1. Insurance-Tenant.** Tenant shall maintain at all times during the Term of this Lease commercial general liability insurance with coverages acceptable to Landlord, which by way of example and not limitation, protects Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence with an "Additional Insured-Managers and Landlords of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease. If, in the commercially reasonable opinion of the insurance broker retained by Landlord, the amount of public liability or property damage insurance coverage at any time during the Term is not adequate, Tenant shall increase the insurance coverage as required by Landlord's insurance broker. In no event shall the limits of such policy be considered as limiting the liability of Tenant under this Lease.

Tenant may also obtain and keep in force during the Term of this Lease "all risk" extended coverage property insurance on Tenant's personal property, all tenant improvements installed at the Premises by Tenant and Tenant's trade fixtures and other property (collectively, "Tenant's Personal Property"). Tenant expressly acknowledges and agrees that in the event its insurance policy fails to cover any of Tenant's Personal Property or excludes coverage for flood, earthquake, windstorm or any other peril, that neither Tenant nor its insurance company shall have any right or claim against Landlord or its insurance company as a result of damage to Tenant's Personal Property resulting from such failure of coverage or excluded peril.

**8.2. Insurance-Landlord.** Landlord shall maintain general liability insurance with coverage against such risks and in such amounts as Landlord deems advisable insuring Landlord against liability arising out of the ownership, operation and management of the Project. Landlord shall also maintain a policy or policies of insurance covering loss or damage to the Project in the amount of not less than eighty percent (80%) of the full replacement cost thereof, as determined by Landlord from time to time. The terms and conditions of said policies and the perils and risks covered thereby shall be determined by Landlord, from time to time, in Landlord's sole discretion. In addition, at Landlord's option, Landlord shall obtain and keep in force, during the Term of this Lease, a policy of rental interruption insurance, with loss payable to Landlord, which insurance shall, at Landlord's option, also cover all Operating Expenses. In addition, Landlord shall have the right to obtain such additional insurance as is customarily carried by owners or operators of other comparable office buildings in the geographical area of the Project. Tenant will not be named as an additional insured in any insurance policies carried by Landlord and shall have no right to any proceeds therefrom. The policies purchased by Landlord shall contain such deductibles as Landlord may determine. In addition to amounts payable by Tenant in accordance with Section 4.2, Tenant shall pay any increase in the property insurance premiums for the Project over what was payable immediately prior to the increase to the extent the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy (other than general office use) or any act or omission of Tenant.

**8.3. Insurance Policies.** Tenant shall deliver to Landlord certificates of the insurance policies required under Section 8.1 prior to the earlier of the Commencement Date or the date Tenant is provided with possession of the Premises and thereafter as necessary to assure that Landlord always has current certificates evidencing Tenant's insurance. Tenant's insurance policies shall not be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Landlord. Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with certificates of renewals thereof. Tenant's insurance policies shall be issued by insurance companies authorized to do business in the state in which the Project is located, and said companies shall maintain during the policy term a "General Policyholders' Rating" of at least "A" and a financial rating of at least "Class X" (or such other rating as may be required by any lender having a lien on the Project), as set forth in the most recent edition of "Best Insurance Reports." All insurance obtained by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. Landlord, and at Landlord's option, the holder of any mortgage or deed of trust encumbering the Project and any person or entity managing the Project on behalf of Landlord, shall be named as an additional insured on all insurance policies Tenant is obligated to obtain by Section 8.1 above. Tenant's commercial general liability insurance policy shall not include deductibles in excess of Twenty Thousand Dollars (\$20,000) and Tenant's Property insurance policy shall not include deductibles in excess of Fifty Thousand Dollars (\$50,000), except for any windstorm policy.

**8.4. Waiver of Subrogation.** Landlord and Tenant hereby waive and shall cause their respective insurance carriers to waive any and all rights of recovery, claims, actions or causes of action against the other for any loss or damage with respect to Tenant's Property, the Building, the Premises, or any contents thereof, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance. For the purposes of this waiver, any deductible with respect to a party's insurance shall be deemed covered by and recoverable by such party under valid and collectable policies of insurance.

**9. Damage or Destruction.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises. If the Premises or the Building are damaged by fire or other casualty, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effectuate a satisfactory settlement with Landlord's insurance company) repair such damage at its own expense, and, the Rent and additional rent shall be abated in proportion to the part of the Premises which is rendered untenable until such repairs have been completed (in no event shall damage to any parking areas be deemed to render the Premises untenable). However, if available insurance proceeds are insufficient or if the Premises or the Building are damaged by fire or other casualty to such an extent that the damage, in Landlord's reasonable opinion, cannot be fully repaired within one hundred eighty (180) days from the date such damage occurs, Landlord shall provide Tenant with written notice of such fact, and thereafter either Landlord or Tenant shall have the right, exercised by giving written notice within such one hundred eighty (180) day period, to terminate this Lease effective as of the date of such damage.



**10. Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or related to Tenant's use of the Premises. If any of Tenant's personal property shall be assessed with Landlord's real or personal property, Tenant shall pay to Landlord the taxes attributable to Tenant within ten (10) days after receipt of a written statement from Landlord setting forth the taxes applicable to Tenant's property. Landlord agrees that Landlord shall be responsible to pay all real property taxes assessed against the Premises or the Building of which the Premises is a part.

**11. Building Services; Utilities.**

**11.1. Services Provided by Landlord.** Subject to all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide HVAC to the Premises for normal office use during the times described in Section 11.2, reasonable amounts of electricity for normal office lighting and desk-type office machines, water in the Premises or in the Common Areas for reasonable and normal drinking and lavatory use, replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures, building standard janitorial services (as more particularly described on Schedule 1 attached hereto), elevator service and access to the Building for the Tenant and its employees 24 hours per day/ 7 days per week subject to the terms of this Lease and such protective services or monitoring systems, if any, as Landlord may reasonably impose and such other services as Landlord reasonably determines are necessary or appropriate for the Project.

**11.2. Hours of Service.** Building services and utilities shall be provided Monday through Friday from 6:00 a.m. to 10:00 p.m. HVAC and janitorial service shall not be provided at other times or on nationally recognized holidays. Nationally recognized holidays shall include, but shall not necessarily be limited to, New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Landlord shall use its best efforts to provide HVAC to Tenant at times other than those set forth above subject to (a) the payment by Tenant of Landlord's then standard charge for after hours HVAC and (b) Tenant providing to Landlord at least one (1) business day's advance written notice of Tenant's need for after hours HVAC.

**11.3. Excess Usage by Tenant.** Tenant's use of Building utilities and services shall not exceed the standard usage for the Building. If Tenant does use Building utilities or services in excess of the standard usage for the Building, Landlord shall have the right, in addition to any other rights or remedies it may have under this Lease, to (a) at Tenant's expense, install separate metering devices at the Premises, and to charge Tenant for its usage, (b) require Tenant to pay to Landlord all costs, expenses and damages incurred by Landlord as a result of such usage, and (c) require Tenant to stop using excess utilities or services.

**11.4. Interruptions.** Tenant agrees that Landlord shall not be liable to Tenant for its failure to furnish, or any interruption, diminishment or termination of services due to the application of Laws, the failure of any equipment, the performance of repairs, improvements or alterations, utility interruptions or the occurrence of a Force Majeure Event and such failures shall never be deemed to constitute a constructive eviction of Tenant or relieve Tenant from the obligation of paying rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for loss of property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any such services or utilities. Landlord may comply with voluntary controls or guidelines promulgated by any governmental entity relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions without creating any liability of Landlord to Tenant under this Lease.

**11.5 Failure to Provide Essential Services.** Notwithstanding the provisions of Section 11.4, in the event the Building experiences an interruption of electrical, telephone, water or HVAC which prevents Tenant from utilizing the Premises to conduct its business (an "Interruption") which Interruption is within the control of Landlord to cure (i.e. not as a result of the inability of Landlord to obtain the applicable utility service through no fault of Landlord) (a "Controllable Interruption.") Landlord shall commence and diligently pursue the curative action within a commercially reasonable amount of time after written notice from Tenant of a Controllable Interruption. If Landlord fails to commence and diligently pursue the curative action within a commercially reasonable amount of time after written notice from Tenant, then Tenant shall have the right, after written notice to Landlord to expend commercially reasonable market sums to cure the Controllable Interruption and offset said amount against the next payments of Rent due hereunder. This self help provision is specifically limited to Controllable Interruptions of service which Landlord is responsible for correction. Notwithstanding the foregoing, Tenant shall be entitled to an abatement of Rent with respect to a Controllable Interruption commencing with the sixth (6th) consecutive business day of the Controllable Interruption until such time as the services are restored.

## 12. Assignment and Subletting.

**12.1. Landlord's Consent Required.** Tenant shall not voluntarily or by operation of law assign, transfer, hypothecate, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises (hereinafter collectively a "Transfer"), without Landlord's prior written consent, which consent shall not be unreasonably withheld. Landlord shall respond to Tenant's written request for consent hereunder within fifteen (15) days after Landlord's receipt of the written request from Tenant. Any attempted Transfer without such consent shall be void and shall constitute a default of this Lease. If the entity(ies) which directly or indirectly controls the voting shares/rights of Tenant changes at any time, such change of ownership or control shall constitute a Transfer unless Tenant is an entity whose outstanding stock is listed on a recognized securities exchange or if at least 80% of its voting stock is owned by another entity, the voting stock of which is so listed. Tenant's written request for Landlord's consent shall include all of the following information: (a) financial statements for the proposed assignee or subtenant, (b) a detailed description of the business the assignee or subtenant intends to operate at the Premises, (c) a copy of the fully executed sublease or assignment agreement, and (d) such other information as Landlord may reasonably request.

**12.2. Standard For Approval.** Landlord shall not unreasonably withhold its consent to a Transfer provided that Tenant has complied with each and every requirement, term and condition of this Section 12. It shall be deemed reasonable for Landlord to withhold its consent to a Transfer if any requirement, term or condition of this Section 12 is not complied with or: (i) the Transfer would cause Landlord to be in violation of its obligations under another lease or agreement to which Landlord is a party; (ii) in Landlord's reasonable judgment, a proposed assignee or subtenant is not a creditworthy party; (iii) a proposed assignee's or subtenant's business will impose a burden on the Building's parking facilities, elevators, Common Areas or utilities that is greater than the burden imposed by Tenant, in Landlord's reasonable judgment; (iv) a proposed assignee or subtenant refuses to enter into a written assignment agreement or sublease, reasonably satisfactory to Landlord, which provides that it will abide by and assume all of the terms and conditions of this Lease for the term of any assignment or sublease and containing such other terms and conditions as Landlord reasonably deems necessary; (v) the use of the Premises by the proposed assignee or subtenant will be for a use not permitted by this Lease; (vi) any guarantor of this Lease refuses to consent to the Transfer or to execute a written agreement reaffirming the guaranty; (vii) Tenant is in default as defined in Section 13.1 at the time of the request (taking into account any grace and cure periods); (viii) if requested by Landlord, the assignee or subtenant refuses to sign a non-disturbance and attornment agreement in favor of Landlord's lender; (ix) Landlord has sued or been sued by the proposed assignee or subtenant or has otherwise been involved in a legal dispute with the proposed assignee or subtenant; (x) the assignee or subtenant is involved in a business which is not in keeping with the then current standards of the Building; (xi) the proposed assignee or subtenant is a person or entity then negotiating with Landlord for the lease of space in the Building; or (xii) the terms of a proposed assignment or subletting will allow the proposed assignee or subtenant to pay a rent less than the prevailing rental rate in the Building at the time of Tenant's request to such Transfer.

**12.3. Additional Terms and Conditions.** Regardless of Landlord's consent, no Transfer shall release Tenant from Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder and to perform all other obligations to be performed by Tenant hereunder or release any guarantor from its obligations under its guaranty. Landlord may accept rent from any person other than Tenant pending approval or disapproval of an assignment or subletting. The consent by Landlord to any Transfer shall not constitute a consent to any subsequent Transfer by Tenant or to any subsequent or successive Transfer by an assignee or subtenant and no assignment or sublease may be modified or amended without Landlord's prior written consent. However, Landlord may consent to subsequent Transfers or any amendments or modifications thereto without notifying Tenant or anyone else liable on the Lease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease. In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including any subtenant or assignee, without first exhausting Landlord's remedies against any other person or entity responsible therefore to Landlord, or any security held by Landlord. The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's consent null and void. Landlord shall not be liable under this Lease or under any sublease to any subtenant. Any assignee of, or subtenant under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Landlord, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment or sublease, other than such obligations as are contrary or inconsistent with provisions of an assignment or sublease to which Landlord has specifically consented in writing.

**12.4. Transfer Premium from Assignment or Subletting.** Landlord shall be entitled to receive from Tenant (as and when received by Tenant) as an item of additional rent fifty percent (50%) of all amounts received by Tenant from the subtenant or assignee in excess of the amounts payable by Tenant to Landlord hereunder (hereinafter the "Transfer Premium"). The Transfer Premium shall be reduced by the reasonable brokerage commissions and legal fees actually paid by Tenant in order to assign the Lease or to sublet a portion of the Premises. "Transfer Premium" shall mean all Rent, additional rent or other consideration of any type whatsoever payable by the assignee or subtenant in excess of the Rent and additional rent payable by Tenant under this Lease. If less than all of the Premises is transferred, the Rent and the additional rent shall be determined on a per rentable square foot basis. For purposes of calculating the Transfer Premium, expenses will be amortized over the life of the sublease.

**12.5. Landlord's Option to Recapture Space.** Notwithstanding anything to the contrary contained in this Section 16, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any request by Tenant to assign this Lease or to sublease space in the Premises, to terminate this Lease with respect to said space as of the date thirty (30) days after Landlord's election. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent and the number of parking spaces Tenant may use shall be adjusted on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the original Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of same.

**12.6. Transfers to Affiliates and Collateral Assignments to Lenders.** Notwithstanding anything to the contrary contained in the Lease, Tenant shall have the right, without Landlord's consent, to assign this Lease or sublet all or any portion of the Premises to: (a) a parent, subsidiary or affiliated entity of Tenant, or (b) any entity to which all or a substantial portion of the assets of Tenant have been transferred, or (c) any entity in connection with a merger, sale of stock, consolidation or other corporate reorganization or transaction involving Tenant (collectively, a "Permitted Transfer"). Tenant shall also have the right to collaterally assign its interest as a tenant in this Lease as security for loan(s) to be made to Tenant (a "Collateral Assignment"). Tenant shall provide Landlord with at least ten (10) business days prior written notice of a Permitted Transfer or a Collateral Assignment.

**13. Default; Remedies.**

**13.1. Default by Tenant.** Landlord and Tenant hereby agree that the occurrence of any one or more of the following events is a default by Tenant under this Lease and that said default shall give Landlord the rights described in Section 13.2. Landlord or Landlord's authorized agent shall have the right to execute and deliver any notice of default, notice to pay rent or quit or any other notice Landlord gives Tenant.

(a) Tenant's failure to make any payment of Rent, late charges or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant (provided however that in no event shall Landlord be obligated to provide written notice more than twice in any twelve month period).

(b) The abandonment of the Premises by Tenant in which event Landlord shall not be obligated to give any notice of default to Tenant.

(c) Tenant's failure to comply with any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant (other than those referenced in Sections 13.1(a) and (b) above), where such failure shall continue for a period of twenty (20) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's nonperformance is such that more than twenty (20) days are reasonably required for its cure, then Tenant shall be allowed additional time (not to exceed 60 days) as is reasonably necessary to cure the failure so long as Tenant commences such cure within said twenty (20) day period and thereafter diligently pursues such cure to completion. In the event that Landlord serves Tenant with a notice to quit or any other notice pursuant to applicable unlawful detainer statutes, said notice shall also constitute the notice required by this Section 13.1(c).

(d) (i) The making by Tenant or any guarantor of Tenant's obligations hereunder of any general arrangement or general assignment for the benefit of creditors; (ii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; (iii) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or (iv) the insolvency of Tenant or Tenant becoming subject to state insolvency or federal bankruptcy. In the event that any provision of this Section 13.1(d) is unenforceable under applicable law, such provision shall be of no force or effect.

**13.2. Remedies.** Upon the occurrence of any event of default by Tenant under this Lease, Landlord shall have the option to pursue any one or more of the following remedies, in addition to the remedies otherwise provided herein or otherwise available at law or in equity, without any notice or demand whatsoever:

(a) Landlord may cancel and terminate this Lease and dispossess Tenant;

(b) Landlord may without terminating or canceling this Lease declare all amounts and rents due under this Lease for the remainder of the Lease Term (or any applicable extension or renewal thereof) to be immediately due and payable, and thereupon all rents and other charges due hereunder to the end of the Lease Term or any renewal term, if applicable, shall be accelerated (after discounting the same to their present value).

(c) Landlord may elect to enter and repossess the Premises and relet the Premises for Tenant's account, holding Tenant liable in damages for all expenses incurred in any such reletting and for any difference between the amount of rent received from such reletting and the amount due and payable under the terms of this Lease.

(d) Landlord may enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease (and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Landlord shall not be liable for any damages resulting to the Tenant from such action), whether caused by the negligence of Landlord or otherwise.

All of the foregoing rights, remedies, powers and elections of Landlord reserved herein are cumulative, and pursuit of any of the foregoing remedies shall not preclude other remedies available under this Lease or provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default, or delay by Landlord in enforcing one or more of such remedies upon an event of default, shall not be deemed or construed to constitute a waiver of such default. All monies expended by Landlord for which Tenant is liable under this Lease, and all amounts and charges due to Landlord under this Lease shall be deemed to constitute rents and all rents shall be paid by Tenant to Landlord without any setoff or counterclaim whatsoever and all past due rents shall bear interest at the maximum legal rate per annum and shall be included in any lien for rent.

**13.3. Default by Landlord.** Except with respect to the specific notice and cure periods set forth in Section 11.5 of this Lease, Landlord shall not be in default under this Lease unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord and to the holder of any mortgage or deed of trust encumbering the Project whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its cure, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Tenant hereby waives its right to recover consequential damages (including, but not limited to, lost profits) or punitive damages arising out of a Landlord default. Except to the extent Tenant obtains a final judgment of constructive eviction in accordance with applicable law or as otherwise permitted by applicable law, in no event shall Tenant have the right to terminate this Lease as a result of Landlord's default, and Tenant's remedies shall be limited to damages and/or an injunction. This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if

such inability or delay is caused by reason of a Force Majeure Event, and the time for Landlord's performance shall be extended for the period of any such delay. Any claim, demand, right or defense by Tenant that arises out of this Lease or the negotiations which preceded this Lease shall be barred unless Tenant commences an action thereon, or interposes a defense by reason thereof, within one (1) year after the date of the inaction, omission, event or action that gave rise to such claim, demand, right or defense.



**13.4. Late Charges.** If any installment of Rent or any other sum due from Tenant shall not be received by Landlord within five (5) days of when such amount shall be due, then, without any requirement for notice or demand to Tenant, Tenant shall immediately pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder including the assessment of interest under Section 13.5.

**13.5. Interest on Past-due Obligations.** Except as expressly herein provided, any amount due to Landlord that is not paid when due shall bear interest at the lesser of ten percent (10%) per annum, or the maximum rate permitted by applicable law. Payment of such interest shall not excuse or cure any default by Tenant under this Lease; provided, however, that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant.

**13.6. Payment of Rent and Security Deposit After Default.** If Tenant fails to pay Rent or any other monetary obligation due hereunder on the date it is due (taking into account any grace and cure period) on at least three occasions, at Landlord's option, all monetary obligations of Tenant hereunder shall thereafter be paid by cashiers check, and Tenant shall, upon demand, provide Landlord with a Security Deposit equal to three (3) months' Rent. If Landlord has required Tenant to make said payments by cashiers check or to provide an additional Security Deposit, Tenant's failure to make a payment by cashiers check or to provide an additional Security Deposit, shall be a default hereunder.

**14. Landlord's Right to Cure Default; Payments by Tenant.** If Tenant shall fail to perform any of its obligations under this Lease, Landlord shall have the right to make any such payment or perform any such act on Tenant's behalf without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder. Tenant shall reimburse Landlord for the cost of such performance upon demand.

**15. Condemnation.** If the Premises or the Project are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "Condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs, except with respect to a temporary taking lasting less than ninety (90) days in which case Tenant's rent will be proportionately abated but the Lease shall continue in full force and effect. Any award for the taking of all or any part of the Premises or the Project under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold, for good will, for the taking of the fee, as severance damages, or as damages for tenant improvements; provided, however, that Tenant shall be entitled to any separate award for loss of or damage to Tenant's removable personal property and for moving expenses.

**16. Broker's Fee.** Tenant and Landlord each represent and warrant to the other that neither has had any dealings or entered into any agreements with any person, entity, broker or finder other than the persons, if any, listed in Section 1.13, in connection with the negotiation of this Lease, and no other broker, person, or entity is entitled to any commission or finder's fee in connection with the negotiation of this Lease, and Tenant and Landlord each agree to indemnify, defend and hold the other harmless from and against any claims, damages, costs, expenses, attorneys' fees or liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings, actions or agreements of the indemnifying party.

#### **17. Subordination; Estoppel Certificates.**

**17.1. Subordination.** This Lease and any options granted to Tenant hereunder, upon Landlord's written election, shall be subject and subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Project and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. At the request of any mortgagee, trustee or ground lessor, Tenant shall attorn to such person or entity. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease are dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof. In the event of the foreclosure of a security device, the new owner shall not (a) be liable for any act or omission of any prior landlord or with respect to events occurring prior to its acquisition of title, (b) be liable for the breach of this Lease by any prior landlord, (c) be subject to any offsets or defenses which Tenant may have against the prior landlord (other than any current rent paid to the Landlord) or (d) be liable to Tenant for the return of its Security Deposit. Tenant agrees to execute and acknowledge any documents Landlord reasonably requests that Tenant execute to effectuate an attornment, a subordination, or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder. Landlord represents and warrants that as of the Commencement Date of this lease, there are no mortgages or ground leases encumbering the Building of which the Premises are a part.

**17.2. Estoppel Certificates.** Tenant shall from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying such information as Landlord may reasonably request including, but not limited to, the following: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) (b) the date to which the Rent and other charges are paid in advance and the amounts so payable, (c) that there are not, to Tenant's knowledge, any uncured defaults or unfulfilled obligations on the part of Landlord, or specifying such defaults or unfulfilled obligations, if any are claimed, (d) that all tenant improvements to be constructed by Landlord, if any, have been completed in accordance with Landlord's obligations and (e) that Tenant has taken possession of the Premises. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Project. At Landlord's option, the failure of Tenant to deliver such statement within such time shall constitute a material default of Tenant hereunder, or it shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance, (c) not more than one month's Rent has been paid in advance, (d) all tenant improvements to be constructed by Landlord, if any, have been completed in accordance with Landlord's obligations and (e) Tenant has taken possession of the Premises.

**18. Landlord's Liability.** Landlord shall have the right to transfer all or any portion of its interest in the Project and to assign this Lease to the transferee. Upon transfer, Landlord shall automatically be released from all further liability under this Lease; and Tenant hereby agrees to look solely to Landlord's transferee for the performance of Landlord's obligations hereunder after the date of the transfer. Upon such a transfer, Landlord shall, at its option, return Tenant's Security Deposit to Tenant or transfer Tenant's Security Deposit to Landlord's transferee and, in either event, Landlord shall have no further liability to Tenant for the return of its Security Deposit. Subject to the rights of any lender holding a mortgage or deed of trust encumbering all or part of the Project, Tenant agrees to look solely to Landlord's equity interest in the Project for the collection of any judgment requiring the payment of money by Landlord arising out of (a) Landlord's failure to perform its obligations under this Lease or (b) the negligence or willful misconduct of Landlord, its partners, employees and agents. No other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of any judgment or writ obtained by Tenant against Landlord. No partner, employee or agent of Landlord shall be personally liable for the performance of Landlord's obligations hereunder or be named as a party in any lawsuit arising out of or related to, directly or indirectly, this Lease and the obligations of Landlord hereunder. The obligations under this Lease do not constitute personal obligations of the individual partners of Landlord and Tenant shall not seek recourse against the individual partners of Landlord or their assets. In no event shall Landlord be liable to Tenant for consequential or punitive damages.

**19. Indemnity.** Except to the extent caused by the gross negligence or willful misconduct of an Indemnified Party (as hereinafter defined), Tenant hereby agrees to indemnify, defend and hold harmless Landlord and its employees, partners, agents, contractors, lenders and ground lessors (said persons and entities are hereinafter collectively referred to as the "Indemnified Parties") from and against any and all liability, loss, cost, damage, claims, loss of rents, liens, judgments, penalties, fines, settlement costs, investigation costs, cost of consultants and experts, attorneys fees, court costs and other legal expenses, effects of environmental contamination, cost of environmental testing, removal, remediation and/or abatement of Hazardous Materials (as said term are defined below), insurance policy deductibles and other expenses (hereinafter collectively referred to as "Damages") arising out of or related to an Indemnified Matter (as defined below). For purposes of this Section, an "Indemnified Matter" shall mean any matter for which one or more of the Indemnified Parties incurs liability or Damages if the liability or Damages arise out of or involve, directly or indirectly, (a) Tenant's or its employees', agents', contractors' or invitees' (all of said persons or entities are hereinafter collectively referred to as "Tenant Parties") use or occupancy of the Premises or the Project, (b) any act, omission or neglect of a Tenant Party, (c) Tenant's failure to perform any of its obligations under the Lease, (d) the existence, use or disposal of any Hazardous Material brought on to the project by a Tenant Party or (e) any other matters for which Tenant has agreed to indemnify Landlord pursuant to any other provision of this Lease. This indemnity is intended to apply to the fullest extent permitted by applicable law. Tenant's obligations under this Section shall survive the expiration or termination of this Lease unless specifically waived in writing by Landlord after said expiration or termination.

Landlord hereby agrees to indemnify, defend and hold harmless Tenant and its employees, agents, and contractors (said persons and entities are hereinafter collectively referred to as the "Tenant Indemnified Parties") from and against any and all Damages that result from the gross negligence or willful misconduct of Landlord its employees and its authorized representatives (a "Tenant Indemnified Matter"). Landlord's obligations hereunder shall include, but shall not be limited to (a) compensating the Tenant Indemnified Parties for Damages arising out of Tenant Indemnified Matters within ten (10) days after written demand from a Tenant Indemnified Party plus a reasonable period of time for Landlord's investigation of the claim and (b) providing a defense, with counsel reasonably satisfactory to the Tenant Indemnified Party, at Landlord's sole expense, within ten (10) days after written demand from the Tenant Indemnified Party, of any claims, action or proceeding arising out of or relating to an Tenant Indemnified Matter. This indemnity is intended to apply to the fullest extent permitted by applicable law. Landlord's obligations under this section shall survive the expiration or termination of this Lease unless specifically waived in writing by Tenant after said expiration or termination. Tenant hereby waives its right to recover consequential, special, indirect, exemplary or punitive damages (including but not limited to, lost profits) arising out of a Tenant Indemnified Matter.

**20. Exemption of Landlord from Liability.** Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for loss of or damage to Tenant's Property, Tenant's employees, agents, contractors or invitees, or any other person in or about the Project, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents, contractors or invitees, whether such damage or injury is caused by or results from any cause whatsoever including, but not limited to, theft, criminal activity at the Project, negligent security measures, bombings or bomb scares, Hazardous Materials, fire, steam, electricity, gas, water or rain, flooding, breakage of pipes, sprinklers, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Project, or from other sources or places, or from new construction or the repair, alteration or improvement of any part of the Project, unless the cause of the damage or injury arises out of Landlord's or its employees', agents' or contractors' grossly negligent or intentional acts. Landlord shall not be liable for any damages arising from any act or neglect of any employees, agents, contractors or invitees of any other tenant, occupant or user of the Project, nor

from the failure of Landlord to enforce the provisions of the lease of any other tenant of the Project. Tenant, as a material part of the consideration to Landlord hereunder, hereby assumes all risk of damage to Tenant's Property or business or injury to persons in, upon or about the Project arising from any cause, excluding Landlord's gross negligence or the gross negligence of its employees, agents or contractors, and Tenant hereby waives all claims in respect thereof against Landlord, its employees, agents and contractors.

## **21. Hazardous Material.**

**21.1. Indemnity; Duty to Inform Landlord.** Tenant shall not cause or permit any Hazardous Material (as defined hereinafter) to be brought, kept or used in or about the Premises or the Project by Tenant, its agents, employees, contractors, or invitees. Tenant hereby agrees to indemnify Landlord from and against any breach by Tenant of the obligations stated in the preceding sentence, and agrees to defend and hold Landlord harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Project, damages for the loss or restriction or use of rentable space or of any amenity of the Project, damages arising from any adverse impact on marketing of space in the Project, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term of this Lease as result of such breach. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions and any cleanup, remedial removal, or restoration work required due to the presence of Hazardous Material. If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from same, has come to be located in, on or under or about the Premises or the Project, Tenant shall immediately give written notice of such fact to Landlord. Tenant shall also immediately give Landlord (without demand by Landlord) a copy of any statement, report, notice, registration, application, permit, license, given to or received from, any governmental authority or private party, or persons entering or occupying the Premises, concerning the presence, spill, release, discharge of or exposure to, any Hazardous Substance or contamination in, on or about the Premises or the Project. The provisions of this Section 21 shall survive the termination of the Lease.

**21.2. Definition and Consent.** The term "Hazardous Substance" as used in this Lease shall mean any hazardous substance, hazardous waste, infectious waste, or toxic substance, product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or affect, either by itself or in combination with other materials expected to be on the Premises, is either: (a) potentially injurious to the public health, safety or welfare, the environment or the Premises, (b) regulated or monitored by any governmental entity, (c) a basis for liability of Landlord to any governmental entity or third party under any federal, state or local statute or common law theory or (d) defined as a hazardous material or substance by any federal, state or local law or regulation. Except for small quantities of ordinary office supplies such as copier toner, liquid paper, glue, ink and common household cleaning materials, Tenant shall not cause or permit any Hazardous Substance to be brought, kept, or used in or about the Premises or the Project by Tenant, its agents, employees, contractors or invitees.

**21.3. Inspection; Compliance.** Landlord and Landlord's employees, agent, contractors and lenders shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Section 21. Landlord shall have the right to employ experts and/or consultants in connection with its examination of the Premises and with respect to the installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a contamination, caused or materially contributed to by Tenant, is found to exist or be imminent, or unless the inspection is requested or ordered by governmental authority as the result of any such existing or imminent violation or contamination. In any such case, Tenant shall upon request reimburse Landlord for the cost and expenses of such inspection.

**22. Force Majeure.** Landlord will not be deemed in default or have liability to Tenant, nor will Tenant have any right to terminate this Lease or abate rent or assert a claim of partial or constructive eviction, because of Landlord's failure to perform any of its obligations under this Lease if the failure is due in part or in full to reasons beyond Landlord's reasonable control. Such reasons will include but not be limited to: fire, earthquake, weather delays or other acts of God, strikes, boycotts, war, terrorism, bio-terrorism, riot, insurrection, embargoes, shortages of equipment, labor or materials, utility failure or defect, delays in issuance of any necessary governmental permit or approval (including building permits and certificates of occupancy), any governmental preemption in connection with a national emergency or any other cause, whether similar or dissimilar, which is beyond a party's reasonable control (each, hereinafter, a "Force Majeure Event"). If this Lease specifies a time period for performance of an obligation by Landlord, that time period will be extended by the period of any delay in Landlord's performance caused by the Force Majeure Event.

Tenant will not be deemed in default or have liability to Landlord because of Tenant's failure to perform any of its obligations under this Lease (other than an obligation to pay money) if the failure is due in part or in full to a Force Majeure Event. If this Lease specifies a time period for performance of an obligation by Tenant, that time period will be extended by the period of any delay in Tenant's performance caused by the Force Majeure Event.

## **23. Landlord's Rights.**

**23.1. Landlord Reservations.** Landlord shall have the right: (a) to change the name and address of the Project or Building upon not less than ninety (90) days prior written notice; (b) to provide and install Building standard graphics on or near the door of the Premises and such portions of the Common Areas as Landlord shall determine, in Landlord's sole discretion; (c) to permit any tenant the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and (d) to place signs, notices or displays upon the roof, interior, exterior or Common Areas of the Project. Tenant shall not permit anyone, except in an emergency, to go upon the roof of the Building. Landlord reserves the right to use the exterior walls of the Premises, and the area beneath, adjacent to and above the Premises, together with the right to install, use, maintain and replace equipment, machinery, pipes, conduits and wiring through the Premises, which serve other parts of the Project, provided that Landlord's use does not unreasonably interfere with Tenant's use of the Premises. Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents within ten (10) days after Landlord's request and Tenant's failure to do so shall constitute a default by Tenant. The obstruction of Tenant's view, air, or light by any structure erected in the vicinity of the Project, whether by Landlord or third parties,

shall in no way affect this Lease or impose any liability upon Landlord.

**23.2. Changes to Project.** Landlord shall have the right, in Landlord's sole discretion, from time to time, to make changes to the size, shape, location, number and extent of the improvements comprising the Project (hereinafter referred to as "Changes") including, but not limited to, the Project interior and exterior, the Common Areas, elevators, escalators, restrooms, HVAC, electrical systems, communication systems, fire protection and detection systems, plumbing systems, security systems, parking control systems, driveways, entrances, parking spaces, parking areas and landscaped areas. In connection with the Changes, Landlord may, among other things, erect scaffolding or other necessary structures at the Project, limit or eliminate access to portions of the Project, including portions of the Common Areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Changes and Landlord's actions in connection with such Changes shall in no way constitute a constructive eviction of Tenant or entitle Tenant to any abatement of rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Changes, nor shall Tenant be entitled to any compensation or damages from Landlord for any inconvenience or annoyance occasioned by such Changes or Landlord's actions in connection with such Changes. Landlord agrees to use commercially reasonable efforts to minimize interference with Tenant's operations within the Premises in connection with any such Changes.

**23.3. Landlord's Access.** Landlord and Landlord's agents, contractors and employees shall have the right to enter the Premises at reasonable times for the purpose of inspecting the Premises, performing any services required of Landlord, showing the Premises to prospective purchasers, lenders, or tenants, undertaking safety measures and making alterations, repairs, improvements or additions to the Premises or to the Project. In the event of an emergency, Landlord may gain access to the Premises by any reasonable means, and Landlord shall not be liable to Tenant for damage to the Premises or to Tenant's Property resulting from such access. Landlord shall have the right to retain keys to the locks on the entry doors to the Premises and all interior doors at the Premises. At Landlord's option, Landlord may require Tenant to obtain all keys to door locks at the Premises from Landlord's engineering staff or Landlord's locksmith and to only use Landlord's engineering staff or Landlord's locksmith to change locks at the Premises. Tenant shall pay Landlord's or its locksmith's standard charge for all keys and other services obtained from Landlord's engineering staff or locksmith.

**24. Parking.** During the Term and subject to the rules and regulations attached hereto as Exhibit "B" as modified by Landlord from time to time (the "Rules"), Tenant shall be entitled to use twenty (20) unreserved parking spaces in the Building's garage and Tenant shall be entitled to use seven (7) reserved parking spaces in the first floor of the Building's garage. For purposes of this Lease, a "parking space" refers to the space in which one (1) motor vehicle is intended to park. If Tenant commits or allows in the parking facility any of the activities prohibited by the Lease or the Rules, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable by Tenant upon demand by Landlord. Tenant's parking rights are the personal rights of Tenant and Tenant shall not transfer, assign, or otherwise convey its parking rights separate and apart from this Lease. Landlord agrees that during the term of this Lease, Landlord will make available guest parking spaces in the Building's garage.

**25. INTENTIONALLY DELETED.**

**26. Holding Over.** If Tenant remains in possession of the Premises or any part thereof after the expiration or earlier termination of the term hereof with Landlord's consent, such occupancy shall be a tenancy from month to month upon all the terms and conditions of this Lease pertaining to the obligations of Tenant, except that the monthly Rent payable shall be one hundred fifty percent (150%) of the monthly Rent that was payable in the month immediately preceding the termination date of this Lease for the first thirty (30) days of such holdover, and thereafter the monthly Rent payable shall be two hundred percent (200%) of the monthly Rent that was payable in the month immediately preceding the termination date of this Lease. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term hereof without Landlord's consent, Tenant shall, at Landlord's option, be treated as a tenant at sufferance or a trespasser. Nothing contained herein shall be construed to constitute Landlord's consent to Tenant holding over at the expiration or earlier termination of the Term of the Lease. Tenant hereby agrees to indemnify, hold harmless and defend Landlord from any cost, loss, claim or liability (including attorneys' fees) Landlord may incur as a result of Tenant's failure to surrender possession of the Premises to Landlord upon the termination of this Lease.

**27. Perimeter Access Control.** Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project, and Landlord shall have no liability to Tenant due to its failure to provide such services. Tenant assumes all responsibility for the protection of Tenant, its agents, employees, contractors and invitees and the property of Tenant and of Tenant's agents, employees, contractors and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from implementing security measures for the Project or any part thereof, in which event Tenant shall participate in such security measures and Tenant's share of the cost thereof may be charged to Tenant, and Landlord shall have no liability to Tenant and its agents, employees, contractors and invitees arising out of Landlord's negligent provision of security measures. Landlord shall have the right, but not the obligation, to require all persons entering or leaving the Project to identify themselves to a security guard and to reasonably establish that such person should be permitted access to the Project.

**28. Signs.** Tenant shall not place any sign upon the Premises (including on the inside or the outside of the doors or windows of the Premises) or the Project without Landlord's prior written consent, which may be given or withheld in Landlord's reasonable discretion. Landlord shall have the right to place any sign it deems appropriate on any portion of the Project except the interior of the Premises. Any sign Landlord permits Tenant to place upon the Premises shall be maintained by Tenant, at Tenant's sole expense. If Landlord permits Tenant to include its name in the Building's directory, the cost of placing Tenant's name in the directory and the cost of any subsequent modifications thereto shall be paid by Tenant, at Tenant's sole expense. Landlord acknowledges and agrees that Tenant shall have the right to place a sign identifying the Premises and a sign identifying that certain of Tenant's principals are the holders of a Florida real estate broker's licenses outside of the Tenant's principal entrance to the Premises with Landlord's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned. Landlord further acknowledges that Landlord shall either (i) provide a building directory identifying the Tenant's suite in the lobby of the Building or (ii) advise the Landlord's receptionist seated in the lobby of the Building to direct Tenant's customers and guests to Tenant's suite within the Building.

**29. Notices.** All notices required or permitted by this Lease shall be in writing and shall be delivered (a) by hand, (b) by U.S. Postal Service certified mail, return receipt requested, or (c) by U.S. Postal Service Express Mail, Federal Express or other overnight courier and shall be deemed sufficiently given if served in a manner specified in this Section. The addresses set forth in Section 1.15 of this Lease shall be the address of each party for notice purposes. Landlord or Tenant may by written notice to the other specify a different address or addresses for notices purposes, except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for the purpose of mailing or delivering notices to Tenant. Any notice sent by certified mail, return receipt requested, shall be deemed given three (3) days after deposited with the U.S. Postal Service. Notices delivered by U.S. Express Mail, Federal Express or other courier shall be deemed given on the date delivered by the carrier to the appropriate party's address for notice purposes. If notice is received on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day. Nothing contained herein shall be construed to limit Landlord's right to serve any notice to pay rent or quit or similar notice by any method permitted by applicable law, and any such notice shall be effective if served in accordance with any method permitted by applicable law whether or not the requirements of this Section have been met. Tenant hereby elects domicile at the Premises for the purpose of service of all notices, writs of summons or other legal documents or process in any suit, action or proceeding which Landlord or any mortgagee may undertake under this Lease. Notice from Landlord may be given to Tenant by Landlord or Landlord's agent or attorney.

**30. Miscellaneous.**

**30.1. Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

**30.2. Time of Essence.** Time is of the essence with respect to each of the obligations to be performed by Tenant and Landlord under this Lease.

**30.3. Incorporation of Prior Agreements.** This Lease and the attachments listed in Section 1.14 contain all agreements of the parties with respect to the lease of the Premises and any other matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker nor Landlord or any employee or agents of any of said persons has made any oral or written warranties or representations to Tenant concerning the condition or use by Tenant of the Premises or the Project or concerning any other matter addressed by this Lease.

**30.4. Waivers.** No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Landlord or Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No acceptance by Landlord of partial payment of any sum due from Tenant shall be deemed a waiver by Landlord of its right to receive the full amount due, nor shall any endorsement or statement on any check or accompanying letter from Tenant be deemed an accord and satisfaction. Tenant hereby waives for Tenant and all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease. This Lease shall be construed as though the covenants contained herein are independent and not dependent and Tenant hereby waives the benefit of any statute to the contrary. All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions.

**30.5. Amendments.** This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

**30.6. Binding Effect; Choice of Law; Conflict.** Subject to any provision hereof restricting assignment or subletting by Tenant, this Lease shall bind the parties, their heirs, personal representatives, successors and assigns. This Lease shall be governed by the laws of the state in which the Project is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Project is located. Except as otherwise provided herein to the contrary, any conflict between the printed provisions, exhibits, addenda or riders of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

**30.7. Attorneys' Fees.** If Landlord or Tenant brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, or appeal thereon, shall be entitled to its reasonable attorneys' fees and court costs to be paid by the losing party as fixed by the court in the same or separate suit, and whether or not such action is pursued to decision or judgment. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees and court costs reasonably incurred in good faith. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default. Landlord and Tenant agree that attorneys' fees incurred with respect to defaults and bankruptcy are actual pecuniary losses within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code or any successor statute.

**30.8. Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or the Common Areas. The holding of any auction on the Premises or Common Areas in violation of this Section 30.8 shall constitute a material default hereunder.

**30.9. Merger; Relationship of Parties.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not result in the merger of Landlord's and Tenant's estates, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

**30.10. Quiet Possession.** Subject to the other terms and conditions of this Lease, and the rights of any lender, and provided Tenant is not in default hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all of the provisions of this Lease.

**30.11. Authority; Multiple Parties.** If Tenant is a corporation, trust, general or limited partnership, or other entity, Tenant, and each individual executing this Lease on behalf of such entity, represents and warrants that such individual is duly authorized to execute and deliver this Lease on behalf of said entity, that said entity is duly authorized to enter into this Lease, and that this Lease is enforceable against said entity in accordance with its terms. If Tenant is a corporation, trust or partnership, Tenant shall deliver to Landlord upon demand evidence of such authority satisfactory to Landlord. If more than one person or entity is named as Tenant herein, the obligations of Tenant shall be the joint and several responsibility of all persons or entities named herein as Tenant. Service of a notice in accordance with Section 29 on one Tenant shall be deemed service of notice on all Tenants.

**30.12. Interpretation.** This Lease shall be interpreted as if it was prepared by both parties and ambiguities shall not be resolved in favor of Tenant because all or a portion of this Lease was prepared by Landlord. The captions contained in this Lease are for convenience only and shall not be deemed to limit or alter the meaning of this Lease. As used in this Lease the words tenant and landlord include the plural as well as the singular. Words used in the neuter gender include the masculine and feminine gender. The deletion of any printed, typed or other portion of this Lease shall not evidence the parties' intention to contradict such deleted portion. Such deleted portion shall be deemed not to have been inserted in this Lease. Notwithstanding anything to the contrary contained in this Lease, if the Term of the Lease has not commenced within twenty-one (21) years after the date of this Lease, this Lease shall automatically terminate on the twenty-first (21st) anniversary of such date. The sole purpose of this provision is to avoid any interpretation of this Lease as a violation of the Rule Against Perpetuities, or any other rule of law or equity concerning restraints on alienation.

**30.13. Prohibition Against Recording.** Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant. Landlord shall have the right to record a memorandum of this Lease, and Tenant shall execute, acknowledge and deliver to Landlord for recording a commercially reasonable form of memorandum prepared by Landlord.

**30.14. Rules and Regulations.** Tenant agrees to abide by and conform to the Rules and to cause its employees, suppliers, customers and invitees to so abide and conform. Landlord shall have the right, from time to time, to modify, amend and enforce the Rules. Landlord shall not be responsible to Tenant for the failure of other persons including, but not limited to, other tenants, their agents, employees and invitees to comply with the Rules.

**30.15. Intentionally Omitted.**

**30.16. Attachments.** The items listed in Section 1.14 are a part of this Lease and are incorporated herein by this reference.

**30.17. Confidentiality.** Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate other leases with respect to the Project and may impair Landlord's relationship with other tenants of the Project. Tenant agrees that, except as otherwise required by law (including to comply with its obligations under the Federal Securities Laws), it and its partners, officers, directors, employees, brokers, and attorneys, if any, shall not disclose the terms and conditions of this Lease to any other person or entity without the prior written consent of Landlord which may be given or withheld by Landlord, in Landlord's sole discretion. It is understood and agreed that damages alone would be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall also have the right to seek specific performance of this provision and to seek injunctive relief to prevent its breach or continued breach.

Landlord agrees that it will not publicize the terms of this Lease without Tenant's prior written consent, which consent will not be unreasonably withheld, delayed or conditioned.





**30.18 Lease of Furniture.** Landlord hereby also leases to Tenant the furniture and other items listed on Exhibit "C" attached hereto (the "Furniture") during the term of this Lease at no additional cost to Tenant beyond the Rent stated herein. Tenant accepts the Furniture in its "as-is" condition existing as of the Commencement Date of this Lease. Tenant agrees to return the Furniture to Landlord at the expiration or earlier termination of this Lease in the same condition as when it was received, ordinary wear and tear excepted. Landlord warrants that it owns all of the furniture.

### **31. OFAC Certification.**

**31.1.** Tenant certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.

**31.2.** Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

**32. RADON DISCLOSURE.** Tenant is hereby advised that radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. The foregoing disclosure is provided to comply with state law and is for informational purposes only. Landlord has not conducted radon testing with respect to the Building and specifically disclaims any and all representations and warranties as to the absence of radon gas or radon producing conditions in connection with the Building and the Premises.

**33. WAIVER OF JURY TRIAL.** LANDLORD AND TENANT HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER LANDLORD AGAINST TENANT OR TENANT AGAINST LANDLORD ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

LANDLORD AND TENANT ACKNOWLEDGE THAT THEY HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES. TENANT ACKNOWLEDGES THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE THIS LEASE REVIEWED BY ITS LEGAL COUNSEL PRIOR TO ITS EXECUTION. PREPARATION OF THIS LEASE BY LANDLORD OR LANDLORD'S AGENT AND SUBMISSION OF SAME TO TENANT SHALL NOT BE DEEMED AN OFFER BY LANDLORD TO LEASE THE PREMISES TO TENANT OR THE GRANT OF AN OPTION TO TENANT TO LEASE THE PREMISES. THIS LEASE SHALL BECOME BINDING UPON LANDLORD AND TENANT ONLY WHEN FULLY EXECUTED BY BOTH PARTIES AND WHEN LANDLORD HAS DELIVERED A FULLY EXECUTED ORIGINAL OF THIS LEASE TO TENANT.

**34. EXPANSION RIGHT.** At any time prior to July 1, 2008, Tenant shall have the right to provide Landlord with notice in writing that Tenant will lease the remaining 1120 square feet on the north portion of the 11<sup>th</sup> floor, and at any time prior to December 31, 2008 Tenant shall have the right to provide Landlord with notice in writing that Tenant will lease all or a portion of the south portion of the 11<sup>th</sup> floor (the "Expansion Space"). The terms of the lease for the Expansion Space shall be the same as the terms contained in this Lease, except that the Rent to be paid by Tenant for such Expansion Space shall be the then prevailing rate as determined by Landlord. Tenant's right to lease such Expansion Space shall automatically terminate if Tenant fails to timely notify Landlord in writing that Tenant will lease the Expansion Space.

### **35. OPTIONS TO RENEW.**

**A.** Provided no default exists and Tenant is occupying the entire Premises at the time of such election, Tenant may renew this Lease for one (1) additional period of five (5) years (the "First Extension Term") on the same terms provided in this Lease (except as set forth below), by delivering written notice (the "First Renewal Notice") of the exercise thereof to Landlord at least nine (9) months prior to the expiration date of this Lease. Upon Tenant's timely notice of the exercise of the option to renew, the Lease shall be extended on the same terms provided in this Lease, except as follows:

- (a) The Rent payable during such First Extension Term shall be the prevailing rental rate, as determined by Landlord in its commercially reasonable discretion (and with Landlord's delivery, if requested by Tenant, of the basis for such determination), for buildings comparable to the Building, at the commencement of such First Extension Term, for space of equivalent quality, size, utility and location, with the length of the First Extension Term and the credit standing of Tenant to be taken into account; and



- (b) Landlord shall lease to Tenant the Premises in their then current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, tenant improvements allowance and the like) or other tenant inducements.

Landlord shall deliver written notice (the "Landlord Notice") to Tenant, within thirty (30) days after Landlord's receipt of a timely First Renewal Notice, which sets forth the Rent determined by Landlord to be payable during the First Extension Term after consideration of the factors set forth under clause (a) above. Tenant shall have the right, within ten (10) days following the date of the Landlord Notice, to deliver written notice (the "First Revocation Notice") to Landlord that Tenant elects to revoke its exercise of the renewal option. If Tenant delivers a First Revocation Notice, Tenant shall have no further right to extend the term of this Lease and this Lease shall terminate upon the expiration of the initial term hereof. If Tenant timely delivers a First Renewal Notice but fails to timely deliver a First Revocation Notice, this Lease shall be extended on the terms set forth above and at the Rent specified in the Landlord Notice.

Tenant's right to extend the term of this Lease shall terminate if (i) this Lease or Tenant's right to possession of the Premises is terminated, (ii) Tenant, at any time during the Lease Term, assigns any of its interest in this Lease or sublets any portion of the Premises other than as permitted under the terms of Section 12.6 hereof, (iii) Tenant delivers a First Revocation Notice, or (iv) Tenant fails to timely exercise its option under this Section 34A. , time being of the essence with respect to Tenant's exercise thereof.

**B.** Provided no default exists and Tenant is occupying the entire Premises at the time of such election, Tenant may renew this Lease for a second additional period of five (5) years (the "Second Extension Term") on the same terms provided in this Lease (except as set forth below), by delivering written notice (the "Second Renewal Notice") of the exercise thereof to Landlord at least nine (9) months prior to the expiration date of the First Extension Term. Upon Tenant's timely notice of the exercise of the option to renew, the Lease shall be extended on the same terms provided in this Lease, except as follows:

- (a) The Rent payable during such Second Extension Term shall be the prevailing rental rate, as determined by Landlord in its commercially reasonable discretion (and with Landlord's delivery, if requested by Tenant, of the basis for such determination), for buildings comparable to the Building, at the commencement of such Second Extension Term, for space of equivalent quality, size, utility and location, with the length of the Second Extension Term and the credit standing of Tenant to be taken into account;
- (b) Tenant shall have no further renewal options unless hereafter expressly granted by Landlord in writing; and
- (c) Landlord shall lease to Tenant the Premises in their then current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, tenant improvements allowance and the like) or other tenant inducements.

Landlord shall deliver written notice (the "Landlord Notice") to Tenant, within thirty (30) days after Landlord's receipt of a timely Second Renewal Notice, which sets forth the Rent determined by Landlord to be payable during the Second Extension Term after consideration of the factors set forth under clause (a) above. Tenant shall have the right, within ten (10) days following the date of the Landlord Notice, to deliver written notice (the "Second Revocation Notice") to Landlord that Tenant elects to revoke its exercise of the renewal option. If Tenant delivers a Second Revocation Notice, Tenant shall have no further right to extend the term of this Lease and this Lease shall terminate upon the expiration of the initial term hereof. If Tenant timely delivers a Second Renewal Notice but fails to timely deliver a Second Revocation Notice, this Lease shall be extended on the terms set forth above and at the Rent specified in the Landlord Notice.

Tenant's right to extend the term of this Lease shall terminate if (i) this Lease or Tenant's right to possession of the Premises is terminated, (ii) Tenant, at any time during the Lease Term, assigns any of its interest in this Lease or sublets any portion of the Premises other than as permitted under the terms of Section 12.6 hereof, (iii) Tenant delivers a Second Revocation Notice, or (iv) Tenant fails to timely exercise its option under this Section 34B. , time being of the essence with respect to Tenant's exercise thereof.

**[SIGNATURE PAGE FOLLOWS]**

WITNESSES:

LANDLORD:

FROST REAL ESTATE HOLDINGS, LLC  
a Florida limited liability company

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: /s/ Yehuda Ben-Horn

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Name: Yehuda Ben-Horn

Title: VP Engineering Services

TENANT:

OPKO HEALTH INC.,  
a Delaware corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: /s/ Adam Logal

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Name: Adam Logal

Title: Chief Accounting Officer and Treasurer

**OPKO Health, Inc.**

**CERTIFICATION PURSUANT TO  
RULE 13A-14 OF THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Phillip Frost, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended September 30, 2007 of OPKO Health Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The Registrant's other certifying officer and I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15(e)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2007

/s/ Phillip Frost

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Phillip Frost  
Chairman of the Board,  
Chief Executive Officer

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**OPKO Health, Inc.**  
**CERTIFICATION PURSUANT TO**  
**RULE 13A-14 OF THE SECURITIES EXCHANGE ACT OF 1934**  
**AS ADOPTED PURSUANT TO**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rao Uppaluri, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarter ended September 30, 2007 of OPKO Health Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The Registrant's other certifying officer and I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 (e) and 15d-15(e)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2007

/s/ Rao Uppaluri

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Rao Uppaluri  
Chief Financial Officer

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**Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  
(Subsections (a) and (b) of Section 1350, Chapter 73 of Title 18, United States Code)**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant section 906 of the Sarbanes-Oxley Act of 2002, I, Phillip Frost, Chief Executive Officer of OPKO Health, Inc. (the "Company"), hereby certify that:

The Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2007

/s/ Phillip Frost

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Phillip Frost  
Chairman of the Board,  
Chief Executive Officer

A signed original of this written statement required by Section 907 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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**Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  
(Subsections (a) and (b) of Section 1350, Chapter 73 of Title 18, United States Code)**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant section 906 of the Sarbanes-Oxley Act of 2002, I, Rao Uppaluri, Chief Financial Officer of OPKO Health, Inc. (the "Company"), hereby certify that:

The Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2007 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2007

/s/ Rao Uppaluri

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Rao Uppaluri  
Chief Financial Officer

A signed original of this written statement required by Section 907 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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