UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

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

For The Fiscal Year Ended December 31, 2003

OR

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

For the transition period from to .

Commission File No. 0-19700

AMYLIN PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**33-0266089**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
9360 Towne Centre Drive, Suite 110 San Diego, California	**92121**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(858) 552-2200**

Securities registered pursuant to Section 12(b) of the Act:
NONE

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, $.001 par value
(Title of Class)

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

The aggregate market value of the common stock of the registrant, as of June 30, 2003, held by non-affiliates was $1,446,463,042**.**

The number of shares outstanding of the registrant's common stock was 93,837,889 as of March 1, 2004.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement to be filed with the Securities and Exchange Commission (the "Commission") pursuant to Regulation 14A in connection with the 2004 Annual Meeting of Stockholders to be held on May 5, 2004 are incorporated herein by reference into Part III of this Report. Such Definitive Proxy Statement will be filed with the Commission not later than 120 days after December 31, 2003.

You should read the following together with the more detailed information regarding our company, our common stock and our financial statements and notes to those statements appearing elsewhere in this document or incorporated here by reference. The SEC allows us to "incorporate by reference" information that we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this annual report.

Except for the historical information contained herein, this annual report on Form 10-K and the information incorporated by reference contains forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results may differ materially from those discussed here. Factors that could cause or contribute to such differences are described below in "Risk Factors Related To Our Business," as well as those discussed in Part II, Item 7 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere throughout this annual report on Form 10-K and in any other documents incorporated by reference into this report. We assume no obligation to update any forward-looking statement.

PART I

Item 1. *Business*

Amylin Pharmaceuticals, Inc.

We are a biopharmaceutical company engaged in the discovery, development and commercialization of drug candidates for the treatment of diabetes, obesity and cardiovascular disease. We currently have two first-in-class lead drug candidates in late stage development for the treatment of diabetes, SYMLIN® (pramlintide acetate) and exenatide. In June 2003, we submitted an amendment to our SYMLIN New Drug Application, or NDA, to address questions from the United States Food and Drug Administration, or FDA. In December 2003, we received a second approvable letter from the FDA indicating that SYMLIN is approvable for marketing in the United States as an adjunctive therapy with insulin, subject to our providing the FDA additional clinical data to identify a patient population and method of use for SYMLIN where there is no increased risk of significant hypoglycemia or where there is an added benefit that clearly counterbalances any potential for increases in episodes of hypoglycemia. We believe that existing data generated since our June 2003 amendment to our SYMLIN NDA could provide the necessary data requested by the FDA. We are currently in discussions with the FDA regarding the specific requirements for approval.

Our second drug candidate, exenatide, is being investigated for its potential to treat people with type 2 diabetes who fail to reach target blood glucose levels with diet, exercise, and metformin, sulfonylureas or a combination of metformin and sulfonylureas. Exenatide is the first of a new class of compounds known as incretin mimetics. We completed three pivotal Phase 3 clinical trials on exenatide in late 2003, and in December 2003, we received $35 million in milestone payments from Eli Lilly and Company, or Lilly, our collaboration partner for exenatide. All of the pivotal studies met the primary glucose control endpoint as measured by hemoglobin A1C, or A1C. A1C is a measure that reflects average glucose levels over the prior 3 to 4 month period. We believe the data from our Phase 3 program provides a solid base for a regulatory submission to the FDA, currently projected for mid-2004. Additionally, we are developing a sustained release formulation of exenatide, exenatide LAR, that is in a Phase 2 clinical program. We have a collaboration agreement with Lilly for the worldwide development and commercialization of exenatide and sustained release formulations of exenatide.

We are developing additional drug candidates for the treatment of obesity. This includes a Phase 2 program for AC137 (pramlintide acetate) which is the same compound as SYMLIN and a Phase 1 program for AC162352 (PYY 3-36). We also have two drug candidates for the treatment of cardiovascular disease. This includes a Phase 2 program for AC2592 (glucagon-like peptide 1, or GLP-1) for the treatment of severe congestive heart failure and a Phase 1 program for AC3056 for the treatment of atherosclerosis-related cardiovascular disease. We maintain a discovery research program focused on peptide therapeutics and are actively seeking to in-license additional drug candidates.

Our principal executive offices are located at 9360 Towne Centre Drive, Suite 110, San Diego, CA 92121, and our telephone number is (858) 552-2200. We were incorporated in Delaware in September 1987. We maintain a website at *www.amylin.com*. The reference to our worldwide web address does not constitute incorporation by reference of the information contained on our website.

Our periodic and current reports that we file with the Securities and Exchange Commission, or SEC, are available free of charge, on our website at *www.amylin.com*, as soon as reasonably practicable after we have electronically filed them with, or furnished them to, the SEC.

Product Pipeline

	Drug Discovery	Preclinical Development	Clinical Studies P1	Clinical Studies P2	Clinical Studies P3	Regulatory Review	Commercialization
SYMLIN®						X	
Exenatide					X		
Exenatide LAR				X			
AC2592				X			
AC137				X			
AC162352			X				
AC3056			X				
Peptide Programs	X	X					

Diabetes

Diabetes is a major health problem in most developed countries and is the fifth leading cause of death by disease in the United States. It is a progressive disease caused primarily by a deficiency of the hormone insulin, which is secreted by the pancreas, or a failure of the body to properly use available insulin. Diabetes is characterized by poor control of blood sugar, or glucose, concentrations and frequently results in severe long-term complications, such as heart, eye, kidney and peripheral vascular diseases.

It is estimated that over 194 million people worldwide have diabetes. Of that population, approximately 18 million have type 1 diabetes, also known as juvenile onset diabetes, and approximately 159 million have type 2 diabetes, also known as adult-onset diabetes. In the United States alone, in 2002 there were approximately 13 million people diagnosed with diabetes, and approximately 1.3 million new cases of diabetes are diagnosed each year.

In people without diabetes, the beta cells of the pancreas produce two hormones, insulin and amylin. Type 1 diabetes destroys beta cells that produce both insulin and amylin, and most often is diagnosed in children and young adults. Replacement of beta cells through islet transplant therapy can, in some cases, temporarily render patients insulin-independent; however, life-long daily insulin therapy is eventually necessary to sustain life for people with type 1 diabetes.

Type 2 diabetes is a complex metabolic disease resulting from the body's inability to make enough insulin or to properly use available insulin. Amylin secretion is also impaired in people with type 2 diabetes. Historically, type 2 diabetes occurred later in life. However, primarily as a result of changes in diet and lifestyle, it is now occurring much earlier in life. Diet and exercise therapy, in addition to a number of oral medications that either stimulate insulin production or improve tissue sensitivity to insulin, are currently used to treat type 2 diabetes.

Type 2 diabetes begins with impaired glucose tolerance (a prediabetic state) and progresses to overt hyperglycemia (elevated blood glucose concentrations). Because of the progressive nature of the disease, no single therapy is currently effective in controlling the disease over time. As the disease progresses, additional treatments, typically oral medications, are necessary, and these often become ineffective to regulate blood glucose concentrations within accepted guidelines established by the American Diabetes Association. At this stage, the therapy must be supplemented or replaced. Insulin is added to the treatment regimen for many people with type 2 diabetes when oral therapies become ineffective. Over time, the insulin dosage and number of injections are usually increased when desired blood glucose control cannot be achieved. Even with additional insulin injections, however, many people are unable to regulate their blood glucose concentrations within accepted guidelines, or do so at the expense of weight gain and increased risk of low blood glucose concentrations, or hypoglycemia.

For people suffering from diabetes, poor control of blood glucose concentrations has been shown to result in severe long-term complications. For instance, damage to small blood vessels due to diabetes may result in disorders such as:

- retinopathy, a condition manifested by damage to the retina;
- nephropathy, or kidney disease;
- neuropathy, a condition where there is damage to the nervous system; and
- peripheral vascular disease.

Weight control and obesity are also major problems for patients with diabetes, particularly for those people using insulin as part of their treatment regimen. Other metabolic complications resulting from diabetes and associated metabolic disorders include high blood pressure and dyslipidemia, the abnormal metabolism of fat. These undesired metabolic effects may result in additional complications involving large blood vessels, which can lead to heart attacks, strokes and amputations of lower extremities. Further, patients with diabetes frequently have wide fluctuations in blood sugar following meals. These fluctuations in blood sugar can significantly affect a patient's quality of life. Collectively, these complications and associated metabolic disorders can lead to increased pain, suffering, reduced quality of life and early death.

The most widely accepted measure of long-term blood glucose is glycated hemoglobin, or A1C. A person's A1C level is a recognized indicator of that individual's average blood glucose concentrations over a 3 to 4-month period. Lower A1C levels indicate better blood glucose control, on average. A1C levels in people without diabetes are usually less than 6%. The American Diabetes Association's Clinical Practice Recommendations suggest that people with diabetes should aim for an A1C level that is lower than 7%. Only a minority of people diagnosed with diabetes in the United States are able to achieve the American Diabetes Association's recommended target A1C level, even with available drug therapies. Additionally, aggressive use of insulin and other available therapies to achieve target glucose control can be associated with an increased risk of hypoglycemia and weight gain. Consequently, there is a pressing need to develop new treatment strategies that improve the overall health profile of patients with diabetes and reduce the risk of complications without increased pain and suffering.

In 1993, a landmark study in patients with type 1 diabetes, called the Diabetes Control and Complications Trial, showed that improved glucose control — as measured by any reduction in an individual's A1C level — reduced the incidence of long-term complications. In 1998, a similar landmark study in patients with type 2 diabetes, the United Kingdom Prospective Diabetes Study, reported similar conclusions for type 2 diabetes. Unfortunately, both of these studies showed that available therapies cannot mitigate the progressive nature of diabetes and long-term complications are to be expected.

SYMLIN® (pramlintide acetate)

SYMLIN is a unique injectable drug candidate intended for the treatment of patients with type 1 diabetes and insulin-using patients with type 2 diabetes. Other than insulin and insulin analogues, SYMLIN is the first potential treatment addressing glucose control for patients with type 1 diabetes that has completed Phase 3 clinical trials since the discovery of insulin approximately 80 years ago. SYMLIN is intended to improve blood glucose control in people treated with insulin alone, or insulin plus one or more oral medications, without causing an increase in body weight.

Scientific Overview. SYMLIN is a synthetically manufactured analog of the human hormone, amylin. It is the first member of a new class of therapeutic medications known as amylinomimetic agents, or amylin receptor agonists. Amylinomimetic agents mimic the actions of the hormone amylin and have demonstrated activity in blood glucose regulation. Amylin is made in and secreted from the same cells in the pancreas that make and secrete insulin. These pancreatic cells are called beta cells. Amylin complements the actions of insulin, and these two hormones work together with another pancreatic hormone, glucagon, to help maintain normal glucose concentrations. Along with insulin, amylin concentrations normally increase and glucagon levels decrease after meals.

In people with type 1 diabetes, insulin and amylin concentrations are extremely low or undetectable and do not increase after meals, and conversely, glucagon levels tend to rise after meals. In people with type 2 diabetes whose disease has progressed to the point where they need insulin therapy, the normal post-meal increase in insulin and amylin concentrations also fails to occur and glucagon levels also are inappropriately elevated in the post-meal period. These hormonal abnormalities contribute significantly to the disturbance of glucose metabolism in the context of a meal. Replacement of insulin alone, the current therapy, cannot replace amylin's actions, nor can insulin normalize post-meal glucagon concentrations.

Clinical Trials. Approximately 5,000 patients have been treated with SYMLIN. We have completed six Phase 3 clinical trials with various doses of SYMLIN as well as numerous Phase 2 and Phase 1 trials. Additionally, we completed long-term open-label safety trials and open-label extensions of the Phase 3 clinical trials to assess long-term effects of SYMLIN. Our Phase 3 trials have shown a statistically significant reduction in A1C levels for both type 1 and insulin-using type 2 patients. Data from our short-term clinical trials involving both type 1 and insulin-using type 2 patients with diabetes showed that SYMLIN, as an adjunct to insulin:

- prevented the abnormal rise in glucagon after meals;
- slowed the rate of gastric emptying; and
- reduced the range of after-meal variations in blood glucose levels.

Collectively, across all of our long-term Phase 3 clinical trials, patients with type 1 diabetes and type 2 diabetes receiving the recommended dosage of SYMLIN in addition to their existing diabetes therapy achieved an average additional reduction in A1C of 0.3% and 0.4%, respectively, at the end of 26 weeks, compared to patients using insulin with placebo. In these studies, patients with type 2 diabetes who were treated with SYMLIN lost an average of 3.3 pounds during the trial period, while patients with type 2 diabetes in the control group gained an average of 0.7 pounds. Trial participants with type 1 diabetes who received the recommended dose of SYMLIN lost an average of 2.4 pounds at the end of 26 weeks, while those patients receiving insulin and placebo gained an average of 1.5 pounds.

In our long-term clinical trials of 26 or 52 weeks, the addition of SYMLIN did not adversely affect patients' lipids or blood pressure. The most commonly occurring side effects in our SYMLIN trials have been nausea, anorexia and vomiting, which were generally mild to moderate in intensity, were dose related, occurred early in treatment and generally dissipated over time.

In April 2002, after consultation with the FDA, we initiated a seven-month dose titration study of SYMLIN focused on safety involving approximately 300 subjects with type 1 diabetes. We also conducted four smaller studies to clarify suggested prescribing information. In May 2003, we reported that results from the dose titration study met prospectively defined parameters for the non-inferiority objective of the study. The dose titration study was conducted in patients who were intensively managing their disease with either multiple daily injections or insulin pump therapy. In addition to reductions in A1C consistent with the non-inferiority objective of the study, SYMLIN-treated subjects used 12% less insulin overall compared to the control group. SYMLIN was also associated with a significant reduction in post-meal blood glucose concentrations compared to the control group using insulin alone. At the end of the study, SYMLIN-treated patients experienced a reduction in body weight while the control group gained weight. The difference in the mean weight change from baseline between the SYMLIN-treated patients and the control group was approximately six pounds.

The data also indicate that the SYMLIN dose titration protocol reduced the impact of nausea and the event rate of severe hypoglycemia during the initiation phase of this study compared to earlier pivotal trials. Overall severe hypoglycemia event rates for the entire study period for both the SYMLIN and placebo groups were similar to rates seen in the Diabetes Control and Complications Trial, a landmark study in type 1 diabetes. Approximately 75% of the SYMLIN-treated subjects progressed to the highest dose of 60 micrograms, in accordance with the protocol, and experienced a similar rate of severe hypoglycemia to the control group during the titration period. Doses of SYMLIN higher than 30 micrograms were not well tolerated by approximately 25% of subjects. This group experienced a higher rate of nausea with initiation of therapy, which was associated with a higher rate of severe hypoglycemia. A majority of the 30-microgram dose subjects continued in the study and also experienced reductions in both post-meal blood glucose concentrations and A1C.

We currently have an open-label Phase 3 extension study of our dose titration trial and a Phase 3 open-label clinical study evaluating the use of SYMLIN in type 1 and type 2 patients in a standard endocrine/diabetes specialist practice setting.

Regulatory Status. In December 2000, we submitted an NDA for SYMLIN to the FDA. We received a letter from the FDA in October 2001 stating that SYMLIN was approvable for marketing in the United States, as an adjunctive therapy with insulin, for the treatment of type 1 and insulin-using type 2 diabetes patients, subject to satisfactory results from additional clinical trials. After consultation with the FDA, we conducted a seven-month dose titration study and four smaller trials to clarify suggested prescribing information. In June 2003, we submitted an amendment to our SYMLIN NDA. In December 2003, we received our second approvable letter from the FDA stating that SYMLIN is approvable for marketing in the United States as an adjunctive therapy with insulin, subject to providing the FDA additional clinical data. The FDA has requested clinical data to identify a patient population and method of use for SYMLIN where there is no increased risk of significant hypoglycemia or where there is an added benefit that clearly counterbalances any potential for increases in episodes of hypoglycemia. We believe that existing data generated since our June 2003 amendment to our SYMLIN NDA could provide the necessary data requested by the FDA. We are currently in discussions with the FDA regarding the specific requirements for approval. Until these requirements are known, our research and development efforts for SYMLIN will be limited to specific activities related to our interactions with the FDA and continuation of ongoing open label clinical trials.

In August 2001, we submitted an application for SYMLIN to regulatory authorities in Switzerland. In March 2003, at the request of Swiss authorities, we submitted interim summary data from our SYMLIN dose titration trial and study reports from four smaller studies. The Swiss regulatory authorities indicated in January 2004 that they require additional data to demonstrate the benefit of SYMLIN therapy relative to adverse events, including nausea and hypoglycemia. The Swiss regulatory procedure does not provide for the submission of additional data at this stage of the review process. Accordingly, we withdrew our application in January 2004. Once we have clarification on the process for obtaining marketing approval of SYMLIN in the United States, we will evaluate our regulatory strategy for SYMLIN in other countries.

Target Market. The primary patient population focus for SYMLIN is people with diabetes who use insulin. This target population currently has limited therapeutic options. Patients with type 1 diabetes generally have complete beta cell deficiency and must use insulin to sustain life or undergo islet transplant therapy, which, in some cases, can temporarily render them insulin-independent.

Patients with type 2 diabetes who have progressed to insulin therapy have typically exhausted other therapeutic options for improved blood glucose control due to advanced beta cell dysfunction. We estimate that approximately 4.5 million people in the United States use insulin, based on published and proprietary estimates. Within this population group, we estimate that approximately one million people, or 22%, have type 1 diabetes, and the remaining 3.5 million, or 78%, have type 2 diabetes. SYMLIN is an injectable product and we plan to market it initially in a syringe/vial form and eventually, in a disposible pen/cartridge system similar to those currently marketed with newer insulin preparations.

Exenatide

Exenatide, the first of a new class of compounds known as incretin mimetics, is an injectible drug candidate for the treatment of type 2 diabetes. Exenatide is initially being developed to improve glucose control in patients with type 2 diabetes who are not using insulin and are not achieving target A1C levels with diet, exercise, and metformin, a sulfonylurea, or a combination of metformin and a sulfonylurea.

Scientific Overview. Exenatide is a potent 39-amino acid peptide that exhibits several anti-diabetic, or glucose lowering, actions. Our clinical trials have shown that exenatide uniquely stimulates secretion of insulin in the presence of elevated blood glucose concentrations, but not during periods of low blood glucose concentrations. Our clinical trials have also shown that exenatide lowered post-meal glucagon concentrations and slows gastric emptying to modulate the entry of ingested nutrients into the bloodstream, and preclinical data indicate that exenatide reduces food consumption leading to reduced body weight. Most importantly, in patients with type 2 diabetes, exenatide administration lowered blood glucose concentrations, resulting in a marked reduction of A1C levels. In addition to lowering post-meal glucose concentrations, exenatide has also been shown to suppress post-meal elevations in serum triglyceride concentrations in people with type 2 diabetes. Elevations in post-meal triglycerides appear to be an independent risk factor for cardiovascular disease.

Clinical Trials. More than 2,000 patients have been treated with exenatide. We have completed three pivotal Phase 3 clinical trials, which we have referred to as our AMIGO trials, as well as numerous Phase 2 and Phase 1 trials. We are conducting open-label extension studies from the pivotal Phase 3 trials and an open label study. We also have a number of studies planned and ongoing, including studies to support regulatory submissions outside the United States and studies to increase our understanding of exenatide's potential in the United States and other markets.

The first pivotal Phase 3 clinical trial of exenatide included 336 patients and evaluated exenatide in people with type 2 diabetes who are currently not achieving target blood glucose concentrations using metformin alone. Metformin is one of several available oral therapies for the treatment of type 2 diabetes. The second pivotal Phase 3 clinical trial included 377 patients and evaluated exenatide in people who are currently not achieving target blood glucose concentrations using a sulfonylurea alone. Sulfonylureas are another form of oral therapy for the treatment of type 2 diabetes. The third pivotal Phase 3 clincial trial included approximately 734 patients and evaluated exenatide in patients who are currently not achieving target blood glucose concentrations using a combination of metformin and a sulfonylurea. Of the randomized patients in each clinical trial, approximately two-thirds received exenatide and one-third received placebo. Those on active drug received an introductory 5-microgram dose of exenatide for one month, given by subcutaneous injection twice a day at breakfast and dinner. This was followed by six months of exposure to doses of either 5 micrograms or 10 micrograms given twice a day at breakfast and dinner. All of the treatment groups in each of the three Phase 3 clinical trials continued to use their current therapies of oral medications.

In late November 2003, we announced the summary results of our combined pivotal Phase 3 clinical trial data. All three studies met the primary glucose control endpoint as measured by A1C. The average reduction in A1C across the Phase 3 program in patients completing the studies on the highest dose of exenatide (10 micrograms twice daily) was approximately one percentage point. Additionally, approximately 40% of these patients achieved A1C measurements of 7% or less. On average, subjects in the Phase 3 program on the highest dose of exenatide also showed statistically significant reductions in body weight of approximately 4.4 pounds. The most common adverse event was mild to moderate nausea.

- In August 2003, results from our first pivotal trial showed that exenatide produced statistically significant, dose-dependent reductions in the primary glucose control endpoint in people with type 2 diabetes failing to achieve target blood glucose levels with metformin alone. Of the participants receiving the 10 microgram dose of exenatide, 46% reduced their average A1C to less than or equal to 7%. The subjects receiving exenatide also showed statistically significant reductions in body weight. Consistent with exenatide's glucose-dependent action, no difference was observed in rates of mild to moderate hypoglycemia between the exenatide and placebo groups, and no severe hypoglycemia was observed. The drop out rate was similar between placebo and active arms of the study and was less than 20% overall. Only four patients in the exenatide group discontinued as a result of nausea.

- In early November 2003, results from the second pivotal trial showed that exenatide produced statistically significant, dose-dependent reductions in the glucose control endpoint in people with type 2 diabetes failing to achieve target blood glucose levels with a sulfonylurea alone. Reductions in average blood glucose were similar to reductions observed in the first exenatide pivotal study. At the end of the study, 41% of subjects completing the study on the 10 microgram dose of exenatide reduced their A1C levels to less than or equal to 7%. Patients receiving the 10 microgram dose of exenatide also showed statistically significant reductions in body weight. No severe hypoglycemia was observed in the second study. As glucose control improved in the exenatide arms of the study, the rate of mild to moderate, sulfonylurea-induced hypoglycemia increased. Patients in the study were instructed to maintain their maximally effective dose of sulfonylurea unless hypoglycemia occurred, at which point they were instructed to reduce their dose of sulfonylurea. Patients treated with the 10 microgram dose of exenatide showed the greatest improvement in A1C and a 36% incidence of mild to moderate hypoglycemia. In contrast, the placebo arm, with no improvement in A1C, had an incidence of hypoglycemia of 3%. Only one patient receiving exenatide withdrew from the second study due to mild to moderate hypoglycemia. Although nausea was the most frequent adverse event in this trial, only eight patients receiving exenatide discontinued as a result.

- In late November 2003, results from our third exenatide pivotal trial showed that the reductions in A1C in the trial were similar to those observed in the first two pivotal Phase 3 studies. Despite having failed to reach treatment goals on both metformin and a sulfonylurea prior to entering this study, 34% of patients completing the study on the 10 microgram dose of exenatide reduced their A1C levels to less than or equal to 7%. Patients receiving the 10 microgram dose of exenatide also showed statistically significant reductions in body weight. In the third pivotal trial, in order to more effectively evaluate a sulfonylurea-related hypoglycemia, patients in each treatment group were further randomized into two groups. Patients in the first group were instructed to maintain their maximally effective dose of sulfonylurea unless hypoglycemia occurred, at which point they were instructed to reduce their dose of sulfonylurea. Patients in the second group reduced their sulfonylurea dose before starting study medication, and were later instructed to titrate their sulfonylurea dose to maximize glucose control. As expected, rates of mild to moderate hypoglycemia were higher in patients in the first group who maintained their maximally effective dose of sulfonylurea at initiation of exenatide. In this group, patients treated with the 10 microgram dose of exenatide showed statistically significant reductions in A1C compared to placebo and a 35% incidence of mild to moderate hypoglycemia. In contrast, the placebo arm, with a slight increase in A1C, had an incidence of mild to moderate hypoglycemia of 15%. Patients in the second group, who reduced their sulfonylurea dose prior to initiation of exenatide, ended the study with a significant reduction in A1C and a 21% incidence of mild to moderate hypoglycemia, compared to 10% on placebo. No subjects withdrew from the study due to hypoglycemia. One patient reported a single episode of severe hypoglycemia while receiving the 5 microgram dose of exenatide. No severe hypoglycemia was observed in patients receiving 10 micrograms of exenatide. Although mild nausea was the most frequent adverse event in this third trial, fewer than 3% of patients receiving exenatide discontinued as a result of nausea.

- In August 2002, we commenced an open-label Phase 3 clinical study of exenatide in patients who are currently not achieving target blood glucose concentrations using diet, exercise, and metformin, a sulfonylurea or both metformin and a sulfonylurea. In January 2004, the 52 patients who have completed 52 weeks of treatment in this on-going study showed mean reductions in A1C of 1.2% and average body weight loss of approximately 8 pounds. The patients in this study were not achieving target blood glucose levels with their current oral diabetes medications before entering the study. At the end of 52 weeks, 46% of these participants had lowered their A1C to the treatment goal of less than or equal to 7%. The most common adverse event reported was mild to moderate nausea, consistent with our pivotol Phase 3 exenatide clinical studies. Anti-exenatide antibodies are present in a portion of these patients. Participants maintain their current diabetes treatment regimens for the duration of the trial. Subjects received an introductory 5-microgram dose for four weeks, given by subcutaneous injection twice a day at breakfast and dinner. After four weeks, the dose was increased to 10 micrograms twice a day.

- In the open-label Phase 3 extension studies of our pivotal Phase 3 trials, at 52 weeks of treatment, 162 patients showed mean reductions in A1C of 1.2%, and 50% had lowered their A1C to the treatment goal of less than or equal to 7%. Anti-exenatide antibodies are present in a portion of the patients. The data do not suggest a causal relationship between the presence of antibodies and A1C effect.

Regulatory Status. We filed an Investigational New Drug Application, or IND, for exenatide in January 1999 prior to our initiation of clinical trials. We completed our pivotal Phase 3 clinical trials in late 2003, and plan to file our NDA for exenatide in mid-2004.

Target Market. The initial patient focus for exenatide is patients with type 2 diabetes who are not using insulin and are not achieving target blood glucose concentrations with diet, exercise, and metformin, sulfonylureas or both metformin and sulfonylureas. The current therapeutic steps available to this patient population are additional oral medications, the addition of insulin to the oral agent regimen, or insulin therapy alone. These approaches are not always successful and are often associated with inconvenience and side effects, particularly weight gain. We estimate this population of people with diabetes who were using oral medications as of 2001 to be 11.9 million in the United States, France, Germany, Italy, Japan, Spain and the United Kingdom, which comprise the seven largest pharmaceutical markets worldwide, of which an estimated 6.0 million people are in the United States. We currently plan to market exenatide in an injectable pen/cartridge delivery system, subject to our receiving the necessary regulatory approvals.

Exenatide LAR

The combination of potency and the glucose dependent mechanism of action inherent in exenatide makes it well suited to development of a sustained release formulation. In May 2000, we signed an agreement with Alkermes, Inc. for the development, manufacture and commercialization of an injectable sustained release formulation of exenatide, which we refer to as exenatide LAR. This development program utilizes Alkermes' patented, FDA approved and proprietary Medisorb® injectable sustained release drug delivery technology. The goal of the work under this agreement is to develop a formulation that might allow once-a-week to once-a-month administration of exenatide for the treatment of type 2 diabetes.

We completed the first Phase 1 clinical trial of exenatide LAR in 2001. This trial demonstrated a sustained release of exenatide for over 30 days, with no significant immediate release of the drug following administration. Exenatide LAR was well tolerated in this trial with no significant adverse effects. Further, the results of a Phase 1 clinical trial with exenatide, also completed in 2001, demonstrated that sustained, continuous infusion of exenatide in patients with type 2 diabetes over a twenty-four hour period can lower both pre-meal and post-meal blood glucose concentrations throughout the day.

In June 2002, we initiated a Phase 2 clinical trial in the United States focusing on safety and tolerability, as well as the pharmacokinetic profiles of rising doses of multiple formulations of exenatide LAR. In March 2003, we announced that the pharmacokinetic results from this study are consistent with our objective of demonstrating that sustained levels of exenatide are possible. Safety or tolerability issues arising from this trial were the same as previous studies in exenatide. Based on these data and previous clinical results, in March 2003 we, along with Lilly and Alkermes, submitted an IND to the FDA to support an independent development program for exenatide LAR. We have selected a target formulation. In early 2004 we intend to initiate another Phase 2 study designed to characterize the proportion of drug made available in the blood stream over time, following various doses of exenatide LAR.

Obesity

Obesity is a condition that significantly raises the risk of illness or death from serious medical conditions including hypertension, type 2 diabetes, cardiovascular disease, stroke and certain cancers. It is a major health problem in all developed countries. In the United States, obesity-related condition costs exceed $75 billion a year. It is estimated that approximately 60 million adults in the United States suffer from obesity. Obesity-related conditions, such as stroke and myocardial infarction, are estimated to contribute to about 300,000 deaths yearly.

Obesity is characterized by excess body fat and occurs when more calories are consumed than burned. Genetic, metabolic, psychological, and environmental factors can all contribute to obesity. Obesity is measured by Body Mass Index, or BMI, a mathematical formula using a person's height and weight. A person with a BMI between 25 and 29.9 is considered *overweight.* A person with a BMI of 30 or more is considered *obese*. Current treatments for obesity include dietary therapy, physical activity, drug therapy and surgery.

AC137 (pramlintide acetate)

We are developing AC137 as a drug candidate for the potential treatment of obesity. AC137 is pramlintide acetate, the same compound as SYMLIN. Pramlintide acetate has been studied extensively in people with diabetes and has demonstrated a chronic effect of lowering body weight. In 2003, we conducted preclinical studies on AC137. In early 2004, we initiated a Phase 2 proof of concept study in the United States to evaluate the potential use of AC137 in the treatment of obesity.

AC162352 (PYY 3-36)

We are developing AC162352 (PYY 3-36) as a drug candidate for the potential treatment of obesity. Independent researchers have reported a reduction in food intake in humans using PYY 3-36. In 2003, we conducted preclinical studies on AC162352. We filed an IND for AC162352 in December 2003 and plan to initiate a Phase 1 study in the first quarter of 2004.

Cardiovascular Disease

AC2592 (GLP-1)

In January 2003, we completed the acquisition from Restoragen, Inc. of rights to a Phase 2 program utilizing continuous infusion of GLP-1, or AC2592, for the treatment of congestive heart failure, or CHF, in patients ineligible for transplant. GLP-1 is a naturally occurring hormone produced in the gut in response to food intake. In connection with this transaction, we also acquired rights to various GLP-1 related patents. We paid Restoragen approximately $3.3 million at closing and in January 2004, paid an additional $700,000 upon receiving satisfactory results from a Phase 2 clinical trial. Restoragen may also receive future contingent milestone payments and royalties on product sales.

CHF occurs when the heart cannot adequately pump oxygenated blood throughout the body, resulting in impaired kidney function and an accumulation of fluid in the lungs and other body tissues. Many diseases or medical conditions contribute to CHF, including ischemic heart disease, high blood pressure and diabetes, and CHF carries risks of morbidity and mortality above and beyond those of the underlying diseases.

In July 2003, we reported on an open-label Phase 2 study involving 14 patients with New York Heart Association (NYHA) Class III or IV congestive heart failure, all of whom received GLP-1. The patients were followed for 12 weeks and monitored on a number of parameters. Outcome measures included peak oxygen consumption, left ventricular ejection fraction, quality of life assessment, and brain natriuretic peptide, or BNP (an indicator of heart dysfunction). Patients received infusion of GLP-1 at an introductory dose for the first week, a higher-level infusion of GLP-1 for weeks 2 through 5, the maximum infusion dose for weeks 6 through 9, and no medication from weeks 10 through 12. Patients showed general improvement in a composite score designed to quantify quality of life and cardiac function while receiving study medication. The score returned to baseline when medication was discontinued. The severity of heart failure, as indicated by NYHA class, also improved during GLP-1 administration. The most common adverse event reported was mild to moderate nausea.

We plan to file an IND for AC2592 and initiate a Phase 2 clinical study in the second half of 2004.

AC3056

We are currently evaluating AC3056, a compound we in-licensed from Aventis Pharma in 1997, in an on-going Phase 1 program in which we have completed three studies. AC3056 is designed for the treatment of atherosclerosis-related cardiovascular disease. In animal studies, AC3056: 1) reduced serum low density lipoproteins, known as LDLs, but not serum high density lipoproteins, referred to as HDLs; 2) inhibited lipoprotein oxidation; and 3) inhibited the expression cell adhesion molecules in vascular cells. We are evaluating our strategic opportunities for this drug candidate.

Research and Licensing Activities

The metabolic components of diabetes, obesity and cardiovascular disease are linked in many ways that may allow us to leverage our more than a decade of expertise to develop new drug candidates to treat these conditions. We currently have approximately 225 full-time employees dedicated to our research and development activities, including approximately 80 employees with Ph.D. or M.D. degrees, seven of whom are diabetologists.

Our scientists are primarily focused on investigating the biological actions and potential utilities of new peptide hormone candidates. We are also using our resources to optimize pharmaceutical properties of peptide drugs to develop new peptide hormone analogs. Our scientists are also involved in the ongoing evaluation of in-licensing opportunities.

Lilly Collaboration

In September 2002, we entered into a collaboration agreement with Lilly for the global development and commercialization of exenatide, including sustained release formulations of that compound, such as exenatide LAR. Under the terms of the agreement, Lilly made initial payments to us totaling $110 million, of which $30 million was for the purchase of approximately 1.6 million shares of our common stock. In addition to these up-front payments, Lilly agreed to make future milestone payments of up to $85 million upon the achievement of certain development milestones, including milestones relating to both twice-daily and sustained release formulations of exenatide. Under the agreement, these milestone payments could be converted into our common stock, at Lilly's option, if the filing of NDAs with the FDA are delayed beyond December 31, 2005 for the twice-daily formulation of exenatide and beyond December 31, 2007 for the sustained release formulation of exenatide. In December 2003, Lilly paid us $35 million in milestone payments and relinquished the right to convert these payments into our common stock at a future date. $5 million of this payment is potentially creditable against future milestones. Lilly has agreed to make additional future milestone payments of up to

$130 million contingent upon the commercial launch of exenatide in selected territories throughout the world, including both twice-daily and sustained release formulations. Our collaboration agreement may be terminated by Lilly at any time on sixty days notice.

We were responsible for the first $101.2 million of development costs for the exenatide program, following the date of the collaboration agreement. We reached this threshold in the third quarter of 2003. Going forward, we share U.S. development costs with Lilly equally. Commercialization costs in the United States will also be shared equally. Development costs outside of the United States will be shared 80% by Lilly and 20% by us, and Lilly will be responsible for all commercialization costs outside of the United States.

In addition, following successful completion of the three pivotal Phase 3 trials for exenatide and contingent upon certain other events, Lilly agreed to make available to us up to a $110 million loan facility to fund a portion of our development and commercialization costs for exenatide. At the end of 2003, a small portion of the loan facility was available to us and we expect more to become available in 2004. The loan will be secured by certain of our patents and other collateral and would become convertible into our common stock if amounts remain outstanding for more than two years.

Each company will receive 50% of the operating profits from the sale of the product in the United States. Operating profits elsewhere will be shared at approximately 80% to Lilly and 20% to us. We will record all U.S. product revenues and Lilly will record all other product revenues.

Under our co-promotion agreement with Lilly, the parties have agreed to equally co-promote exenatide and sustained release formulations of exenatide within the United States. With respect to commercialization outside of the United States, Lilly will be primarily responsible for commercialization efforts.

Also, as part of the agreement with Lilly, we are co-promoting Humatrope®, Lilly's recombinant human growth hormone product, in the United States through March 2004, unless extended by both parties.

Patents, Proprietary Rights, and Licenses

We believe that patents and other proprietary rights are important to our business. Our policy is to file patent applications to protect technology, inventions and improvements that may be important to the development of our business. We also rely upon trade secrets, know-how, continuing technological innovations and licensing opportunities to develop and maintain our competitive position. We plan to enforce our issued patents and our rights to proprietary information and technology. We review third-party patents and patent applications, both to shape our own patent strategy and to identify useful licensing opportunities.

We own or hold exclusive rights to approximately 46 issued U.S. patents and 63 pending U.S. applications. We have approximately 13 pending and 10 issued U.S. patents relevant to the development and commercialization of pramlintide, including uses for diabetes and obesity. We have approximately 24 pending and issued U.S. patents relevant to the development and commercialization of exenatide. We have also filed foreign counterparts of many of these issued patents and applications. Included within our pramlinitide patent portfolio are issued patents for:

- pramlintide and other amylin agonist analogues invented by our researchers;
- the amylin molecule;
- amylin agonist pharmaceutical compositions, including compositions containing pramlintide and compositions containing amylin;
- methods for treating diabetes using any amylin agonist;
- methods for synthesis of amylin and amylin analogues; and
- methods for preparing products that include an amylin agonist in composition for parenteral administration.

With respect to exenatide, we have patents and patent applications pending which include claims directed to exendins, exendin analogs, agonists and their uses to:

- modulate gastric emptying;
- inhibit glucagon secretion;
- stimulate insulin release;
- reduce serum lipids; and
- generate insulin-producing cells from non-insulin producing cells.

We do not have a composition-of-matter patent for exenatide or exenatide LAR.

With respect to our other drug candidates, we have patents and patent applications pending, or have licensed patents and patent applications, relevant to the development and commercialization of such products. With regard to our development of AC3056, we received a letter from a third party informing us of the availability of three U.S. patents for licensure. We do not believe that these patents are material to our AC3056 development plans.

Generally, our policy is to file foreign counterpart applications in countries with significant pharmaceutical markets.

Manufacturing

We work with three contract suppliers, Bachem California, UCB S.A., and Mallinckrodt, Inc., who have the capabilities for the commercial manufacture of bulk pramlintide acetate. Two of these suppliers have entered into long-term agreements with us. We have a short-term agreement with OMJ Pharmaceuticals, Inc. for the dosage form of SYMLIN in vials, and are currently negotiating with other manufacturers to provide a long-term supply. We have a long-term agreement with CP Pharmaceuticals Ltd., a subsidiary of Wockhardt Ltd., for the dosage form of SYMLIN in cartridges and are working with a manufacturer, Ypsomed AG, for the manufacture of pens for delivery of SYMLIN in cartridges.

For exenatide, Lilly has entered into a long-term agreement with us for the manufacture of disposable pens. We have long-term supply agreements with Bachem and Mallinckrodt for bulk exenatide. We are in negotiations with other third-party manufacturers for long-term contracts for exenatide in dosage form in cartridges**.**

We have selected manufacturers that we believe comply with current good manufacturing practices and other regulatory standards. We have established a quality control and quality assurance program, including a set of standard operating procedures, analytical methods and specifications, designed to ensure that pramlintide acetate and exenatide are manufactured in accordance with current good manufacturing practices and other domestic and foreign regulations and are in the process of establishing such a program for exenatide.

Although some materials for our drug candidates are currently available from only one qualified source, we will attempt to acquire a substantial inventory of such materials, establish alternative sources and/or negotiate long-term supply arrangements. We believe we will not have any material supply issues; however, we cannot be certain that we will be able to obtain long-term supplies of those materials on acceptable terms.

Under our agreement with Alkermes, Alkermes is responsible for manufacturing exenatide LAR. Manufacturing scale-up activities are under way. Under our collaboration agreement for AC3056, Aventis Pharma has supplied AC3056 manufactured in accordance with current good manufacturing practices for our initial Phase 1 clinical trials. We have no agreements for our other drug candidates and obtain them from third-party contract manufacturers.

Commercialization Operations

We have established a core commercial team to focus on the development and execution of our commercial strategies. This team includes leadership of the following internal functions:

- sales
- sales operations
- marketing
- training
- medical education
- medical affairs
- regulatory affairs
- manufacturing
- distribution logistics
- quality assurance
- payor reimbursement

Members of this team have extensive industry experience from a wide range of large and small companies and have substantial experience in the field of diabetes, as well as in launching and marketing pharmaceutical products. Their activities have been focused on developing the plans for commercializing SYMLIN and on preparations for the expansion of our organization that will be required to perform sales and marketing activities if the drug candidate is approved.

Our SYMLIN commercialization plan is designed to enable us to prepare for its launch in the United States, pending FDA approval. We believe the target market for SYMLIN is highly concentrated and addressable with focused commercialization efforts.

In early 2003, we established a sales force of approximately 50 people and necessary support staff to enable us to co-promote Humatrope, Lilly's recombinant human growth hormone product, in the United States. This sales force is marketing Humatrope primarily to endocrinologists, the primary target prescribers of SYMLIN through March 2004, unless extended by both parties. We are currently seeking additional opportunities to utilize our sales force until SYMLIN and/or exenatide are approved by the FDA.

Under our co-promotion agreement with Lilly, the parties have agreed to equally co-promote exenatide and sustained release formulations of exenatide within the United States. We plan to increase our existing sales force to conduct our U.S. sales effort when the timing of approval of exenatide is more certain. With respect to commercialization outside of the United States, Lilly will be primarily responsible for commercialization efforts.

Government Regulation

Regulation by governmental authorities in the United States and foreign countries is a significant factor in the development, manufacture and marketing of pharmaceutical products. All of our potential products, including SYMLIN and exenatide, will require regulatory approval by governmental agencies prior to commercialization. In particular, human therapeutic products are subject to rigorous preclinical testing and clinical trials and other pre-market approval requirements by the FDA and regulatory authorities in foreign countries. Various federal and state statutes and regulations also govern or influence the manufacturing, safety, labeling, storage, record keeping and marketing of such products.

The activities required before a pharmaceutical agent may be marketed in the United States begin with preclinical testing. Preclinical tests include laboratory evaluation of product chemistry and animal studies to assess the potential safety and activity of the product and its formulations. The results of these studies must be submitted to the FDA as part of an Investigational New Drug Application, or IND, which must be reviewed by the FDA before a proposed clinical trial can begin. Typically, clinical trials involve a three-phase process. In Phase 1, clinical trials are conducted with a small number of healthy volunteers to determine the early safety and tolerability profile and the pattern of drug distribution and metabolism. In Phase 2, clinical trials are conducted with groups of patients afflicted with a specified disease in order to determine preliminary efficacy, dosing regimens and expanded evidence of safety. In Phase 3, large-scale, multi-center, adequate and well-controlled comparative clinical trials are conducted with patients afflicted with a target disease in order to provide enough data for the statistical proof of efficacy and safety required by the FDA and others. The results of the preclinical testing and clinical trials for a pharmaceutical product are then submitted to the FDA in the form of a New Drug Application, or NDA, for approval to commence commercial sales. In responding to an NDA, the FDA may grant marketing approval, request additional information, or deny the application if it determines that the application does not satisfy its regulatory approval criteria.

Among the conditions for NDA approval is the requirement that the prospective manufacturer's quality control and manufacturing procedures conform to current good manufacturing practices. In complying with these practices, manufacturers must continue to expend time, money and effort in the area of production and quality control and quality assurance to ensure full technical compliance. Manufacturing facilities are subject to periodic inspections by the FDA to ensure compliance.

We are also subject to various federal, state and local laws, regulations and recommendations relating to safe working conditions, laboratory and manufacturing practices, the experimental use of animals and the use and disposal of hazardous or potentially hazardous substances, including radioactive compounds and infectious disease agents, used in connection with our research.

The activities required before a pharmaceutical agent may be marketed in the European Union are dictated by the International Conference on Harmonization and are generally similar to those established in the United States. Approval of new drugs across the European Union relies on either the mutual recognition process or the centralized approval process of the European Medicines Evaluation Agency, or EMEA. Under the centralized procedure, the marketing application is referred for review to two review teams, each representing one of the member countries. Each reviewer then forwards an early assessment to the Committee for Proprietary Medicinal Products, or CPMP, for discussion and preparation of an initial consolidated assessment report, including a list of questions requesting clarification as well as additional information. This step initiates a series of dialogues, meetings and other communications among the CPMP, the two review teams and the applicant, leading in turn to clarification, education and refinement of the original assessment reports. Ultimately, a decision is reached to either grant marketing approval or deny the application if it is determined that the application does not satisfy the regulatory approval criteria. An alternative regulatory procedure in Europe to the centralized procedure for some drugs is the mutual recognition process. Under the mutual recognition process, an application is filed in one country for review. If the drug is approved in that country, it may only be marketed initially in that country. However, under the mutual recognition process, other European countries may individually recognize the approval and allow the drug to then be marketed in such countries.

The clinical testing, manufacture and sale of pharmaceutical products outside of the United States and the European Union are subject to regulatory approvals by other jurisdictions which may be more or less rigorous than those required by the United States or the European Union.

Competition

Biotechnology and pharmaceutical companies are highly competitive. There are many pharmaceutical companies, biotechnology companies, public and private universities and research organizations actively engaged in the research and development of products that may be similar to our products. A number of our largest competitors, including Bristol-Myers Squibb Company, GlaxoSmithKline plc, Eli Lilly and Company, Merck & Co., Novartis AG, Novo Nordisk A-S and Takeda Pharmaceuticals, are pursuing the development of or are marketing pharmaceuticals that target the same diseases that we are targeting, and it is possible that the number of companies seeking to develop products and therapies for the treatment of diabetes, obesity, and cardiovascular disease will increase. Many of these and other existing or potential competitors have substantially greater financial, technical and human resources than we do and may be better equipped to develop, manufacture and market products. These companies may develop and introduce products and processes competitive with or superior to ours. In addition, other technologies or products may be developed that have an entirely different approach or means of accomplishing the intended purposes of our products, which might render our technology and products noncompetitive or obsolete. For example, SYMLIN, exenatide and AC137 are injectable, and may have to compete with therapies that do not require injection. We cannot be certain that we will be able to compete successfully.

We believe that SYMLIN is the only non-insulin-based drug candidate in late-stage clinical development for improving blood glucose control in people with type 1 diabetes. Further, insulin and oral medications are often insufficient for many people with type 2 diabetes to achieve satisfactory glucose and weight control. SYMLIN or exenatide may be complementary to, or competitive with, these other medications. Although competitive activity in the diabetes market is intense, most recent activity has resulted in additional treatment options for people with type 2 diabetes who are responsive to oral medications.

If approved for marketing, SYMLIN or exenatide may compete with established therapies for market share. In addition, many companies are pursuing the development of novel pharmaceuticals that target diabetes. These companies may develop and introduce products competitive with or superior to SYMLIN or exenatide. Such competitive or potentially competitive products include:

- acarbose
- nateglinide
- metformin
- miglitol
- pioglitazone
- repaglinide
- rosiglitazone
- sulfonylureas

There is substantial competition in the discovery and development of treatments for obesity, as well as emerging prescription and over-the-counter treatments for this condition. Current treatments for obesity include dietary therapy, physical activity, drug therapy and surgery. Hoffmann-LaRoche and Abbott Laboratories already market oral medicines for the treatment of obesity. Regeneron Pharmaceuticals, Inc. and Sanofi-Synthelabo have late stage clinical programs ongoing, and a number of other pharmaceutical companies are developing new potential therapeutics.

Current therapies for severe CHF in patients ineligible for heart transplant include angiotensin converting enzyme inhibitors, or ACEI, Nesiritide (B type natiuretic peptide), beta blockers and aldosterone antagonists. Endothelin receptor antagonist are under investigation for the treatment of heart failure. None of these aforementioned agents or therapies are directed at correcting the cardiac metabolic abnormalities associated with severe CHF.

Research and Development Expense

In the years ended December 31, 2003, 2002 and 2001, we incurred research and development expense of $149.4 million, $94.5 million and $49.6 million, respectively.

Employees

As of December 31, 2003, we had approximately 535 full-time employees. A significant number of our management and professional employees have had experience with pharmaceutical, biotechnology or medical product companies. We believe that we have been highly successful in attracting skilled and experienced personnel. None of our employees is covered by collective bargaining agreements and we consider relations with our employees to be good.

Directors and Officers

The names of our directors and officers and certain information about them as of March 1, 2004 are set forth below:

Name	Age	Position
Ginger L. Graham (4)	48	President, Chief Executive Officer and Director
Joseph C. Cook, Jr. (4)	62	Chairman of the Board
Vaughn D. Bryson (1) (3)	65	Director
Howard E. Greene, Jr.(2) (3) (4)	61	Director
Terrance H. Gregg (1) (3)	55	Director
Jay S. Skyler, M.D.(3)	57	Director
Joseph P. Sullivan (2) (3) (4)	61	Director
Thomas R. Testman (2) (3) (4)	67	Director
James N. Wilson (1) (3)	60	Director
Daniel M. Bradbury	42	Chief Operating Officer
Alain D. Baron, M.D	50	Senior Vice President, Clinical Research
Martin R. Brown	57	Senior Vice President, Operations
Joann L. Data, M.D., Ph.D.	59	Senior Vice President, Regulatory Affairs and Quality Assurance
Dwayne M. Elwood	56	Senior Vice President, Marketing
Orville G. Kolterman, M.D.	56	Senior Vice President, Clinical Affairs
Craig A. Eberhard	44	Vice President, Sales
Mark G. Foletta	43	Vice President, Finance and Chief Financial Officer
Michael R. Hanley, Ph.D.	52	Vice President, Discovery Research
Joni Harvey	49	Vice President, Quality Assurance
Lloyd A. Rowland	47	Vice President, Legal, General Counsel and Secretary
Michael D. Step	44	Vice President, Corporate Development
Gregg Stetsko, Ph.D	47	Vice President, Product Development
Andrew A. Young, M.D., Ph.D.	51	Vice President and Senior Research Fellow

(1) Member of the Compensation and Human Resources Committee.
(2) Member of the Audit Committee.
(3) Member of the Nominating and Governance Committee.
(4) Member of the Finance Committee.

Ms. Graham was named President and Chief Executive Officer effective September 1, 2003. Ms. Graham has served as a director since November 1995 and currently serves on the Finance Committee. She previously served on the Audit Committee and the Nominating and Governance Committee. From April 2002 until June 2003, Ms. Graham served as Advisor to the President for Guidant Corporation, a medical technology company. From February 2000 until April 2002, Ms. Graham served as Group Chairman, Office of the President with responsibility for global geographically based operations. Prior to this role, Ms. Graham served as President of the Vascular Intervention Group and Vice President, Guidant. In 1993, Ms. Graham was named President and CEO of Advanced Cardiovascular Systems (ACS). Prior to joining ACS, she held various positions with Eli Lilly and Company from 1979 to 1992 including sales, marketing and strategic planning positions. She serves on the board of directors of Millennium Pharmaceuticals, Inc., the Harvard Business School Health Advisory Board, the Advisory Board for the Kellogg Center for Executive Women and the University of California, San Diego Health Sciences Advisory Board. Ms. Graham received an M.B.A. from Harvard University.

Mr. Cook has been our Chairman of the Board since March 1998. He currently serves on our Finance Committee. He served as Chief Executive Officer from March 1998 until September 2003. From 1994 to 1998, Mr. Cook served as a member of our Board and a consultant to us. Mr. Cook is a founder and serves as Chairman of the Board of Microbia, Inc., a privately held biotechnology company. He also serves as a director of Corcept Therapeutics, Inc., a privately held biotechnology company. Mr. Cook is also a founder of Mountain Group Capital, LLC, Clinical Products, Inc., Cambrian Associates, LLC, and Mountain Ventures, Inc. Mr. Cook also serves on the boards of the American Diabetes Research Foundation, the Advisory Board of the College of Engineering, University of Tennessee and the Board of Trustees for Louisville Presbyterian Theological Seminary. Mr. Cook retired as a Group Vice President of Eli Lilly & Company in 1993 after more than 28 years of service. Mr. Cook received a B.S. in Engineering from the University of Tennessee.

Mr. Bryson has served as a director since July 1999 and serves on the Compensation and Human Resources Committee and the Nominating and Governance Committee. Mr. Bryson was a thirty-two year employee of Eli Lilly & Company and retired as its President and Chief Executive Officer in 1993. He was Executive Vice President from 1986 until 1991, and served as a member of Eli Lilly's board of directors from 1984 until his retirement in 1993. Mr. Bryson was Vice Chairman of Vector Securities International from April 1994 to 1996. Mr. Bryson is President of Clinical Products, Inc., which develops and markets medical foods for people with diabetes and obesity. He serves on the board of directors of AtheroGenics, Inc. and Chiron Corporation. Mr. Bryson received a B.S. in Pharmacy from the University of North Carolina and completed the Sloan Program at the Stanford University Graduate School of Business.

Mr. Greene is our co-founder and has served as a director since our inception in September 1987. Mr. Greene serves on the Audit Committee, the Nominating and Governance Committee, and the Finance Committee. Mr. Greene is an entrepreneur who has participated in the founding and/or management of eleven medical technology companies over two decades, including three companies for which he served as chief executive officer. From September 1987 to July 1996, Mr. Greene served as our Chief Executive Officer. He was a full-time employee of Amylin from September 1989 until September 1996, and a part-time employee until March 1998. From October 1986 until July 1993, Mr. Greene was a founding general partner of Biovest Partners, a seed venture capital firm. He was Chief Executive Officer of Hybritech from March 1979 until its acquisition by Eli Lilly & Company in March 1986, and he was co-inventor of Hybritech's patented monoclonal antibody assay technology. Prior to joining Hybritech, he was an executive with the medical diagnostics division of Baxter Healthcare Corporation from 1974 to 1979 and a consultant with McKinsey & Company from 1967 to 1974. He is Chairman of the Board of Epimmune, Inc. and a director of Biosite Incorporated. Mr. Greene received an M.B.A. from Harvard University.

Mr. Gregg has served as a director since October 2001 and serves on the Compensation and Human Resources Committee and the Nominating and Governance Committee. Mr. Gregg currently serves as a senior advisor to the diabetes business of Medtronic, Inc., a medical technology company. In July 2002, Mr. Gregg retired as Vice President of Medtronic and as President of Medtronic MiniMed, positions he had held since August 2001. Mr. Gregg previously served as President and Chief Operating Officer of Minimed Inc. from October 1996 until its acquisition by Medtronic in August 2001. Mr. Gregg joined Minimed as Vice President of Regulatory Affairs and Clinical Research in September 1994 and in 1995 was promoted to Executive Vice President, Operations. Prior to joining Minimed, Mr. Gregg spent the preceding nine years as Vice President of Governmental Affairs for Ioptex Research, the ophthalmic surgical products subsidiary of Smith & Nephew, plc. Prior to joining Ioptex Research, Mr. Gregg was responsible for Regulatory Affairs, Clinical Research and Quality Assurance for divisions of Allergan, Inc. Mr. Gregg serves on the board of directors of Ocular Sciences, Inc., a manufacturer of contact lenses, and Vasogen, Inc., a developer of immune modulation therapies for treatment of various diseases. Mr. Gregg is also an Ambassador to the President of the University of Southern California, and serves as the Chairman of the American Diabetes Association Research Foundation Board. Mr. Gregg received a B.S. in Zoology from Colorado State University.

Dr. Skyler has served as a director since August 1999 and serves on the Nominating and Governance Committee. He is Professor of Medicine, Pediatrics and Psychology, Director of the Division of Endocrinology, Diabetes and Metabolism and Director of the General Clinical Research Center at the University of Miami in Florida, where he has been employed since 1976. He is also Study Chairman for the National Institute of Diabetes & Digestive & Kidney Diseases of the Type 1 Diabetes TrialNet clinical trial network, and serves on the board of directors of Dexcom, Inc. Dr. Skyler has served as President of the American Diabetes Association, and as Vice President of the International Diabetes Federation. Dr. Skyler serves on the editorial board of diabetes and general medicine journals. He received his B.S. from Pennsylvania State University, his M.D. from Jefferson Medical College, and completed postdoctoral studies at Duke University Medical Center.

Mr. Sullivan has served as a director since September 2003 and serves on the Audit Committee, the Nominating and Governance Committee, and the Finance Committee. Mr. Sullivan is currently Chairman of the Board of Advisors of RAND Health and Vice Chairman of the Board of the UCLA Medical Center. From 2000 to 2003, Mr. Sullivan served as Chairman, Chief Executive Officer and a director of Protocare, Inc. From 1993 until November 1999, he served as Chairman, Chief Executive Officer and a director of American Health Properties, Inc. For the previous twenty years, Mr. Sullivan was an investment banker with Goldman Sachs. Mr. Sullivan also currently serves on the board of directors of SCCI, Inc. (a private long-term acute care hospital company), Covenant Care, Inc. (a private nursing home company), and Health Care Property Investors, Inc. (a real estate investment trust). Mr. Sullivan received his M.B.A. from Harvard Graduate School of Business Administration and his J.D. from the University of Minnesota Law School.

Mr. Testman has served as a director since December 2002 and serves on the Audit Committee, the Nominating and Governance Committee, and the Finance Committee. Mr. Testman is a former managing partner of Ernst & Young, LLP where, during his tenure from 1962 to 1992, he served as managing partner of both Health Care Services and Management Consulting Services for the West Coast and national practices. He also served as an area managing partner for the audit and tax practice. Mr. Testman currently serves on the board of directors of Endocare, Inc. and is Chairman of the Board of Specialty Laboratories, Inc. He formerly served as a director at MiniMed Inc., ChromaVision Medical Systems, Inc., Peregrine Pharmaceuticals, Inc. and Nichols Institute. He also serves on the board of four privately held companies. He received an M.B.A. from Trinity University and is a certified public accountant (retired).

Mr. Wilson has served as a director since March 2002 and serves on the Compensation and Human Resources Committee and the Nominating and Governance Committee. He is a director and Chairman of the Board of Corcept Therapeutics Incorporated. From 1996 to 2001, Mr. Wilson was Chairman of the Board of Amira Medical, Inc. From 1990 to 1994, Mr. Wilson served as President and Chief Operating Officer of Syntex Corporation. Prior to 1990, he served in various senior management positions, including Chief Executive Officer for Neurex Corporation and LifeScan, Inc. Mr. Wilson serves on the board of directors of the American Diabetes Association Research Foundation, the Palo Alto Medical Foundation, A Stepping Stone Foundation (pre-school education) and the Insight Prison Project (rehabilitation for San Quentin inmates). Mr. Wilson received his B.A. and his M.B.A. from the University of Arizona.

Mr. Bradbury, one of our executive officers, has served as our Chief Operating Officer since June 2003, and previously served as Executive Vice President since June 2000. He previously served as Senior Vice President, Corporate Development from April 1998 to June 2000 and as Vice President of Marketing from June 1995 to April 1998. From July 1994 to May 1995, Mr. Bradbury, a native of the United Kingdom, served as Director of Marketing for Amylin Europe Limited. Prior to joining us, Mr. Bradbury was employed by SmithKline Beecham Pharmaceuticals from September 1984 to July 1994, where he held a number of positions, most recently as Associate Director, Anti-Infectives in the Worldwide Strategic Product Development Division. He is a director of Illumina, Inc. and Peninsula Pharmaceuticals, Inc. Mr. Bradbury is a member of the Royal Pharmaceutical Society of Great Britain and serves on the Advisory Council of the Keck Graduate Institute and the University of California-San Diego Leadership Council. He received a Bachelor of Pharmacy from Nottingham University and a Diploma in Management Studies from Harrow and Ealing Colleges of Higher Education.

Dr. Baron, one of our executive officers, has served as our Senior Vice President, Clinical Research since June 2002. He previously served as Vice President, Clinical Research since December 1999. Dr. Baron has been clinical Professor of Medicine at the University of California, San Diego, and Clinical VA Staff Physician at the VA Medical Center, San Diego, since 2001. From 1989 to 2000, Dr. Baron worked for the Indiana University School of Medicine, where he served as Professor of Medicine and Director, Division of Endocrinology and Metabolism. Earlier, Dr. Baron held academic and clinical positions in the Division of Endocrinology and Metabolism at the University of California, San Diego, and the Veterans Administration Medical Center in San Diego. He is the recipient of several prestigious awards for his research in diabetes and vascular disease, including the 1996 Outstanding Clinical Investigator Award from the American Federation for Medical Research, several awards from the American Diabetes Association, and is a current National Institutes of Health MERIT award recipient. He earned his M.D. from the Medical College of Georgia, Augusta, and completed postdoctoral studies at the University of California, San Diego.

Mr. Brown, one of our executive officers, has served as Senior Vice President, Operations since March 2000. Mr. Brown previously served as Vice President, Operations from October 1998 to March 2000, and as Senior Director, Information Technology from May 1994 to October 1998. Prior to joining us, Mr. Brown was Director, Information Systems, Europe, for Eli Lilly from 1989 to 1993. From 1988 to 1989, Mr. Brown was Director, Information Systems for the Medical Devices and Diagnostics Division of Eli Lilly; he served as Director, Information Systems of IVAC Corporation, one of the seven companies in that division, from 1983 to 1988. Mr. Brown received a B.S. in Commerce and Engineering and an M.B.A. in Operations Research from Drexel University.

Dr. Data, one of our executive officers, has served as Senior Vice President, Regulatory Affairs and Quality Assurance since August 1999. From 1996 to 1999, Dr. Data served as an officer of CoCensys, most recently as Executive Vice President, Product Development and Regulatory Affairs. From 1990 to 1996, Dr. Data held several positions at The Upjohn Company, most recently as Corporate Vice President for Pharmaceutical Regulatory Affairs and Project Management. Previously, she held a number of positions at Hoffmann-La Roche, including Vice President of Clinical Research and Development. Dr. Data is a director of Stressgen Biotechnology Company. She earned her M.D. from Washington University School of Medicine and her Ph.D. in Pharmacology from Vanderbilt University.

Mr. Elwood, one of our executive officers, has served as Senior Vice President, Marketing since January 2003. Prior to joining us, Mr. Elwood served as a consultant to various pharmaceutical companies and other companies regarding pharmaceutical industry matters from November 2001 to January 2003. He served as Chief Commercial Officer at Corixa Corporation from December 2000, when Corixa acquired Coulter Pharmaceuticals, Inc., to November 2001. Mr. Elwood served in various positions at Coulter from 1997 until its acquisition by Corixa, including as Chief Commercial Officer beginning in January 1999, and Senior Vice President, Marketing and Sales beginning in July 1997. Earlier, Mr. Elwood served as Executive Director, New Product Development from 1990 to 1995, and Vice President, New Product Development from January 1995 to 1997 for Ortho-McNeil Pharmaceutical, a division of Johnson & Johnson. From 1983 to 1990, Mr. Elwood served in various positions at Bristol-Myers Squibb Company. He received his B.S. in Business Administration, with a special emphasis in Marketing and Accounting, from California State University.

Dr. Kolterman, one of our executive officers, has served as Senior Vice President, Clinical Affairs since February 1997. Dr. Kolterman previously served as Vice President, Medical Affairs from July 1993 to February 1997 and Director, Medical Affairs from May 1992 to July 1993. From 1983 to May 1992, he was Program Director of the General Clinical Research Center and Medical Director of the Diabetes Center, at the University of California, San Diego Medical Center. Since 1989, he has been Adjunct Professor of Medicine at UCSD. From 1978 to 1983, he was Assistant Professor of Medicine in the Endocrinology and Metabolism Division at the University of Colorado School of Medicine, Denver. He was a member of the Diabetes Control and Complications Trial Study Group and presently serves as a member of the Epidemiology of Diabetes Intervention and Complications Study. He is also a past-president of the California Affiliate of the American Diabetes Association. Dr. Kolterman earned his M.D. from Stanford University School of Medicine.

Mr. Eberhard, one of our executive officers, has served as Vice President, Sales since May 2003. Prior to joining us, Mr. Eberhard was Regional Vice President, Sales, at Pharmacia Corporation, for which he had worked for 21 years. During his career with Pharmacia Corporation and its related pre-merger companies, he held positions in sales, sales management, corporate training, sales operations, and managed care before assuming the Vice President, Sales position. Mr. Eberhard received his B.S. in Biology from the California Lutheran University.

Mr. Foletta, one of our executive officers, has served as Vice President, Finance and Chief Financial Officer since March 2000. Mr. Foletta previously served as a Principal of Triton Group Management, Inc. from 1997 to 2000. From 1986 to 1997, Mr. Foletta held a number of management positions with Intermark, Inc. and Triton Group Ltd., the most recent of which was Senior Vice President, Chief Financial Officer and Corporate Secretary. From 1982 to 1986, Mr. Foletta was with Ernst & Young, most recently serving as an Audit Manager. Mr. Foletta earned his B.A. in Business Economics from the University of California, Santa Barbara. Mr. Foletta is a certified public accountant.

Dr. Hanley has served as Vice President, Discovery Research since October 2003. He has been a member of our Scientific Advisory Board since 1992, and recently served as a senior scientific advisor for us. Prior to joining us, Dr. Hanley held faculty positions at Imperial College, London, the Medical Research Council Laboratories, Cambridge, and the University of California at Davis, where he was Professor of Biological Chemistry. Dr. Hanley has served on advisory or review panels for the National Institutes of Health, the Medical Research Council and Wellcome Trust of Great Britain, and for the governments of Australia, Singapore, New Zealand, Hong Kong, Denmark and Japan. From 1997 to 2003, Dr. Hanley was a senior consultant for healthcare investors in the venture capital and banking communities and for biotechnology companies such as Cell Therapeutics, Zymogenetics, Elan Pharmaceuticals, and Chiron Corporation. Dr. Hanley has also set-up and directed research programs in privately-held start-ups, such as Chemocentryx, PsychoGenics, and most recently Harvard-based Resolvyx Pharmaceuticals. He received his B.S. in Biochemistry and his Ph.D. in Molecular Biology from the University of California, Berkeley.

Ms. Harvey has served as Vice President, Quality Assurance since July 2003. Ms. Harvey previously served in various positions at Alliance Pharmaceutical Corp. from November 2000 to June 2003, including most recently as Vice President, Operations. Prior to joining Alliance, she was with Oliver Wight Americas, serving as an ERP consultant to various pharmaceutical and electronic component companies. Ms. Harvey was with Molecular Biosystems, Inc. from 1988 to 2000, where she held various management positions, including most recently Vice President, Operations. In addition, she held both manufacturing and quality management positions at Baxter Hyland Division between 1980 and 1988. Ms. Harvey received her B.S. in Microbiology from California State University Long Beach.

Mr. Rowland, one of our executive officers, has served as our Vice President, Legal, General Counsel and Secretary since September 2001. Prior to joining us, Mr. Rowland served in various positions at Alliance Pharmaceutical Corp., including as Vice President beginning in May 1999, Secretary beginning in May 1998 and General Counsel and Assistant Secretary beginning in 1993. Earlier, Mr. Rowland served as Vice President and Senior Counsel, Finance and Securities, at Imperial Savings Association for four years. For the previous eight years, he was engaged in the private practice of corporate law with the San Diego, California law firm of Gray, Cary, Ames & Fry, and the Houston, Texas law firm of Bracewell & Patterson. He received a J.D. from Emory University.

Mr. Step has served as Vice President, Corporate Development since August 2002 and has been a member of our Corporate Development group since October 2001. Mr. Step joined us in July 2000, and until October 2001, served as Executive Director of Commercial Operations where he was responsible for developing the sales function for our future commercialization plans. Prior to serving in this position, he was the Senior Director of Business Development at Dura Pharmaceuticals from 1998 until 2000. From 1996 through 1998, Mr. Step served as Associate Director of Business Development and Strategic Planning at Hoffmann-La Roche. From 1993 to 1996, he served in various sales and management roles for Syntex Labs and Roche Labs. He received his B.A. in Political Science from Vanderbilt University and his M.B.A. in Marketing from the University of Southern California.

Dr. Stetsko was appointed Vice President, Product Development in July 2002. Dr. Stetsko previously served as Executive Director of Preclinical and Product Development from September 2000 to July 2002. Prior to joining us, from September 1999 to September 2000 he was an independent consultant providing regulatory, quality assurance and product development support to biotech companies. From November 1994 to September 1999, Dr. Stetsko was responsible for product development at Ligand Pharmaceuticals, most recently as the Senior Director of Pharmaceutical and Analytical Development. From February 1987 to October 1994, he held a number of management positions at Sterling Winthrop, most recently Associate Director of Pharmaceutical Sciences. Prior to employment at Sterling Winthrop, from June 1983 to January 1987, Dr. Stetsko was a senior research scientist at Sandoz, Ltd. He received his B.S. in Pharmacy from the University of Rhode Island and his Ph.D. in Industrial and Physical Pharmacy from Purdue University.

Dr. Young has served as Vice President, Research since October 1998 and as Senior Research Fellow since March 2002. From 1989 to 1998, he held a number of positions in our Physiology Department, most recently as Vice President, Physiology. Prior to joining us in 1989, Dr. Young was a lecturer in the Department of Physiology at the University of Auckland, New Zealand and a part-time general medical practitioner. From 1984 to 1987, Dr. Young was a Clinical Research Scientist at the National Institutes of Health in Phoenix, Arizona, where he studied insulin resistance and diabetes. He received his M.B., Ch.B. (M.D.) and his Ph.D. in Physiology from the University of Auckland, New Zealand.

RISK FACTORS RELATED TO OUR BUSINESS

Except for the historical information contained or incorporated by reference, this annual report on Form 10-K and the information incorporated by reference contains forward-looking statements that involve risks and uncertainties. These statements include projections about our accounting and finances, plans and objectives for the future, future operating and economic performance and other statements regarding future performance. These statements are not guarantees of future performance or events. Our actual results may differ materially from those discussed here. Factors that could cause or contribute to differences in our actual results include those discussed in the following section, as well as those discussed in Part II, Item 7 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere throughout this annual report on Form 10-K and in any other documents incorporated by reference into this report. You should consider carefully the following risk factors, together with all of the other information included in this annual report on Form 10-K. Each of these risk factors, either alone or taken together, could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our common stock. There may be additional risks that we do not presently know of or that we currently believe are immaterial which could also impair our business and financial position.

We have a history of operating losses, anticipate future losses, may not generate revenues from product sales and may never become profitable.

We have experienced significant operating losses since our inception in 1987, including losses of approximately $72.0 million in 2001, $109.8 million in 2002, and $122.8 million in 2003. As of December 31, 2003, we had an accumulated deficit of approximately $640.3 million. The extent of our future losses and the timing of potential profitability are highly uncertain, and we may never achieve profitable operations. We have been engaged in discovering and developing drugs since inception, which has required, and will continue to require, significant research and development expenditures. We have derived substantially all of our revenues to date from development funding, fees and milestone payments under collaborative agreements and from interest income. To date, we have not received any revenues from product sales. Even if we succeed in commercializing SYMLIN or another drug candidate, we expect to incur losses for at least the next several years, and we expect that our losses may increase as we expand our commercial function and our research and development activities. These losses, among other things, have had and will have an adverse effect on our stockholders' equity and working capital. To achieve profitable operations, we, alone or with others, must successfully develop, manufacture, obtain required regulatory approvals and market our drug candidates. If we become profitable, we may not remain profitable.

We will require future capital and are uncertain of the availability or terms of additional funding, and if additional capital is not available or not available on acceptable terms, we may have to reduce the size of our operations.

We must continue to find sources of capital in order to complete the development and commercialization of our drug candidates. Our future capital requirements will depend on many factors, including:

- progress with our preclinical studies and clinical trials;
- the continuation of our collaboration with Lilly for the development and commercialization of exenatide and sustained release formulations of exenatide, including exenatide LAR;
- our ability to meet milestone objectives under our collaboration with Lilly;
- our access to loan amounts under our collaboration with Lilly;
- scientific progress in our other research programs and the magnitude of these programs;
- the time and costs involved in obtaining regulatory approvals for the marketing of any of our drug candidates;
- the costs of manufacturing any of our drug candidates;
- our ability, and the ability of any partner, to effectively market, sell and distribute SYMLIN, exenatide or our other drug candidates, subject to obtaining regulatory approval;

- our ability to establish one or more marketing, distribution or other commercialization arrangements for SYMLIN or our other drug candidates;

- the cost of any potential licenses or acquisitions;

- the costs involved in preparing, filing, prosecuting, maintaining and enforcing patents or defending ourselves against competing technological and market developments; and

- the potential need to repay existing indebtedness.

You should be aware that:

- we may not be able to obtain additional financial resources in the necessary time frame or on terms favorable to us, if at all;

- any available additional financing may not be adequate; and

- we may be required to use a portion of future financing to repay existing indebtedness to our current or future creditors.

If adequate funds are not available, we may have to delay, scale back or eliminate one or more of our development programs, or obtain funds by entering into more arrangements with collaborative partners or others that may require us to relinquish rights to certain of our drug candidates or technologies that we would not otherwise relinquish.

Contingent on certain events, Lilly will allow us to borrow up to $110 million under a loan agreement in order to fund a portion of our development and commercialization costs for exenatide. A portion of that loan is available. If we incur any debt under the Lilly loan agreement, it will be secured debt and will become due beginning upon the earlier of June 30, 2007, or the first anniversary of the date when a product developed under our collaboration with Lilly is first launched.

In the event we are unable to obtain additional financing on acceptable terms, we may not have the financial resources to continue research and development of SYMLIN, exenatide, exenatide LAR or any of our other drug candidates and we could be forced to curtail or cease our operations.

We are substantially dependent on our collaboration with Lilly for the development and commercialization of exenatide and exenatide LAR.

We have entered into collaborative arrangements with Lilly, who currently markets diabetes therapies and is developing additional diabetes drug candidates, to develop and commercialize exenatide and sustained release formulations of exenatide, including exenatide LAR. We entered into this collaboration in order to:

- fund some of our research and development activities;

- assist us in seeking and obtaining regulatory approvals; and

- assist us in the successful commercialization of exenatide and exenatide LAR.

In general, we cannot control the amount and timing of resources that Lilly may devote to our collaboration. If Lilly fails to assist in the development and commercialization of exenatide and exenatide LAR, or if Lilly's efforts are not effective, our business may be negatively affected. We are primarily relying on Lilly to obtain regulatory approvals in territories outside the United States for exenatide and exenatide LAR. Our collaboration with Lilly may not continue or result in commercialized drugs. Lilly can terminate our collaboration at any time upon 60 days notice. If Lilly ceased funding and/or developing exenatide or sustained release formulations of exenatide, we would have to seek additional sources for funding and may have to delay, reduce or eliminate one or more of our development programs for these compounds.

We may be unable to obtain regulatory clearance to market our drug candidates in the United States or foreign countries on a timely basis, or at all.

Our drug candidates are subject to extensive government regulations related to development, clinical trials, manufacturing and commercialization. The process of obtaining FDA and other regulatory approvals is costly, time consuming, uncertain and subject to unanticipated delays. The FDA may refuse to approve an application for approval of a drug candidate if it believes that applicable regulatory criteria are not satisfied. The FDA may also require additional testing for safety and efficacy. Moreover, if the FDA grants regulatory approval of a product, the approval may be limited to specific indications or limited with respect to its distribution, which could limit our revenues. Foreign regulatory authorities may apply similar limitations or may refuse to grant any approval.

The data collected from our clinical trials may not be sufficient to support approval of SYMLIN, exenatide or any of our other drug candidates by the FDA or any foreign regulatory authorities. In October 2001, the FDA indicated that SYMLIN was approvable for both type 1 and insulin-using type 2 diabetes, however, the FDA also requested additional clinical trials focusing on the safety of SYMLIN when used by patients with type 1 diabetes and a few small studies to clarify suggested prescribing information. In May 2003, we completed the additional clinical trials requested by the FDA and, in June 2003, submitted an amendment to our NDA for SYMLIN. In December 2003, we received a second approvable letter from the FDA requesting additional clinical data to identify a patient population and method of use for SYMLIN where there is no increased risk of significant hypoglycemia or where there is an added benefit that clearly counterbalances any potential for increases in episodes of hypoglycemia. Although we believe that our existing data may provide the necessary data requested by the FDA, we cannot guarantee that it will or that we will ever be able to provide the FDA with the necessary data.

Moreover, manufacturing facilities operated by the third-party manufacturers with whom we may contract to manufacture SYMLIN, exenatide and our other drug candidates may not pass an FDA or other regulatory authority preapproval inspection. Any failure or delay in obtaining these approvals could prohibit or delay us or any of our business partners from marketing these drug candidates.

Consequently, even if we believe that preclinical and clinical data are sufficient to support regulatory approval for these drug candidates, the FDA and foreign regulatory authorities may not ultimately approve SYMLIN, exenatide or our other drug candidates for commercial sale in any jurisdiction. If these drug candidates do not meet applicable regulatory requirements for approval, we may not have the financial resources to continue research and development of any of our drug candidates and we may not be able to generate revenues from the commercial sale of any of our drug candidates.

Delays in the conduct or completion of our clinical trials, the analysis of the data from our clinical trials, or our manufacturing scale-up activities may result in delays in our planned filings for regulatory approvals, and may adversely affect our ability to enter into new collaborative arrangements.

We cannot predict whether we will encounter problems with any of our completed, ongoing or planned clinical studies that will cause us or regulatory authorities to delay or suspend our ongoing clinical studies, delay or suspend planned clinical studies, or delay the analysis of data from our completed or ongoing clinical studies. We also cannot predict whether we will encounter delays or an inability to create manufacturing processes for drug candidates that allow us to produce drug product in large enough quantities to be economical, otherwise known as manufacturing scale-up. If the results of our ongoing or planned clinical studies for our drug candidates are not available when we expect or if we encounter any delay in the analysis of data from our clinical studies or if we encounter delays in our ability to scale-up our manufacturing processes:

- we may be unable to complete our Phase 2 programs for exenatide LAR, AC2592 or AC137;
- we may have to delay our planned filings for regulatory approval of our drug candidates;
- some of our potential milestone payments under our collaboration with Lilly may become convertible into shares of our common stock;
- we may not have the financial resources to continue research and development of any of our drug candidates; and
- we may not be able to enter into additional collaborative arrangements relating to any drug candidate subject to delay in clinical studies or delay in regulatory filings.

In addition, Lilly may terminate our collaboration for the development and commercialization of exenatide and sustained release formulations of exenatide at any time on 60 days notice. Moreover, if the FDA does not accept for filing a new drug application for exenatide by December 31, 2005, and for a sustained release formulation of exenatide by December 31, 2007, Lilly will have the right to convert a portion of future milestone payments that we receive under our collaboration into shares of our common stock at a conversion price equal to the fair market value of our common stock at the time of any such conversion.

Any of the following could delay the completion of our ongoing and planned clinical studies:

- ongoing discussions with the FDA or comparable foreign authorities regarding the scope or design of our clinical trials;
- delays in enrolling volunteers;
- lower than anticipated retention rate of volunteers in a clinical trial;
- negative results of clinical studies;
- insufficient supply or deficient quality of drug candidate materials or other materials necessary for the performance of clinical trials;
- our inability to reach agreement with Lilly regarding the scope, design, conduct or costs of clinical trials with respect to exenatide or sustained release formulations of exenatide; or
- serious side effects experienced by study participants relating to a drug candidate.

Even if we obtain initial regulatory approval for a drug candidate, if we fail to comply with extensive continuing regulations enforced by domestic and foreign regulatory authorities, it could delay or reduce our revenues and harm our ability to generate future revenues, which would negatively impact our ability to fund our commercialization strategy and our research and development programs.

Even if we or our business partners are able to obtain regulatory approval for a drug candidate in the United States or other countries, the approval will be subject to continual review, and newly discovered or developed safety issues may result in revocation of the regulatory approval. Moreover, if we obtain marketing approval for a drug candidate in the United States, the marketing of the product will be subject to extensive regulatory requirements administered by the FDA and other regulatory bodies, including adverse event reporting requirements and the FDA's general prohibition against promoting products for unapproved uses. The manufacturing facilities for our drug candidates are also subject to continual review and periodic inspection and approval of manufacturing modifications. Domestic manufacturing facilities are subject to biennial inspections by the FDA and must comply with the FDA's current Good Manufacturing Practices (cGMP) regulations. The FDA stringently applies regulatory standards for manufacturing. In complying with these regulations, manufacturers must spend funds, time and effort in the areas of production, record keeping, personnel and quality control to ensure full technical compliance. Failure to comply with any of these post-approval requirements can, among other things, result in warning letters, product seizures, recalls, fines, injunctions, suspensions or revocations of marketing licenses, operating restrictions and criminal prosecutions. Any of these enforcement actions or any unanticipated changes in existing regulatory requirements or the adoption of new requirements could adversely affect our ability to market products and generate revenues and thus adversely affect our ability to continue our business.

The manufacturers of our product candidates also are subject to numerous federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control and hazardous substance disposal. In the future, our manufacturers may incur significant costs to comply with those laws and regulations, which could increase our manufacturing costs and reduce our ability to operate profitably.

We have not previously sold, marketed or distributed any of our products and may not be able to successfully commercialize SYMLIN, exenatide or other drug candidates.

We have not previously sold, marketed or distributed any of our products. As our drug candidates progress toward ultimate commercialization, we will need to develop our sales and marketing abilities with respect to those candidates. In 2003, we began to co-promote Humatrope®, a Lilly product, to selected endocrinologists in the United States for a short period of time. To promote Humatrope, we hired a small national sales force and related support staff. Over the last six months of 2003, in anticipation of regulatory approval of SYMLIN, we began the process of expanding our internal marketing function to prepare for marketing SYMLIN. To market SYMLIN and exenatide, if approved, we may need a significantly larger internal sales and marketing function. We may be unable to successfully hire and retain key sales and marketing personnel that we need to effectively manage and carry out the commercialization of SYMLIN, exenatide and our other drug candidates. Even if we manage to hire and retain necessary personnel, we may be unable to implement our sales, marketing and distribution strategies effectively or profitably. In addition, because our agreement to promote Humatrope is only for a short period of time, in the event that SYMLIN, exenatide or another of our drug candidates are not approved for marketing by the FDA, we will have incurred significant expenses for the buildup of a commercialization function that we may not be able to recover.

Our ability to enter into third-party relationships is important to our successful development and commercialization of SYMLIN, exenatide and our other drug candidates and our potential profitability.

To market any of our products in the United States or elsewhere, we must develop internally or obtain access to sales and marketing forces with technical expertise and with supporting distribution capability in the relevant geographic territory. With respect to sales, marketing and distribution outside the United States, we will be substantially dependent on Lilly for activities relating to exenatide and sustained release formulations, including exenatide LAR. We believe that we will likely need to enter into marketing and distribution arrangements with third parties for, or find a corporate partner who can provide support for, the commercialization of SYMLIN or our other drug candidates outside the United States. We may also enter into arrangements with third parties for the commercialization of SYMLIN or any of our other drug candidates within the United States. With respect to exenatide and exenatide LAR, we intend to co-promote those drug candidates with Lilly within the United States. If Lilly ceased commercializing exenatide or exenatide LAR for any reason, we would likely need to either enter into a marketing and distribution arrangement with a third party for those products or significantly increase our internal sales and commercialization infrastructure.

We may not be able to enter into marketing and distribution arrangements or find a corporate partner for SYMLIN or our other drug candidates. If we are not able to enter into a marketing or distribution arrangement or find a corporate partner who can provide support for commercialization of our drug candidates as we deem necessary, we may not be able to successfully perform these marketing or distribution activities. Moreover, any new marketer or distributor or corporate partner for our drug candidates, including Lilly, with whom we choose to contract may not establish adequate sales and distribution capabilities or gain market acceptance for our products, if any.

Our ability to generate revenues will be diminished if we fail to obtain acceptable prices or an adequate level of reimbursement for our products from third-party payors.

The requirements governing product licensing, pricing and reimbursement vary widely from country to country. Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after product licensing approval is granted. As a result, we may obtain regulatory approval for a product in a particular country, but then be subject to price regulations that reduce our revenues from the sale of the product. Also, in some foreign markets, pricing of prescription pharmaceuticals is subject to continuing governmental control even after initial marketing approval. If we succeed in bringing SYMLIN, exenatide or any other drug candidate to the market, we cannot be certain that the products will be considered cost effective and that reimbursement will be available or will be sufficient to allow us to sell the products on a competitive basis.

The continuing efforts of government and third-party payors to contain or reduce the costs of health care through various means, including efforts to increase the amount of patient co-pay obligations, may limit our commercial opportunity. For example, in some foreign markets, pricing and profitability of prescription pharmaceuticals are subject to government control. In the United States, we expect that there will continue to be a number of federal and state proposals to implement similar government control. In addition, increasing emphasis on managed care in the United States will continue to put pressure on the rate of adoption and pricing of pharmaceutical products. Cost control initiatives could decrease the price that any of our collaborators or we would receive for any products in the future. Further, cost control initiatives could adversely affect our collaborators' ability to commercialize our products, our ability to realize revenues from this commercialization, and our ability to fund the development of future drug candidates.

Our ability to commercialize pharmaceutical products, alone or with collaborators, may depend in part on the extent to which adequate reimbursement for the products will be available from:

- governmental and health administration authorities;
- private health insurers; and
- other third-party payors.

Significant uncertainty exists as to the reimbursement status of newly approved health care products. Third-party payors, including Medicare, are challenging the prices charged for medical products and services. Government and other third-party payors increasingly are attempting to contain health care costs by limiting both coverage and the level of reimbursement for new drugs and by refusing, in some cases, to provide coverage for uses of approved products for disease indications for which the FDA has not granted labeling approval. Third-party insurance coverage may not be available to patients for any products we discover and develop, alone or with collaborators. If government and other third-party payors do not provide adequate coverage and reimbursement levels for our products, the market acceptance of these products may be reduced.

We have a significant amount of indebtedness. We may not be able to make payments on our indebtedness, and we may incur additional indebtedness in the future, which could adversely affect our operations.

We have substantial indebtedness outstanding and have the potential borrowing capacity under our collaboration with Lilly of up to $110 million. In June and July 2003, we issued $175 million of convertible notes. Our ability to make payments on our debt, including the notes, will depend on our future operating performance and ability to generate cash and may also depend on our ability to obtain additional debt or equity financing. During each of the last five years, our operating cash flows were negative and insufficient to cover our fixed charges. We may need to use our cash to pay principal and interest on our debt, thereby reducing the funds available to fund our research and development programs, strategic initiatives and working capital requirements. Our ability to generate sufficient operating cash flow to service our indebtedness, including the notes, and fund our operating requirements will depend on our ability, alone or with others, to successfully develop, manufacture, obtain required regulatory approvals for and market our drug candidates, as well as other factors, including general economic, financial, competitive, legislative and regulatory conditions, some of which are beyond our control. Our debt service obligations increase our vulnerabilities to competitive pressures, because many of our competitors are less leveraged than we are. If we are unable to generate sufficient operating cash flow to service our indebtedness and fund our operating requirements, we may be forced to reduce our development programs, sell assets or seek additional debt or equity financing, which may not be available to us on satisfactory terms or at all. Our level of indebtedness may make us more vulnerable to economic or industry downturns. If we incur new indebtedness, the risks relating to our business and our ability to service our indebtedness will intensify.

We do not manufacture our own drug candidates and may not be able to obtain adequate supplies, which could cause delays or reduce profit margins.

The manufacturing of sufficient quantities of new drug candidates is a time-consuming and complex process. We have no manufacturing capabilities. In order to continue to develop our drug candidates, apply for regulatory approvals and ultimately commercialize additional products, we need to contract or otherwise arrange for the necessary manufacturing.

There are a limited number of manufacturers that operate under the FDA's cGMP capable of manufacturing for us. If we are not able to arrange for third-party manufacturing on commercially reasonable terms, we may not be able to complete development of our drug candidates or market them on a timely basis, if at all.

Reliance on third-party manufacturers entails risks to our ability to commercialize our products or conduct clinical trials and include the risks of reliance on the third-party for regulatory compliance and quality assurance, third-party refusal to supply on a long-term basis, the possibility of breach of the manufacturing agreement by the third-party and the possibility of termination or non-renewal of the agreement by the third-party, based on its business priorities, at a time that is costly or inconvenient for us. If any of these risks occur, our product supply will be interrupted resulting in lost or delayed revenues and delayed clinical trials.

If any of our existing or future manufacturers cease to manufacture or are otherwise unable to deliver SYMLIN, exenatide, exenatide LAR or our other drug candidates, in either bulk or dosage form, or other product components, including pens for the delivery of these products, we may need to engage additional manufacturers. The cost and time to establish manufacturing facilities would be substantial. As a result, using a new manufacturer could disrupt our ability to supply our products and/or reduce our profit margins. Any delay or disruption in the manufacturing of bulk product, the dosage form of our products or other product components, including pens for delivery of our products, could harm our ability to generate product sales, harm our reputation and require us to raise additional funds.

We work with three contract suppliers, Bachem California, UCB S.A., and Mallinckrodt, Inc., who have the capabilities for the commercial manufacture of bulk pramlintide acetate. Two of these suppliers have entered into long-term agreements with us. We have a short-term agreement with OMJ Pharmaceuticals, Inc. for the dosage form of SYMLIN in vials, and are currently negotiating with other manufacturers to provide a long-term supply. We have a long-term agreement with CP Pharmaceuticals Ltd., a subsidiary of Wockhardt Ltd., for the dosage form of SYMLIN in cartridges and are working with a manufacturer, Ypsomed AG, for the manufacture of pens for delivery of SYMLIN in cartridges. These manufacturers may not be able to make the transition to commercial production. While we believe that business relations between us and our manufacturers are generally good, we cannot predict whether any of the manufacturers that we may use will meet our requirements for quality, quantity or timeliness for the manufacture of bulk pramlintide acetate, dosage form SYMLIN or pens. For exenatide, Lilly has entered into a long-term agreement with us for the manufacture of pens. We have entered into agreements with Bachem and Mallinckrodt for the long term supply of bulk exenatide and are in negotiations with third-party manufacturers for, but do not yet have a long-term contract for, the manufacture of exenatide in cartridges. Therefore, we may not be able to obtain supplies of products with acceptable quality, on acceptable terms or in sufficient quantities, if at all. Our dependence on third parties for the manufacture of products may also reduce our gross profit margins and our ability to develop and deliver products in a timely manner.

Our other research and development programs may not result in additional drug candidates, which could limit our ability to generate revenue.

Our research and development programs for drug candidates other than SYMLIN and exenatide are at an early stage. Any additional drug candidates will require significant research, development, preclinical and clinical testing, manufacturing scale-up activities, regulatory approval and/or commitments of resources before commercialization. We cannot predict whether our research will lead to the discovery of any additional drug candidates that could generate revenues for us.

If our patents are determined to be unenforceable or if we are unable to obtain new patents based on current patent applications or for future inventions, we may not be able to prevent others from using our intellectual property.

We own or hold exclusive rights to approximately 46 issued U.S. patents and approximately 63 pending U.S. patent applications. Of these issued patents and pending patent applications, we have a total of 10 issued U.S. patents and 13 pending U.S. patent applications that we believe are relevant to the development and commercialization of pramlintide and 24 pending and issued U.S. patent applications that we believe are relevant to the development and commercialization of exenatide or exenatide LAR. We also own or hold exclusive rights to various foreign patent applications that correspond to issued U.S. patents or pending U.S. patent applications. We do not hold issued composition-of-matter patents covering exenatide or exenatide LAR.

Our success will depend in part on our ability to obtain patent protection for our drug candidates and technologies both in the United States and other countries. We cannot guarantee that any patents will issue from any pending or future patent applications owned by or licensed to us. Alternatively, a third party may successfully circumvent our patents. Our rights under any issued patents may not provide us with sufficient protection against competitive products or otherwise cover commercially valuable products or processes. In addition, because patent applications in the United States are maintained in secrecy for eighteen months after the filing of the applications, and publication of discoveries in the scientific or patent literature often lag behind actual discoveries, we cannot be sure that the inventors of subject matter covered by our patents and patent applications were the first to invent or the first to file patent applications for these inventions. In the event that a third party has also filed a patent on a similar invention, we may have to participate in interference proceedings declared by the U.S. Patent and Trademark Office to determine priority of invention, which could result in a loss of our patent position. Furthermore, we may not have identified all U.S. and foreign patents that pose a risk of infringement.

Litigation regarding patents and other proprietary rights may be expensive, cause delays in bringing products to market and harm our ability to operate.

Our success will depend in part on our ability to operate without infringing the proprietary rights of third parties. Legal standards relating to the validity of patents covering pharmaceutical and biotechnological inventions and the scope of claims made under these patents are still developing. As a result, our ability to obtain and enforce patents is uncertain and involves complex legal and factual questions. Third parties may challenge or infringe upon existing or future patents. In the event that a third party challenges a patent, a court may invalidate the patent or determine that the patent is not enforceable. Proceedings involving our patents or patent applications or those of others could result in adverse decisions about:

- the patentability of our inventions and products relating to our drug candidates; and/or
- the enforceability, validity or scope of protection offered by our patents relating to our drug candidates.

The manufacture, use or sale of any of our drug candidates may infringe on the patent rights of others. If we are unable to avoid infringement of the patent rights of others, we may be required to seek a license, defend an infringement action or challenge the validity of the patents in court. Patent litigation is costly and time consuming. We may not have sufficient resources to bring these actions to a successful conclusion. In addition, if we do not obtain a license, develop or obtain non-infringing technology, fail to successfully defend an infringement action or have infringing patents declared invalid, we may:

- incur substantial monetary damages;
- encounter significant delays in bringing our drug candidates to market; and/or
- be precluded from participating in the manufacture, use or sale of our drug candidates or methods of treatment requiring licenses.

We may be unable to adequately prevent disclosure of trade secrets and other proprietary information.

In order to protect our proprietary technology and processes, we rely in part on confidentiality agreements with our corporate partners, employees, consultants, outside scientific collaborators and sponsored researchers and other advisors. These agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. In addition, others may independently discover trade secrets and proprietary information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection could adversely affect our competitive business position.

Competition in the biotechnology and pharmaceutical industries may result in competing products, superior marketing of other products and lower revenues or profits for us.

There are many companies that are seeking to develop products and therapies for the treatment of diabetes and other metabolic disorders. Our competitors include multinational pharmaceutical and chemical companies, specialized biotechnology firms and universities and other research institutions. A number of our largest competitors, including Bristol-Myers Squibb Company, Aventis, Eli Lilly and Company, GlaxoSmithKline, Merck & Co., Novartis, Novo Nordisk and Takeda Pharmaceuticals, are pursuing the development or marketing of pharmaceuticals that target the same diseases that we are targeting, and it is possible that the number of companies seeking to develop products and therapies for the treatment of diabetes and other metabolic disorders will increase. Many of our competitors have substantially greater financial, technical, human and other resources than we do. In addition, many of these competitors have significantly greater experience than we do in undertaking preclinical testing and human clinical studies of new pharmaceutical products and in obtaining regulatory approvals of human therapeutic products. Accordingly, our competitors may succeed in obtaining FDA approval for products more rapidly than we do, which would provide these competitors with an advantage for the marketing of products with similar potential uses. Furthermore, if we are permitted to commence commercial sales of products, we may also be competing with respect to manufacturing and product distribution efficiency and sales and marketing capabilities, areas in which we have limited or no experience as an organization.

Our target patient population for SYMLIN is people with diabetes whose therapy includes multiple insulin injections daily. Exenatide is currently being studied for the treatment of type 2 diabetes. Other products are currently in development or exist in the market that may compete directly with the products that we are seeking to develop and market. Various products are available to treat type 2 diabetes, including:

- sulfonylureas;
- metformin;
- insulin;
- glinides;
- alpha-glucosidase inhibitors; and
- thiazolidinediones.

In addition, several companies are developing various approaches to improve treatments for type 1 and type 2 diabetes. We cannot predict whether our drug candidates, even if successfully tested and developed, will have sufficient advantages over existing products to cause health care professionals to adopt them over other products or that our drug candidates will offer an economically feasible alternative to existing products.

We may not be able to keep up with the rapid technological change in the biotechnology and pharmaceutical industries, which could make our products obsolete and reduce our revenues.

Biotechnology and related pharmaceutical technologies have undergone and continue to be subject to rapid and significant change. Our future will depend in large part on our ability to maintain a competitive position with respect to these technologies. Any products that we develop may become obsolete before we recover expenses incurred in developing those products, which may require that we raise additional funds to continue our operations.

Our future success depends on our ability to retain our chief executive officer and other key executives and to attract, retain and motivate qualified personnel.

We are highly dependent on Ginger L. Graham, our President and Chief Executive Officer, and the other principal members of our executive and scientific teams. The loss of the services of any of these persons might impede the achievement of our research, development and commercialization objectives. Recruiting and retaining qualified sales, marketing and scientific personnel will also be critical to our success. We may not be able to attract and retain these personnel on acceptable terms given the competition between numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific personnel from universities and research institutions. We do not maintain “key person” insurance on any of our employees. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us.

Our business has a substantial risk of product liability claims, and insurance may be expensive or unavailable.

Our business exposes us to potential product liability risks that are inherent in the testing, manufacturing and marketing of human therapeutic products. Product liability claims could result in a recall of products or a change in the indications for which they may be used. We currently have limited product liability insurance, including clinical trial insurance, and will seek additional coverage prior to marketing any of our drug candidates. We cannot assure you that our insurance will provide adequate coverage against potential liabilities. Furthermore, clinical trial and product liability insurance is becoming increasingly expensive. As a result, we may not be able to maintain current amounts of insurance coverage, obtain additional insurance or obtain insurance at a reasonable cost or in sufficient amounts to protect against losses that could have a material adverse effect on us.

Our activities involve the use of hazardous materials, which subject us to regulation, related costs and delays and potential liabilities.

Our research and development involves the controlled use of hazardous materials, chemicals and various radioactive compounds. Although we believe that our safety procedures for handling and disposing of these materials comply with the standards prescribed by state and federal regulations, the risk of accidental contamination or injury from these materials cannot be eliminated. If an accident occurs, we could be held liable for resulting damages, which could be substantial. We are also subject to numerous environmental, health and workplace safety laws and regulations, including those governing laboratory procedures, exposure to blood-borne pathogens and the handling of biohazardous materials. Additional federal, state and local laws and regulations affecting our operations may be adopted in the future. We may incur substantial costs to comply with, and substantial fines or penalties if we violate, any of these laws or regulations.

Our executive officers, directors and major stockholders control approximately 33.77% of our common stock.

As of March 1, 2004, executive officers, directors and holders of 5% or more of our outstanding common stock, in the aggregate, owned or controlled approximately 33.77% of our outstanding common stock. As a result, these stockholders are able to influence all matters requiring approval by our stockholders, including the election of directors and the approval of corporate transactions. This concentration of ownership may also delay, deter or prevent a change in control of our company and may make some transactions more difficult or impossible to complete without the support of these stockholders.

We have been named as a defendant in securities class action litigation that could result in substantial costs and divert management's attention and resources.

We are involved in an ongoing class action lawsuit that was filed against us, our chairman and former chief executive officer and another director in the United States District Court for the Southern District of California. The lawsuit alleges securities fraud in connection with various statements and alleged omissions relating to the development of SYMLIN, and seeks compensatory damages, payment of fees and expenses, and further relief. We may not be successful in our defense of such claims. If we are not successful, we could be forced to make changes to how we conduct our business or make significant payments to the plaintiffs' lawyers or our stockholders. Such changes or payments could have a material adverse effect on our business, financial condition and results of operations, particularly if any required payments are not entirely covered by our insurance. Even if our defense against such claims is successful, the litigation could result in substantial costs and divert management's attention and resources, which could adversely affect our business.

Significant volatility in the market price for our common stock could expose us to continued litigation risk.

The market prices for securities of biopharmaceutical and biotechnology companies, including our common stock, have historically been highly volatile, and the market from time to time has experienced significant price and volume fluctuations that are unrelated to the operating performance of these biopharmaceutical and biotechnology companies. Since January 1, 2001, the high and low sales price of our common stock varied significantly, as shown in the following table:

	High	Low
Year ending December 31, 2003		
Fourth Quarter	$ 30.40	$ 21.30
Third Quarter	30.75	20.95
Second Quarter	26.86	15.47
First Quarter	17.95	13.73
Year ended December 31, 2002		
Fourth Quarter	$ 18.98	$ 14.45
Third Quarter	17.24	8.85
Second Quarter	11.86	8.01
First Quarter	11.10	7.32
Year ended December 31, 2001		
Fourth Quarter	$ 11.20	$ 5.41
Third Quarter	11.11	4.94
Second Quarter	15.01	8.50
First Quarter	12.19	5.00

Given the uncertainty of our future funding and of regulatory approval of SYMLIN, exenatide and our other drug candidates, we may continue to experience volatility of our stock price for the foreseeable future, which could cause volatility in the trading price for our common stock. In addition, the following factors may significantly affect the market price of our common stock:

- announcements of additional clinical study results;
- announcements of determinations by regulatory authorities with respect to our drug candidates;
- developments in our relationships with current or future collaborative partners;
- our ability to successfully implement our commercialization strategies;

- fluctuations in our operating results;
- developments in our relationships with third-party manufacturers of our products and other parties who provide services to us;
- public concern as to the safety of drugs that we are developing;
- technological innovations or new commercial therapeutic products by us or our competitors;
- developments in patent or other proprietary rights; and
- governmental policy or regulation.

Broad market and industry factors also may materially adversely affect the market price of our common stock, regardless of our actual operating performance. Periods of volatility in the market price of our common stock expose us to securities class-action litigation, and we may continue to be the target of such litigation as a result of market price volatility in the future.

Item 2. ***Properties***

Our primary administrative offices and research laboratories are located in San Diego, California. As of December 31, 2003, we occupied approximately 269,000 square feet of office and laboratory space, for which, as of December 2003, we pay approximately $579,000 per month. Our leases on a majority of these properties expire in 2015. The remaining properties are currently on short term or month-to-month leases. We also maintain small offices in Boulder, Colorado, the United Kingdom and Germany.

Item 3. ***Legal Proceedings***

Since August 2001, we have been subject to an ongoing class action lawsuit filed by certain shareholders in the United States District Court for the Southern District of California against us, our Chairman and former Chief Executive Officer and one director, alleging violations of the federal securities laws related to declines in our stock price. The complaint alleges securities fraud in connection with various statements and alleged omissions to the public and to the securities markets. The lawsuit is at an early stage and the extent or range of possible damages, if any, cannot yet be reasonably estimated.

In October 2002, Roman Glowacki filed a shareholder derivative lawsuit purportedly on behalf of our company against our Chairman and former Chief Executive Officer and several other present and former members of the Board of Directors of our company in the California State Superior Court for San Diego County. The derivative complaint alleges that the defendants breached their fiduciary duty, abused corporate control, engaged in mismanagement, wasted corporate assets and committed "constructive fraud" as a result of the federal securities class action lawsuit in the Southern District of California. The derivative complaint seeks attorney fees and the payment of damages to our company. On February 6, 2004, the court granted defendants' demurrer, dismissing the complaint subject to plaintiff's right to amend within 45 days.

We believe that the lawsuits are without merit and intend to defend ourselves and our officers and directors vigorously against the claims, although no assurance can be given that we will be successful in defending such claims. If we are not successful in our defense of the Federal class action lawsuit, we could be forced to make significant payments that could have a material adverse effect on our business, financial condition and results of operations.

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

None.

PART II

Item 5. ***Market for Registrant's Common Equity and Related Stockholder Matters***

Our common stock is traded on The Nasdaq National Market under the symbol "AMLN." The following table sets forth, for the periods indicated, the reported high and low sales price per share of our common stock on The Nasdaq National Market:

	High	Low
Year Ended December 31, 2003		
Fourth Quarter	$ 30.40	$ 21.30
Third Quarter	30.75	20.95
Second Quarter	26.86	15.47
First Quarter	17.95	13.73
Year Ended December 31, 2002		
Fourth Quarter	$ 18.98	$ 14.45
Third Quarter	17.24	8.85
Second Quarter	11.86	8.01
First Quarter	11.10	7.32

The last reported sale price of our common stock on The Nasdaq National Market on March 1, 2004 was $23.63. As of March 1, 2004, there were approximately 950 shareholders of record of our common stock.

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain any future earnings for funding growth and, therefore, do not anticipate paying any cash dividends in the foreseeable future.

For information concerning prior stockholder approval of and other matters relating to our equity incentive plans, see "Equity Compensation Plan Information" under Item 12 in this annual report on Form 10-K.

Item 6. ***Selected Financial Data***

Please read the following selected financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and related notes included elsewhere in this annual report on Form 10-K.

	Years Ended December 31,				
	2003	2002	2001	2000	1999
	(in thousands, except for per share amounts)				
Consolidated Statements of Operations Data:					
Revenue under collaborative agreements	$ 85,652	$ 13,395	$ —	$ —	$ —
Expenses:					
Research and development	149,431	94,456	49,601	33,807	19,181
General and administrative	56,761	25,334	20,469	10,716	7,920
Acquired in-process research and development	3,300	—	—	—	—
	209,492	119,790	70,070	44,523	27,101
Net interest and other income (expense)	1,032	(3,392)	(1,902)	480	(3,463)
Net loss	(122,808)	(109,787)	(71,972)	(44,043)	(30,564)
Dividends paid on preferred stock	—	—	—	—	335
Net loss available to common stockholders	$ (122,808)	$ (109,787)	$ (71,972)	$ (44,043)	$ (30,899)
Net loss per share — basic and diluted	$ (1.33)	$ (1.39)	$ (1.09)	$ (0.71)	$ (0.73)
Shares used in calculating net loss per share — basic and diluted	92,396	79,106	65,927	61,644	42,271
Consolidated Balance Sheets Data:					
Cash, cash equivalents and short-term investments	$ 269,776	$ 147,358	$ 46,574	$ 82,899	$ 22,503
Working capital	243,144	92,368	47,188	78,380	17,359
Total assets	311,045	168,545	63,527	90,635	26,422
Long-term obligations	202,425	88,234	58,073	52,103	46,847
Accumulated deficit	(640,339)	(517,531)	(407,744)	(335,772)	(291,729)
Total stockholders' equity (deficit)	63,216	12,298	(3,483)	31,286	(26,400)

Item 7. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

Overview

Amylin Pharmaceuticals, Inc. is a biopharmaceutical company engaged in the discovery, development and commercialization of drug candidates for the treatment of diabetes, obesity and cardiovascular disease.

We have two first-in-class lead drug candidates in late stage development for the treatment of diabetes that have completed Phase 3 clinical trials, SYMLIN (pramlintide acetate) and exenatide. We are developing exenatide, including both twice-daily and sustained release formulations, with our partner Eli Lilly and Company, or Lilly, pursuant to a global development and commercialization collaboration agreement signed in September 2002. The agreement provides for equal sharing of exenatide expenses and operating profits in the United States. Outside of the United States, Lilly leads development and regulatory efforts and is responsible for 80% of the development expenses and 100% of the commercial expenses. Future operating profits from outside of the United States will be split 80% to Lilly and 20% to us. We have two early stage development programs for the treatment of obesity, including a Phase 2 program for AC137 (pramlintide acetate) and a Phase 1 program for AC162352 (PYY 3-36). We are studying AC2592 (GLP-1), in a Phase 2 program for the treatment of patients with severe congestive heart failure. Our drug candidate AC3056 is in a Phase 1 program for the treatment of atherosclerosis-related cardiovascular disease. We maintain a focused discovery research program concentrated on peptide therapeutics and we are actively seeking to in-license additional drug candidates.

Since our inception in September 1987, we have devoted substantially all of our resources to our research and development programs. All of our revenues to date have been derived from fees and expense reimbursements under our exenatide collaboration agreement with Lilly and previous SYMLIN collaborative agreements. We currently have no approved products and we have not received any revenues from the sale of any of our drug candidates. We have been unprofitable since inception and expect to incur additional operating losses for at least the next few years. As of December 31, 2003, our accumulated deficit was approximately $640 million.

At December 31, 2003, we had approximately $270 million in cash, cash equivalents and short-term investments. We do not expect to generate positive operating cash flows for at least the next few years and accordingly, we expect that we will need to raise additional funds from outside sources. Refer to the discussion under the heading "Liquidity and Capital Resources" for more detailed information regarding our anticipated future financing requirements.

Research and Development Programs

Currently, our research and development efforts are focused on seven programs in various stages of development as detailed in the following table:

Program	Indication	Development Status	Planned 2004 Milestones
SYMLIN®	Type 1 and insulin-using type 2 diabetes	• Second FDA "Approvable Letter" received in late 2003 • Discussions with FDA ongoing	• Clarify FDA requirements for approval
Exenatide	Type 2 diabetes	• Pivotal Phase 3 trials completed	• Submit New Drug Application (NDA), in mid-2004
Exenatide LAR	Type 2 diabetes	• Phase 2 evaluation	• Initiate Phase 2 study in first quarter of 2004
AC2952 (GLP-1)	Late-stage congestive heart failure	• Phase 2 evaluation	• Submit Investigational New Drug Application (IND), in second half of 2004 • Initiate additional Phase 2 study second half of 2004
AC137 (pramlintide acetate)	Obesity	• Phase 2 evaluation	• Phase 2 study initiated in first quarter of 2004 • Report Phase 2 results in second half of 2004
AC3056	Atherosclerosis	• Phase 1 evaluation	• Phase 1 evaluation ongoing
AC162352 (PYY 3-36)	Obesity	• Preclinical evaluation • IND filed with FDA in late 2003	• Initiate Phase 1 study in first quarter of 2004 • Report Phase 1 results in second half of 2004

From inception through 1998, we devoted substantially all of our research and development efforts to SYMLIN. Beginning in 1999, the composition of our research and development costs started to include costs for our other drug candidates, primarily exenatide and exenatide LAR. Our recent research and development efforts are focused on our late stage diabetes products, SYMLIN and exenatide, however we are building a pipeline by leveraging our experience with metabolic diseases to include programs targeted for obesity and cardiovascular disease.

The drug development process, from discovery through regulatory approval, takes on average 12 years according to recent industry reports. The process includes several steps defined by the United States Food and Drug Administration, or FDA. The process begins with discovery and preclinical evaluation leading up to the submission of an IND to the FDA, which allows for the initiation of the clinical evaluation in humans of a potential drug candidate. Clinical evaluation is typically comprised of three phases of study, Phase 1, Phase 2 and Phase 3. Generally, the majority of a drug candidate's total development costs are incurred during Phase 3, as these trials are typically the longest and largest studies conducted during the drug development process. Successful completion of Phase 3 clinical testing is followed by the submission of an NDA to the FDA for marketing approval. It is not uncommon for the FDA to request additional data following its review of an NDA, which can significantly increase the drug development timeline and expenses. Following initial regulatory approval for a drug candidate, we anticipate initiating additional clinical studies aimed at expanding product labels and market potential. The timing and costs to complete the successful development of any of our drug candidates are highly uncertain, and therefore difficult to estimate. For a more complete discussion of the risks and uncertainties associated with our development programs, please refer to the "Risk Factors Related to our Business" section of Item I above.

Our research and development expenses are comprised of salaries and benefits, costs paid to third-party contractors to perform research, conduct clinical trials, develop and manufacture drug materials and delivery devices, and a portion of our facilities costs. We charge direct internal and external program costs to the respective development programs. We also incur indirect costs that are not allocated to specific programs because such costs benefit multiple development programs and allow us to increase our pharmaceutical development capabilities. These consist primarily of facilities costs and other internal-shared resources related to the development and maintenance of systems and processes applicable to all of our programs.

The following table provides information regarding our research and development expenses for our major projects (in millions):

	Year ended December 31,		
	2003	2002	2001
Exenatide	$ 85.7	$ 56.0	$ 19.6
SYMLIN	27.3	17.3	10.6
Early stage programs and research	14.4	7.4	7.1
Unallocated	22.0	13.8	12.3
	$ 149.4	$ 94.5	$ 49.6

Exenatide

Exenatide, the first in a new class of drugs called incretin mimetics, is a drug candidate for the treatment of type 2 diabetes. We are developing exenatide, including both twice-daily and sustained release formulations, with Lilly to improve glucose control in patients with type 2 diabetes who are not achieving target levels with diet, exercise and metformin, a sulfonylurea or a combination of metformin and a sulfonylurea.

We completed our pivotal Phase 3 clinical trials of exenatide in the fourth quarter of 2003. We believe the results of these studies are sufficient to form the basis of an NDA for exenatide, which is planned for submission to the FDA in mid-2004.

Our planned 2004 development efforts for our exenatide development program include the continuation of ongoing open label clinical trials, the continuation of manufacturing scale-up and the completion of the NDA. Other trials planned for 2004 include studies to support regulatory filings outside of the United States and studies to increase our understanding of exenatide's potential in the United States and other markets.

We are also studying a sustained release formulation of exenatide, or exenatide LAR, which is currently in a Phase 2 program. We believe that exenatide's glucose-dependent mechanism of action, in addition to its potency and long half-life presents a unique opportunity for a sustained release formulation. In early 2004, we intend to initiate a Phase 2 dose-proportionality study of exenatide using a target formulation that might allow once-a-week to a once-a-month administration of exenatide. This sustained release formulation of exenatide is being developed in collaboration with Lilly and Alkermes.

The timing of material net cash inflows from our exenatide and exenatide LAR development programs are dependent upon regulatory approvals, and subsequent market acceptance.

SYMLIN

SYMLIN is a synthetic version of human amylin, a hormone co-secreted with insulin by the beta cells in the pancreas. We are studying SYMLIN for the treatment of patients with type 1 diabetes and insulin-using patients with type 2 diabetes. Other than insulin and insulin analogues, SYMLIN is the first potential treatment addressing glucose control for patients with type 1 diabetes that has completed Phase 3 clinical trials since the discovery of insulin approximately 80 years ago.

In May 2003, we completed a SYMLIN dose titration study in patients with type 1 diabetes. Data from the dose titration study formed the basis of an amendment to our SYMLIN NDA, which was submitted to the FDA in June 2003. We are currently conducting two open label studies. The first is an extension of the dose titration study and the second is an open label study initiated during 2003 to study the use of SYMLIN in type 1 and type 2 patients in a standard endocrine/diabetes specialist practice setting.

In December 2003, we received a second approvable letter for SYMLIN from the FDA. The FDA requested additional clinical data to identify a patient population and method of use for SYMLIN where there is no increased risk of significant hypoglycemia or where there is an added benefit that clearly counterbalances any potential for increases in episodes of hypoglycemia. Discussions with the FDA are under way with a goal to clarify the specific requirements to obtain FDA approval for SYMLIN. Until these requirements are known, our research and development efforts for SYMLIN will be limited to specific activities related to our interactions with the FDA and continuation of the ongoing open label clinical trials discussed above.

The timing of material net cash inflows from SYMLIN is dependent upon regulatory approvals and subsequent market acceptance.

Early-stage programs and research

In addition to our late-stage diabetes development programs, we are also studying compounds for the treatment of obesity and cardiovascular disease. We have two compounds in our development pipeline for the treatment of obesity. We initiated a Phase 2 study of AC137 (pramlintide acetate) for the treatment of obesity in the first quarter of 2004. We submitted an IND for our second obesity drug candidate, AC162352 (PYY 3-36), in December of 2003 and plan to begin a Phase 1 study in early 2004. We also have two drug candidates for the treatment of cardiovascular disease. AC2592 (GLP-1) is in a Phase 2 program for the treatment of severe congestive heart failure. This program was acquired in early 2003. We plan to submit an IND for AC2592 and initiate a Phase 2 study in the second half of 2004. AC3056 is our drug candidate for the treatment of atherosclerosis-related cardiovascular disease and is in a Phase 1 program. We are evaluating strategic opportunities for this drug candidate. Our internal research efforts continue to be focused on the discovery of additional peptides for the treatment of diseases.

Results of Operations

Revenues under Collaborative Agreements

We had revenues under collaborative agreements of $85.7 million in 2003 compared to $13.4 million in 2002 and no such revenues in 2001. The revenues recorded in these periods consist solely of amounts earned pursuant to our collaboration with Lilly for exenatide, entered into in September 2002. Revenues under collaborative agreements include the amortization of a portion of the $80 million of up-front payments received from Lilly, recognition of a portion of the milestone payments received from Lilly in December 2003, amounts paid or payable by Lilly to equalize exenatide development expenses, and amounts earned for the co-promotion of Humatrope.

The following table summarizes the components of revenues under collaborative agreements for the years ended December 31, 2003, 2002 and 2001 (in millions):

	Year ended December 31,		
	2003	2002	2001
Amortization of up-front payment	$ 42.1	$ 13.4	$ —
Recognition of milestone payment	30.0	—	—
Cost-sharing and co-promotion payments	13.6	—	—
	$ 85.7	$ 13.4	$ —

In September 2002, Lilly made an $80 million non-refundable payment to us, and we agreed to incur the first $101.2 million of development costs following the date of the agreement. Accordingly, we recorded 100% of the first $101.2 million of U.S. development costs for exenatide, whether incurred by us or by Lilly, and we recorded as revenue approximately 50% of these development costs through an amortization of $50 million of the up-front payment, which amortization was completed during the third quarter of 2003. The remaining $30 million is being amortized to revenues ratably over a 7-year period.

During the third quarter of 2003, we reached the $101.2 million level of cumulative exenatide development costs. Subsequently, Lilly is responsible to fund, on an ongoing basis, 50% of development costs in the United States and 80% of development costs outside of the United States. While we continue to lead exenatide development efforts in the United States, Lilly is also directly incurring exenatide development expenses and makes cost-sharing payments to us to equalize development costs, which are recorded as revenues under collaborative agreements in the period in which the related development expenses are incurred.

In addition to the up-front payment and ongoing cost sharing payments discussed above, Lilly agreed to make future milestone payments of up to $85 million to us upon the achievement of certain development milestones related to both the twice-daily and sustained release formulations of exenatide. In December 2003, following successful completion of our pivotal Phase 3 clinical trials for exenatide, we received a milestone payment of $35 million from Lilly. Of this amount, $30 million was recorded as revenues under collaborative agreements and the remaining $5 million was deferred, as it is potentially creditable against future milestones. The majority of future development milestones relate to events in the exenatide LAR development program, and we may receive up to $130 million of future commercial milestones contingent upon the launch of the twice-daily and sustained release formulations of exenatide in the United States and selected territories throughout the world.

We also recorded a small amount as revenues under collaborative agreements in 2003 for amounts earned for our co-promotion of Humatrope. We recorded no such revenues in 2002 or 2001.

In future periods, revenues under collaborative agreements will consist of ongoing cost-sharing payments from Lilly to equalize development costs, possible future milestone payments and the continued amortization of the $30 million portion of the up-front payment. The amount of cost-sharing revenue recorded will be dependent on the timing, extent and relative proportion of total development costs for the exenatide development programs incurred by us and by Lilly. The receipt and recognition as revenue of future milestone payments is subject to the achievement of performance requirements underlying such milestone payments and, for certain development milestones, the expiration of stock conversion rights associated with such payments.

Research and Development Expenses

Research and development expenses were $149.4 million, $94.5 million and $49.6 million in the years ended December 31, 2003, 2002 and 2001, respectively.

Our research and development expenses increased significantly on a year-over-year basis in both 2003 and 2002. The $54.9 million increase in research and development expenses in 2003 compared to 2002 primarily reflects increased costs of $29.7 million associated with our exenatide development program, including costs to complete the pivotal Phase 3 clinical trials, costs for open label extensions of these trials and costs associated with manufacturing scale-up. We also incurred increased costs of $10.0 million for SYMLIN, primarily costs associated with the completion of the dose-titration study, ongoing open label clinical trials and the development of a pen delivery platform. In addition, we incurred increased costs of $7.0 million associated with our research activities and our earlier stage development programs, primarily AC2592 and AC162352.

The $44.9 million increase in research and development expenses in 2002 compared to 2001 reflects, almost exclusively, increased costs of $36.4 million associated with our exenatide development program, including costs associated with the pivotal Phase 3 clinical trials and manufacturing scale-up, and to a lesser extent, increased SYMLIN costs of $6.7 million associated with clinical trials that formed the basis of our NDA amendment in June 2003.

Acquired in-process Research and Development

We recorded an expense of $3.3 million in 2003 for acquired in-process research and development related to the acquisition of our AC2592 development program. This compound is in early Phase 2 development, and no alternative future use was identified. Additional development and regulatory activities are required and product launch, if approved, is not expected in the near-term.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were $56.8 million, $25.3 million and $20.4 million in the years ended December 31, 2003, 2002 and 2001 respectively.

The $31.5 million increase in 2003, compared to 2002 is due primarily to costs associated with the continued investment in our commercial and business support organizations to support future product launches, as well as increased facilities costs required to support our growth. The expansion of our commercial organization includes the addition of a 50 person sales force, increased medical education activities for SMYLIN, and growth in our managed care and other sales support functions.

The $4.9 million increase in general and administrative expenses in 2002 compared to 2001 reflects primarily an increase in pre-launch expenses for SYMLIN and to a lesser extent, an increase in our number of employees and other business support costs.

Other Income and Expense

Interest and other income consists primarily of interest income from investment of cash and investments. Interest and other income was $7.1 million in 2003, $2.6 million in 2002, and $4.2 million in 2001. The increase in 2003 compared to 2002 reflects a $3.6 million gain on early retirement of debt at a discount and higher average reserves available for investment. The decrease in 2002 compared to 2001 primarily reflects declining market interest rates in 2002 as compared to 2001.

Interest and other expense consists primarily of interest expense resulting from long-term debt obligations. In 2003 we issued $175 million aggregate principal amount of convertible senior notes with a coupon rate of 2.25%. During 2003, we repaid our outstanding indebtedness to Johnson & Johnson incurred pursuant to the terms of an earlier collaboration agreement. The interest expense attributable to the debt to Johnson & Johnson through the date of repayment was a non-cash expense, consisting of accrued interest added to the principal balance and the amortization of a debt discount. Interest expense in future periods will consist of interest on the 2.25% convertible senior notes and the amortization of associated debt issuance costs. Interest and other expense was $6.0 million in 2003, $6.0 million in 2002 and $6.1 million in 2001.

Net Loss

Our net loss for the year ended December 31, 2003 was $122.8 million compared to $109.8 million in 2002 and $72.0 million in 2001. The increase in the net loss in 2003 compared to 2002 reflects the increased operating expenses, partially offset by the increases in revenues from collaborative agreement and interest and other income, discussed above. The increase in the net loss in 2002 compared to 2001 reflects the increased operating expenses and the reduction in interest and other income, partially offset by the increase in revenues from collaborative agreement discussed above.

We expect to incur substantial operating losses for at least the next few years due to ongoing expenses associated with the continuation and potential expansion of our research and development programs, exenatide, exenatide LAR, and our earlier stage development programs, the planned commercialization of SYMLIN and exenatide and related general and administrative support. Operating losses may fluctuate from quarter to quarter as a result of differences in the timing of expenses incurred and revenues recognized.

Liquidity and Capital Resources

Since our inception, we have financed our operations primarily through public and private placements of common stock and preferred stock, debt financings, payments received pursuant to our exenatide collaboration with Lilly and reimbursement of SYMLIN development expenses through earlier collaboration agreements.

At December 31, 2003, we had $269.8 million in cash, cash equivalents and short-term investments compared to $147.4 million at December 31, 2002. The increase in our cash, cash equivalents and short-term investments in 2003 reflects $279 million provided by our financing activities, partially offset by amounts used to fund our operations during 2003. The significant financing activities include $165 million in net proceeds from a public offering of common stock in January 2003, $170 million in net proceeds received from a private placement of 2.25% convertible senior notes in June and July 2003, and the repayment of our indebtedness to Johnson & Johnson of $63 million.

We expect to use between $160 and $170 million of cash to fund our operating activities during 2004. This spending level assumes net cost sharing payments from Lilly to equalize exenatide development and pre-launch costs. We do not expect to receive significant milestone payments from Lilly in 2004. SYMLIN activities planned for 2004 will be focused primarily on ongoing open label clinical studies and continued discussions with the FDA to clarify the requirements for SYMLIN approval. This also assumes the maintenance of our commercial capabilities and continued progress with our earlier stage development programs. We do not expect to generate positive operating cash flows for at least the next few years.

In December 2003, we filed a shelf registration statement with the Securities and Exchange Commission (the "SEC"), which allows us to sell up to $300 million of various securities in one or more offerings in the future. The terms of any offering will be established at the time of sale. The SEC declared this registration statement effective in February 2004. We also have a loan facility with Lilly that, subject to certain defined development and regulatory events, over time could provide us up to $110 million to fund a portion of our development and commercialization costs for exenatide. At the end of 2003, a small portion of this facility was available to us and we expect more to become available in 2004. Any loans under this facility would be secured by some of our patents and other tangible assets and, at Lilly's option, are convertible into our common stock if amounts remain outstanding for more than two years.

While we are not currently contemplating a specific source of financing, we expect that we will need to raise additional funds from outside sources to continue our research and development activities, fund operating expenses, establish manufacturing sources and inventory, pursue regulatory approvals and build sales and marketing capabilities as necessary. The sources of outside funding available to us include public and/or private offerings of common or preferred stock, debt or other securities, amounts available to us under our Lilly loan facility, and revenues and expense reimbursements from collaborative agreements for one or more of our drug candidates. The level at which we seek additional funding, the source of such funding, and the timing of any action is dependent on many factors, including but not limited to, the development status of our drug candidates, the timing of potential regulatory approvals for SYMLIN and exenatide and prevailing market conditions.

We used cash of $143.4 million, $20.4 million and $67.8 million from our operating activities in the years ended December 31, 2003, 2002 and 2001, respectively. Our operating activities in 2003 and 2002 reflect payments received from Lilly of a $35 million milestone payment and an $80 million up-front payment, respectively. Our investing activities used $128.3 million, $57.2 million and provided $49.0 million in the years ended December 31, 2003, 2002, and 2001, respectively. Investing activities in all three years consisted primarily of purchases and sales of short-term investments, but also included purchases of laboratory and office equipment and patent additions. Financing activities provided $278.9 million, $124.6 million and $35.0 million in the years ended December 31, 2003, 2002 and 2001, respectively. These amounts consisted primarily of proceeds from sales of common stock and the issuance of convertible senior notes, partially offset by principal payments on notes payable and capital lease obligations.

During 2003, we issued $175 million aggregate principal amount of 2.25% convertible senior notes due June 30, 2008 in a private placement generating net proceeds of $170 million. The notes are currently convertible into a total of up to 5.4 million shares of our common stock at $32.55 per share. Under certain circumstances, the notes are redeemable in whole or in part, at our option, on or after June 30, 2006, at specified redemption prices plus accrued interest.

The following table summarizes our contractual obligations and maturity dates as of December 31, 2003 (in thousands).

	Payments Due by Period				
Contractual Obligations	**Total**	**Less than 1 year**	**1-3 years**	**4-5 years**	**After 5 years**
Long-term debt (1)	$ 175,000	$ —	$ —	$ 175,000	$ —
Capital lease obligations	39	12	27	—	—
Operating leases	54,641	3,073	9,220	10,935	31,413
Total (2)	$ 229,680	$ 3,085	$ 9,247	$ 185,935	$ 31,413

(1) Excludes interest payments, payable in cash semi-annually, of $3.9 million per year.

(2) Excludes long-term obligation of $2.2 million related to deferred compensation, the payment of which is subject to elections made by participants that are subject to change.

In addition, under certain license and collaboration agreements with other companies we are required to pay royalties and/or milestone payments upon the successful development and commercialization of related products.

At December 31, 2003, we are committed to purchase approximately $5.9 million of SYMLIN inventory in the subsequent twelve-month period. If FDA approval for SYMLIN is received, our expenditures to secure commercial grade bulk drug material will increase substantially, including a commitment to purchase approximately $9.4 million of additional material pursuant to an agreement with Johnson & Johnson. We are also obligated to purchase this material if we enter into a collaboration agreement for SYMLIN or if there is a change in control of Amylin. If none of these events occur, we have no obligation to purchase this material from Johnson & Johnson.

Our future capital requirements will depend on many factors, including: the timing and costs involved in obtaining regulatory approvals for SYMLIN and exenatide; whether regulatory approvals for the marketing of SYMLIN and exenatide are received; our ability to receive milestone payments pursuant to our exenatide collaboration with Lilly; our ability and the extent to which we establish commercialization arrangements for SYMLIN; our ability to progress with other ongoing and new clinical and preclinical trials and the extent of these trials; scientific progress in our other research and development programs and the magnitude of these programs; the costs involved in preparing, filing, prosecuting, maintaining, enforcing or defending ourselves against patents; competing technological and market developments; changes in or new collaborative relationships; and any costs of manufacturing scale-up.

Since August 2001, we have been subject to an ongoing class action lawsuit filed by certain shareholders in the United States District Court for the Southern District of California against us, our Chairman and former Chief Executive Officer and one director, alleging violations of the federal securities laws related to declines in our stock price. The complaint alleges securities fraud in connection with various statements and alleged omissions to the public and to the securities markets. We believe that the lawsuit is without merit and intend to defend ourselves and our officers and directors vigorously against the claims, although no assurance can be given that we will be successful in defending such claims. If we are not successful in our defense of this lawsuit, we may be required to make significant payments to our stockholders. The lawsuit is at an early stage and the extent or range of possible damages, if any, cannot yet be reasonably estimated.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, including those related to inventory costs and patent costs. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect the significant judgments and estimates used in the preparation of our consolidated financial statements (see Note 1 to our consolidated financial statements on page F-7).

Revenue Recognition

We recognize revenue when all four of the following criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectibility is reasonably assured. In addition, we follow the provisions of the Securities and Exchange Commission's Staff Accounting Bulletin No. 101 ("SAB 101''), *"Revenue Recognition,"* which sets forth guidelines in the timing of revenue recognition based upon factors such as passage of title, installation, payments and customer acceptance. Amounts received for upfront product and technology license fees under multiple-element arrangements are deferred and recognized over the period of such services or performance if such arrangements require on-going services or performance. Amounts received for milestones are recognized upon achievement of the milestone, and the expiration of stock conversion rights, if any, associated with such payments. Amounts received for equalization of development expenses are recognized in the period in which the related expenses are incurred. Any amounts received prior to satisfying our revenue recognition criteria will be recorded as deferred revenue in the accompanying consolidated balance sheets.

Inventory

We capitalize inventory costs associated with certain drug candidates prior to receipt of regulatory approval, based on management's judgment of probable future commercialization. We would be required to expense these capitalized costs upon a change in such judgment, due to, among other factors, a decision denying approval of the drug candidate by regulatory agencies.

At December 31, 2003, gross capitalized inventory, all of which relates to SYMLIN, totaled $15.9 million. Additionally, at December 31, 2003, we are committed to purchase $5.9 million of SYMLIN inventory in the subsequent twelve-month period. Our ability to recover the value of this inventory is dependent upon our ability to obtain regulatory approvals to market SYMLIN in the United States and/or other markets.

Additionally, approximately $9.3 million of the $15.9 million of SYMLIN inventory is in finished dosage form, the majority of which was manufactured in late 2003. Our NDA suggests that the finished inventory would have a thirty-six month expiration period. We evaluate the recoverability of our finished inventory in consideration of our expected regulatory timelines and estimated sales volumes. In December 2003, we received a second approvable letter from the FDA for SYMLIN. As a result, our planned launch of SYMLIN was delayed. Accordingly, we have a valuation reserve of $3.3 million at December 31, 2003 related to our finished SYMLIN inventory, of which $2.2 million was provided for in 2003.

Income Taxes

We have net deferred tax assets relating primarily to net operating loss carryforwards and research and development tax credits. Subject to certain limitations, these deferred tax assets may be used to offset taxable income in future periods. Since we have been unprofitable since inception and the likelihood of future profitability is not assured, we have fully reserved for these deferred tax assets in our consolidated balance sheets at December 31, 2003 and 2002, respectively. If we determine that we are able to realize a portion or all of these deferred tax assets in the future, we will record an adjustment to increase their recorded value and a corresponding adjustment to increase income in that same period.

Research and Development Expenses

Research and development costs are expensed as incurred and include salaries and benefits, costs paid to third-party contractors to perform research, conduct clinical trials, develop and manufacture drug materials and delivery devices, and associated overhead expenses and facilities costs. Clinical trial costs are a significant component of research and development expenses and include costs associated with third-party contractors. Invoicing from third-party contractors for services performed can lag several months. We accrue the costs of services rendered in connection with third-party contractor activities based on our estimate of management fees, site management and monitoring costs and data management costs. Differences between actual clinical trial costs from estimated clinical trial costs have not been material and are adjusted for in the period in which they become known.

Recently Issued Accounting Pronouncements

In May 2003, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003. This rule amends SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, to provide more consistent reporting of contracts as either derivatives or hybrid instruments. The adoption of SFAS No. 149 did not have a material impact on our results of operations or financial position.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," effective for financial instruments entered into or modified after May 31, 2003, and otherwise effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS No. 150 did not have a material impact on our results of operations or financial position.

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"), which became effective for us on January 1, 2004. FIN 46 requires a variable interest entity to be consolidated by a company if that company is subject to a majority of the risk of loss from the variable interest entity's activities or entitled to receive a majority of the entity's residual returns or both. The adoption of FIN 46 is not expected to have a material impact on our results of operations or financial position.

Item 7A. ***Quantitative and Qualitative Disclosures About Market Risk***

We invest our excess cash primarily in U.S. Government securities, asset-backed securities and debt instruments of financial institutions and corporations with strong credit ratings. These instruments have various short-term maturities. We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions in any material fashion. Accordingly, we believe that, while the instruments held are subject to changes in the financial standing of the issuer of such securities, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive investments. Our debt is not subject to significant swings in valuation as interest rates on our debt are fixed. The fair value of our 2.25% senior convertible notes approximates their carrying value. A hypothetical 1% adverse move in interest rates along the entire interest rate yield curve would not materially affect the fair value of our financial instruments that are exposed to changes in interest rates.

Item 8. ***Financial Statements and Supplementary Data***

The financial statements and supplemental data required by this item are set forth at the pages indicated in Item 15(a)(1) of this annual report.

Item 9. ***Changes In and Disagreements With Accountants on Accounting and Financial Disclosure***

None.

Item 9A. ***Controls and Procedures***

(a) Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we completed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended) as of December 31, 2003. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2003.

Our management does not expect that our disclosure control and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, or misstatements due to error, if any, within the company have been detected. While we believe that our disclosure controls and procedures and internal control over financial reporting are and have been effective, in light of the foregoing we intend to continue to examine and refine our disclosure controls and procedures and internal control over financial reporting and to monitor ongoing developments in these areas.

(b) There has been no change in our internal control over financial reporting in our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART III

Item 10. *Directors and Executive Officers of the Registrant*

The information required by this item with respect to executive officers and directors is incorporated by reference from the information under the caption of "Election of Directors," contained in the proxy statement to be filed with the SEC pursuant to Regulation 14A in connection with our 2004 annual meeting of stockholders.

Item 11. *Executive Compensation*

The information required by this item is incorporated by reference to the information under the caption "Executive Compensation" contained in the proxy statement to be filed with the SEC pursuant to Regulation 14A in connection with our 2004 annual meeting of stockholders.

Item 12. *Security Ownership of Certain Beneficial Owners and Management and Related Shareholder Matters*

The information required by this item is incorporated by reference to the information under the caption "Security Ownership of Certain Beneficial Owners and Management" contained in the proxy statement to be filed with the SEC pursuant to Regulation 14A in connection with our 2004 annual meeting of stockholders.

Equity Compensation Plan Information

The following table sets forth information regarding all of our equity compensation plans as of December 31, 2003 (in thousands, except per share amounts):

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for issuance under equity compensation plans, (excluding securities reflected in first column)
Equity compensation plans approved by securityholders	10,570	$ 13.01	4,750
Equity compensation plans not approved by securityholders	9	$ 6.58	—
Total	10,579	$ 13.00	4,750

We had the following equity compensation plans in effect as of December 31, 2003 that were adopted with the approval of our stockholders: the 1991 Option Plan, the 2001 Equity Incentive Plan, the 2001 Employee Stock Purchase Plan, the 1994 Non-Employee Directors' Stock Option Plan, the 2003 Non-Employee Directors' Stock Option Plan and the Non-Employee Directors' Deferred Compensation Plan.

Our stockholders did not approve the individual compensation arrangement entered into in January 1995 with Joseph C. Cook, Jr., who served as our Chairman and Chief Executive Officer from 1998 to 2003, and continues to serve as our Chairman. From 1994 to 1998, Mr. Cook served as a consultant to us under various consulting agreements pursuant to which he received cash compensation and was granted non-qualified stock options. In connection with one of his consulting agreements with us entered into in January 1995, we also entered into a phantom stock unit agreement with Farview Management Co., L.P., a consulting firm of which Mr. Cook is a general partner. Pursuant to the phantom stock agreement, Farview received 9,000 phantom stock units, each representing the right to receive cash or shares of our common stock. The phantom stock agreement provides that on the date Mr. Cook ceases to be a consultant to or director of our company, we will pay Farview the fair market value of the phantom stock units in cash or shares of our common stock, at our election. The fair market value of each phantom stock unit is to be determined based on the closing price per share of our common stock on The Nasdaq National Market on the last trading day prior to the date that Mr. Cook ceases to be a consultant to or director of our company.

Item 13. ***Certain Relationships and Related Transactions***

The information required by this item is incorporated by reference to the information under the caption contained in "Certain Transactions" contained in the proxy statement to be filed with the SEC pursuant to Regulation 14A in connection with our 2004 annual meeting of stockholders.

Item 14. ***Principal Accountant Fees and Services***

The information required by this item is incorporated by reference to the information under the caption contained in "Ratification of Selection of Independent Auditors" contained in the proxy statement to be filed with the SEC pursuant to Regulation 14A in connection with our 2004 annual meeting of stockholders.

PART IV

Item 15. ***Exhibits, Financial Statement Schedules and Reports on Form 8-K***

(a)(1) **Index to Consolidated Financial Statements**

The financial statements required by this item are submitted in a separate section beginning on page F-1 of this annual report.

(a)(2) **Financial Statement Schedules:** All schedules have been omitted because they are not applicable or required, or the information required to be set forth therein is included in the Consolidated Financial Statements or notes thereto.

(a)(3) **Index to Exhibits** — See Item 15(c) below.

(b) **Reports on Form 8-K**

1. We filed a current report on Form 8-K, dated November 4, 2003, which included as an exhibit a press release announcing our financial results for the quarter ended September 30, 2003.

2. We filed a current report on Form 8-K on November 12, 2003, which included as an exhibit a press release announcing the results of the second of three pivotal phase 3 studies of exenatide.

3. We filed a current report on Form 8-K on November 25, 2003, which included as an exhibit a press release announcing the results of the third of three pivotal phase 3 studies of exenatide.

4. We filed a current report on Form 8-K on December 18, 2003, which included as an exhibit a press release announcing our receipt from the FDA of a second approvable letter for SYMLIN.

5. We filed a current report on Form 8-K on December 22, 2003, which included as exhibits (a) a press release from us and Eli Lilly and Company announcing the achievement of the first development milestones for exenatide and (b) a press release announcing that the Securities and Exchange Commission is conducting an informal inquiry related to recent communications about our drug candidate, SYMLIN.

(c) **Exhibits**

Exhibit Footnote	Exhibit Number	
(1)	3.1	Amended and Restated Certificate of Incorporation of the Registrant.
(6)	3.2	Amended and Restated Bylaws of the Registrant.
(17)	3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Registrant.
	4.1	Reference is made to Exhibits 3.1 - 3.3.
(23)(2)	4.2	Registration Rights Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(22)	4.3	Rights Agreement dated June 17, 2002, between the Registrant and American Stock Transfer & Trust Company.
(22)	4.4	Certificate of Designation of Series A Junior Participating Preferred Stock.
(30)	4.5	First Amendment to Rights Agreement dated December 13, 2002, between the Registrant and American Stock Transfer & Trust Company.
(26)	4.6	Indenture dated as of June 23, 2003, between Registrant and J.P. Morgan Trust Company, National Association (as Trustee).
(26)	4.7	Form of 2.25% Convertible Senior Note due 2008.
(26)	4.8	Registration Rights Agreement dated June 23, 2003, between Registrant and Goldman, Sachs & Co. and Morgan Stanley & Co. Incorporated.
(12)	4.9	Warrant Agreement issued by the Registrant to Johnson & Johnson dated September 30, 1997.
(1)	10.1	Form of Indemnity Agreement entered into between the Registrant and its directors and officers.†
(19)	10.2	Registrant's 1991 Stock Option Plan, as amended.†
(5)	10.3	Form of Incentive Stock Option Agreement under the 1991 Stock Option Plan.†
(1)	10.4	Form of Supplemental Stock Option Agreement under the 1991 Stock Option Plan.†
(1)	10.5	Form of Supplemental Stock Option Agreement not granted under the 1991 Stock Option Plan with related schedule.†
(15)	10.6	Registrant's Employee Stock Purchase Plan, as amended.†
(1)(2)	10.7	License Agreement, dated as of November 22, 1991, among the Registrant, the Regents of the University of Minnesota, and Per Westermark.
(3)	10.8	Form of Nonstatutory Stock Option Agreement under the Directors' Plan.†
(4)	10.9	Phantom Stock Unit Agreement, dated January 4, 1995, between the Registrant and Farview Management Co., L.P.†
(5)	10.10	Consulting Agreement dated June 15, 1995, between Registrant and Joseph C. Cook, Jr., as amended on March 25, 1996, and related Nonstatutory Stock Option grant dated June 15, 1995.†
(13)	10.11	Amendment dated September 1, 1996, to Option Agreements between the Registrant and Howard E. Greene, Jr.†
(7)(2)	10.12	Patent and Technology License Agreement, Consulting Agreement and Nonstatutory Stock Option Agreement dated October 1, 1996, between the Registrant and Dr. John Eng.
(7)(2)	10.13	Collaborative Research and Assignment Agreement dated October 15, 1996, among the Registrant, London Health Sciences Centre and Dr. John Dupre.
(9)	10.14	Amendment dated January 15, 1997, to the Consulting Agreement dated June 15, 1995, between the Registrant and Joseph C. Cook, Jr.†
(10)(2)	10.15	Collaboration Agreement between the Registrant and Hoechst Marion Roussel dated March 31, 1997.
(10)(2)	10.16	License and Option Agreement between the Registrant and Hoechst Marion Roussel dated March 31, 1997.
(11)	10.17	Registrant's Directors' Deferred Compensation Plan.†
(20)(2)	10.18	Agreement dated July 2, 1997, by and among the Registrant and Ortho-Biotech and Bachem California.
(14)	10.19	Employment Agreement dated March 25, 1998, between the Registrant and Joseph C. Cook, Jr.†
(15)	10.20	Special Form of Incentive Stock Option Agreement under the Option Plan of the Registrant.†
(16)	10.21	Stock Option Agreement dated March 25, 1998, between the Registrant and Joseph C. Cook, Jr.†
(20)(2)	10.22	Assignment and Amendment Agreement dated September 9, 1998, by and among the Registrant and Bachem California and Ortho-Biotech.

(20)(2)	10.23	Pramlintide Repurchase Agreement dated September 16, 1998, between the Registrant and Ortho-Biotech.
(16)	10.24	Stock Option Agreement dated October 23, 1998, between the Registrant and Joseph C. Cook, Jr.†
(20)(2)	10.25	Manufacturing Agreement dated April 28, 1999, between the Registrant and CP Pharmaceuticals Limited.
(21)(2)	10.26	Development and License Agreement dated May 15, 2000, between the Registrant and Alkermes Controlled Therapeutics II, Inc.
(8)	10.27	Registrant's Change in Control Employee Severance Benefits Plan.†
(25)	10.28	Registrant's 2001 Deferred Compensation Plan, as amended February 19, 2003.†
(11)	10.29	Registrant's 2001 Employee Stock Purchase Plan.†
(11)	10.30	Registrant's 2001 Equity Incentive Plan.†
(11)	10.31	Form of Stock Option Agreement under Registrant's 2001 Equity Incentive Plan.†
(24)	10.32	Sublease Agreement dated June 9, 2000, between Registrant and ST Microelectronics, Inc.
(24)	10.33	Registrant's Non-Employee Directors' Stock Option Plan.†
(23)(2)	10.34	Collaboration Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(23)(2)	10.35	U.S. Co-Promotion Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(23)(2)	10.36	Loan Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(23)	10.37	Milestone Conversion Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(23)	10.38	Stock Purchase Agreement dated September 19, 2002, between the Registrant and Eli Lilly and Company.
(26)	10.39	Security Agreement dated June 30, 2003, between the Registrant and Eli Lilly and Company.
(28)(2)	10.40	Device Development and Manufacturing Agreement dated July 1, 2003, between Registrant and Eli Lilly and Company.
(26)(2)	10.41	Employment Agreement dated May 20, 2003, between Registrant and Julia R. Brown. †
(27)	10.42	Registrant's Non-Employee Directors' Stock Option Plan Stock Option Agreement, as amended. †
(27)	10.43	Registrant's 2001 Equity Incentive Plan Stock Option Agreement, as amended. †
(27)	10.44	Registrant's 2001 Equity Incentive Plan Stock Option Agreement, as amended. †
(27)	10.45	Employment Agreement dated June 9, 2003, between Registrant and Ginger L. Graham. †
(29)(2)	10.46	Manufacturing Agreement dated May 12, 2003, between Registrant and UCB S.A.
(29)(2)	10.47	Limited Manufacturing and Supply Agreement dated June 16, 2003, between Registrant and OMJ Pharmaceuticals, Inc.
	10.48	Exenatide Manufacturing Agreement dated October 21, 2003, between Registrant and Mallinckrodt Inc.*
	10.49	Commercial Supply Agreement for Exenatide dated December 23, 2003, between Registrant and Bachem, Inc.*
	10.50	Sublease Agreement dated November 24, 2003, between Registrant and Bristol-Myers Squibb Company.
	10.51	Lease Agreement dated November 14, 2003, between Registrant and ARE-9363/9373/9393 Towne Centre, LLC.
	23.1	Consent of Ernst & Young LLP, Independent Auditors.
	24.1	Power of Attorney. Reference is made to page 44.
	31.1	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
	31.2	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.
	32.1	Certifications Pursuant to U.S.C Section 1350, As Adopted Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002.

† Indicates management or compensatory plan or arrangement required to be identified pursuant to Item 15(c).

* Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

(1) Filed as an exhibit to the Registrant's Registration Statement on Form S-1 (No. 33-44195) or amendments thereto and incorporated herein by reference.

(2) Confidential Treatment has been granted by the Securities and Exchange Commission with respect to portions of this agreement.

(3) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1993.

(4) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1994.

(5) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1995.

(6) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

(7) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996.

(8) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001.

(9) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1996.

(10) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1997.

(11) Filed as an exhibit to the Registrant's Registration Statement on Form S-8 (No. 333-61660) or amendments thereto and incorporated herein by reference.

(12) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1997.

(13) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1997.

(14) Filed as an exhibit to the Registrant's Registration Statement on Form S-3 (No. 33-58831) or amendments thereto and incorporated herein by reference.

(15) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1998.

(16) Filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1998.

(17) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001.

(18) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2000.

(19) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1999.

(20) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 1999.

(21) Filed as an exhibit to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2000.

(22) Filed as an exhibit on Form 8-K dated June 17, 2002, or amendments thereto and incorporated herein by reference.

(23) Filed as an exhibit on Form 8-K dated October 3, 2002, or amendments thereto and incorporated herein by reference.

(24) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2001.

(25) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2003.

(26) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.

(27) Filed as an exhibit to Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003.

(28) Filed as an exhibit to Amendment 1 to Registrant's Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2003.

(29) Filed as an exhibit to Amendment 1 to Registrant's Quarterly Report on Form 10-Q/A for the quarter ended September 30, 2003.

(30) Filed as an exhibit to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2002.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

AMYLIN PHARMACEUTICALS, INC.

Date: March 12, 2004

By: */s /Ginger L. Graham*
Ginger L. Graham
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Ginger L. Graham and Mark G. Foletta, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Report, and any other documents in connection therewith, and to file the same, with all exhibits thereto, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their or his substitute or substituted, may lawfully do or cause to be done by virtue hereof.

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

Signatures	Title	Date
/s/ GINGER L. GRAHAM Ginger L. Graham	President, Chief Executive Officer and Director *(Principal Executive Officer)*	March 12, 2004
/s/ MARK G. FOLETTA Mark G. Foletta	Vice President of Finance and Chief Financial Officer *(Principal Financial and Accounting Officer)*	March 12, 2004
/s/ JOSEPH C. COOK, JR. Joseph C. Cook, Jr.	Chairman of the Board	March 12, 2004
/s/ VAUGN D. BRYSON Vaughn D. Bryson	Director	March 12, 2004
/s/ HOWARD E. GREENE, JR. Howard E. Greene, Jr.	Director	March 12, 2004
/s/ TERRANCE H. GREGG Terrance H. Gregg	Director	March 12, 2004
/s/ JAY S. SKYLER, M.D. Jay S. Skyler, M.D.	Director	March 12, 2004
/s/ JOSEPH P. SULLIVAN Joseph P. Sullivan	Director	March 12, 2004
/s/ THOMAS R. TESTMAN Thomas R. Testman	Director	March 12, 2004
/s/ JAMES N. WILSON James N. Wilson	Director	March 12, 2004

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Board of Directors and Stockholders
Amylin Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Amylin Pharmaceuticals, Inc., as of December 31, 2003 and 2002, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2003. Our audits also included the financial statement schedule listed in the Index. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Amylin Pharmaceuticals, Inc., at December 31, 2003 and 2002 and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2003, in conformity with accounting principles generally accepted in the United States. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ ERNST & YOUNG LLP

San Diego, California
February 6, 2004

AMYLIN PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except per share data)

ASSETS

	December 31, 2003	December 31, 2002
Current assets:		
Cash and cash equivalents	$ 76,615	$ 69,415
Short-term investments	193,161	77,943
Inventories	12,574	9,820
Other current assets	6,198	3,203
Total current assets	288,548	160,381
Property and equipment, net	13,691	4,469
Patents and other assets, net	4,044	3,695
Debt issuance costs, net	4,762	—
	$ 311,045	$ 168,545

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Accounts payable, accrued expenses and other current liabilities	$ 31,636	$ 19,502
Accrued compensation	9,482	6,421
Current portion of deferred revenue	4,286	42,090
Total current liabilities	45,404	68,013
Deferred revenue, net of current portion	25,229	24,515
Note payable and other long-term obligations, net of current portion	2,196	63,719
Convertible senior notes	175,000	—
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $.001 par value, 7,500 shares authorized, none issued and outstanding at December 31, 2003 and 2002, respectively	—	—
Common stock, $.001 par value, 200,000 shares authorized, 93,625 and 81,979 issued and outstanding at December 31, 2003 and 2002, respectively	94	82
Additional paid-in capital	703,479	530,023
Accumulated deficit	(640,339)	(517,531)
Deferred compensation	(310)	(443)
Accumulated other comprehensive income	292	167
Total stockholders' equity	63,216	12,298
	$ 311,045	$ 168,545

See accompanying notes to consolidated financial statements.

AMYLIN PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Years ended December 31,		
	2003	**2002**	**2001**
Revenues under collaborative agreement	$ 85,652	$ 13,395	$ —
Operating expenses:			
Research and development	149,431	94,456	49,601
Selling, general and administrative	56,761	25,334	20,469
Acquired in-process research and development	3,300	—	—
	209,492	119,790	70,070
Loss from operations	(123,840)	(106,395)	(70,070)
Interest and other income	7,079	2,619	4,179
Interest and other expense	(6,047)	(6,011)	(6,081)
Net loss	$ (122,808)	$ (109,787)	$ (71,972)
Net loss per share — basic and diluted	$ (1.33)	$ (1.39)	$ (1.09)
Weighted average shares — basic and diluted	92,396	79,106	65,927

See accompanying notes to consolidated financial statements.

AMYLIN PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
For the years ended December 31, 2003, 2002 and 2001
(in thousands)

	Common stock		Additional	Accumulated	Deferred	Accumulated other comprehensive	Total stockholders'
	Shares	Amount	paid-in capital	deficit	compensation	income (loss)	equity (deficit)
Balance at December 31, 2000	63,383	$ 63	$ 367,022	$ (335,772)	$ (307)	$ 280	$ 31,286
Comprehensive income (loss):							
Net loss	—	—	—	(71,972)	—	—	(71,972)
Unrealized gain on available-for-sale securities	—	—	—	—	—	108	108
Comprehensive loss	—	—	—	—	—	—	(71,864)
Issuance of common stock upon exercise of options	576	1	1,218	—	—	—	1,219
Issuance of common stock for employer 401(k) match	38	—	347	—	—	—	347
Issuance of common stock for other employee benefit plans	72	—	542	—	—	—	542
Stock-based compensation	—	—	614	—	—	—	614
Issuance of common stock in private placement	3,485	4	33,756	—	—	—	33,760
Deferred compensation related to stock options	—	—	204	—	(204)	—	—
Amortization of deferred compensation	—	—	—	—	202	—	202
Issuance of warrants for services	—	—	411	—	—	—	411
Balance at December 31, 2001	67,554	68	404,114	(407,744)	(309)	388	(3,483)
Comprehensive income (loss):							
Net loss	—	—	—	(109,787)	—	—	(109,787)
Unrealized loss on available-for-sale securities	—	—	—	—	—	(221)	(221)
Comprehensive loss	—	—	—	—	—	—	(110,008)
Issuance of common stock upon exercise of options and warrants	601	—	3,474	—	—	—	3,474
Issuance of common stock for employer 401(k) match	29	—	472	—	—	—	472
Issuance of common stock for other employee benefit plans	115	—	905	—	—	—	905
Stock-based compensation	—	—	103	—	—	—	103
Issuance of common stock in public offering	12,075	12	90,742	—	—	—	90,754
Issuance of common stock in connection with collaboration agreement	1,605	2	29,998	—	—	—	30,000
Deferred compensation related to stock options	—	—	215	—	(215)	—	—
Amortization of deferred compensation	—	—	—	—	81	—	81
Balance at December 31, 2002	81,979	82	530,023	(517,531)	(443)	167	12,298
Comprehensive income (loss):							
Net loss	—	—	—	(122,808)	—	—	(122,808)
Unrealized loss on available-for-sale securities	—	—	—	—	—	125	125
Comprehensive loss	—	—	—	—	—	—	(122,683)
Issuance of common stock upon exercise of options and warrants	898	1	6,376	—	—	—	6,377
Issuance of common stock for employer 401(k) match	39	—	873	—	—	—	873
Issuance of common stock for other employee benefit plans	167	—	1,384	—	—	—	1,384
Stock-based compensation	—	—	84	—	—	—	84
Issuance of common stock in public offering	10,542	11	164,674	—	—	—	164,685
Deferred compensation related to stock options	—	—	65	—	(65)	—	—
Amortization of deferred compensation	—	—	—	—	198	—	198
Balance at December 31, 2003	93,625	$ 94	$ 703,479	$ (640,339)	$ (310)	$ 292	$ 63,216

See accompanying notes to consolidated financial statements.

AMYLIN PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Years ended December 31,		
	2003	2002	2001
Operating activities:			
Net loss	$ (122,808)	$ (109,787)	$ (71,972)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	4,481	2,105	1,289
Inventory reserve	2,186	1,015	—
Amortization of debt discount	655	1,198	1,198
Accrued interest added to note payable	2,701	4,725	4,764
Gain on early retirement of note payable	(3,567)	—	—
Other non-cash expenses	1,303	1,000	1,574
Changes in operating assets:			
Inventories	(4,940)	(2,834)	(6,924)
Other current assets	(3,195)	(1,702)	100
Accounts payable and accrued liabilities	15,820	16,984	1,680
Deferred revenue	(37,090)	66,605	—
Other assets and liabilities, net	1,049	297	468
Net cash used in operating activities	(143,405)	(20,394)	(67,823)
Investing activities:			
Purchases of short-term investments	(335,756)	(152,136)	(50,940)
Sales and maturities of short-term investments	220,329	98,200	103,503
Purchases of equipment, net	(12,314)	(2,535)	(2,641)
Increase in patents	(546)	(701)	(950)
Net cash provided by (used in) investing activities	(128,287)	(57,172)	48,972
Financing activities:			
Proceeds from issuance of common stock, net	172,446	125,133	35,521
Proceeds from issuance of convertible debt, net	169,696	—	—
Principal payments on notes payable and capital leases	(63,250)	(547)	(540)
Net cash provided by financing activities	278,892	124,586	34,981
Increase in cash and cash equivalents	7,200	47,020	16,130
Cash and cash equivalents at beginning of year	69,415	22,395	6,265
Cash and cash equivalents at end of year	$ 76,615	$ 69,415	$ 22,395
Supplemental disclosures of cash flow information:			
Interest paid	$ 2,065	$ 47	$ 118

See accompanying notes to consolidated financial statements.

1. Summary of Significant Accounting Policies

Organization

Amylin Pharmaceuticals, Inc. (the "Company" or "Amylin") was incorporated in Delaware on September 29, 1987. Amylin is a biopharmaceutical company engaged in the discovery, development and commercialization of drug candidates for the treatment of diabetes, obesity and cardiovascular disease.

Reclassifications

Certain reclassifications have been made to the consolidated financial statements to provide consistent presentation for all periods presented.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, Amylin Europe Limited. All significant intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the 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.

Revenue Recognition

Revenue is recognized when all four of the following criteria are met: (i) persuasive evidence that an arrangement exists; (ii) delivery of the products and/or services has occurred; (iii) the selling price is fixed or determinable; and (iv) collectibility is reasonably assured. In addition, the Company follows the provisions of the Securities and Exchange Commission's Staff Accounting Bulletin No. 101, "*Revenue Recognition,*" which sets forth guidelines in the timing of revenue recognition based upon factors such as passage of title, installation, payments and customer acceptance. Amounts received for upfront product and technology license fees under multiple-element arrangements are deferred and recognized over the period of such services or performance if such arrangements require on-going services or performance. Amounts received for milestones are recognized upon achievement of the milestone, and the expiration of stock conversion rights, if any, associated with such payments. Amounts received for equalization of development expenses are recognized in the period in which the related expenses are incurred. Any amounts received prior to satisfying these revenue recognition criteria will be recorded as deferred revenue in the accompanying consolidated balance sheets.

Research and Development Expenses

Research and development costs are expensed as incurred and include salaries and benefits, costs paid to third-party contractors to perform research, conduct clinical trials, develop and manufacture drug materials and delivery devices, and a portion of facilities costs. Clinical trial costs are a significant component of research and development expenses and include costs associated with third-party contractors. Invoicing from third-party contractors for services performed can lag several months. The Company accrues the costs of services rendered in connection with third-party contractor activities based on its estimate of management fees, site management and monitoring costs and data management costs. Actual clinical trial costs may differ from estimated clinical trial costs and are adjusted for in the period in which they become known.

Concentration of Credit Risk

The Company invests its excess cash in U.S. Government securities and debt instruments of financial institutions and corporations with strong credit ratings. The Company has established guidelines relative to diversification and maturities that maintain safety and liquidity. These guidelines are periodically reviewed. Financial instruments that potentially subject the Company to significant credit risk consist principally of cash equivalents and short-term investments.

Cash, Cash Equivalents and Short-term Investments

Cash, cash equivalents and short-term investments consist principally of U.S. Government securities and other highly liquid debt instruments. The Company considers instruments with original maturities of less than 90 days to be cash equivalents.

Investments

The Company has classified its debt securities as available-for-sale when the Company does not intend to hold the securities to maturity or hold the securities for resale in anticipation of short-term market movements. Accordingly, the Company carries its short-term investments at fair value, and unrealized holding gains or losses on these securities are carried as a separate component of stockholders' equity (deficit). The amortized cost of debt securities in this category is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization is included in interest income. Realized gains and losses and declines in value judged to be other-than-temporary (of which there have been none to date) on available-for-sale securities are included in interest income. The cost of securities sold is based on the specific-identification method.

Inventories

Inventories are stated at the lower of cost (FIFO) or market, and consist of SYMLIN® bulk drug material and finished SYMLIN drug product in vials for syringe administration and cartridges for pen administration, pending regulatory approvals.

Included in inventories are $0.5 million and $1.6 million at December 31, 2003, and 2002, respectively, of advance payments for raw materials.

Long-lived Assets

Long-lived assets, consisting primarily of office and laboratory equipment, are recorded at cost. Depreciation of equipment is computed using the straight-line method, over three to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of the estimated useful lives of the assets or the remaining term of the lease. Amortization of equipment under capital leases is reported with depreciation of property and equipment. The Company recorded depreciation expense of $3.1 million, $1.7 million and $1.1 million in the years ended December 31, 2003, 2002 and 2001, respectively.

The Company records impairment losses on long-lived assets used in operations when events and circumstances indicate that assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amount of those assets. The Company also records the assets to be disposed of at the lower of their carrying amount or fair value less cost to sell. To date, the Company has not experienced any impairment losses on its long-lived assets used in operations. While the Company's current and historical operating and cash flow losses are indicators of impairment, the Company believes the future cash flows to be received support the carrying value of its long-lived assets and accordingly, the Company has not recognized any impairment losses as of December 31, 2003.

Patents

The Company has filed a number of patent applications with the United States Patent and Trademark Office and in foreign countries. Legal and related costs incurred in connection with pending patent applications have generally

been capitalized. Costs related to successful patent applications are amortized over the lesser of the remaining useful life of the related technology or the remaining patent life, commencing on the date the patent is issued. Gross capitalized patent costs were approximately $4.7 million and $4.6 million at December 31, 2003 and 2002, respectively. Accumulated amortization was approximately $1.9 million and $1.2 million at December 31, 2003 and 2002, respectively. Capitalized costs related to patent applications are charged to operations in the period during which a determination not to pursue such applications is made.

Debt Issuance Costs

Debt issuance costs relate to the $175 million of 2.25% convertible senior notes issued in June and July of 2003. Debt issuance costs are being amortized to interest expense in the consolidated statement of operations on a straight-line basis over the contractual term of the notes. The Company incurred total debt issuance costs of $5.3 million and recorded $0.5 million of amortization in the year ended December 31, 2003.

Net Loss Per Share

Basic and diluted net loss applicable to common stock per share is computed using the weighted average number of common shares outstanding during the periods. Common stock equivalents from stock options and warrants of approximately 4.2 million, 1.8 million and 4.1 million were excluded from the calculation of net loss per share for the years ended December 31, 2003, 2002 and 2001, respectively, because the effect is antidilutive.

Foreign Currency Translation

Assets and liabilities of foreign operations where the functional currency is other than the U.S. dollar are translated at fiscal year-end rates of exchange, and the related revenue and expense amounts are translated at the average rates of exchange during the fiscal year. Gains and losses resulting from translating foreign currency financial statements resulted in an immaterial impact to the Company's financial statements for the years ended December 31, 2003, 2002 and 2001.

Comprehensive Income (Loss)

Statement of Financial Accounting Standard ("SFAS") No. 130, *Reporting Comprehensive Income* requires that all components of comprehensive income (loss) be reported in the financial statements in the period in which they are recognized. Comprehensive income is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Net income (loss) and other comprehensive income (loss), including unrealized gains and losses on investments, shall be reported, net of their related tax effect, to arrive at comprehensive income (loss).

Stock-based Compensation

The Company records compensation expense for employee stock options based upon the intrinsic value on the date of grant pursuant to Accounting Principles Board (APB) Opinion No. 25, *"Accounting for Stock Issued to Employees."* Because the Company establishes the exercise price based on the fair market value of the Company's stock at the date of grant, the options have no intrinsic value upon grant, and therefore no expense is recorded.

As required under SFAS No. 123 "*Accounting for Stock-Based* Compensation," and SFAS No. 148, *"Accounting for Stock Based Compensation Transition and Disclosure,"* the pro forma effects of stock-based compensation on net income and net earnings per common share have been estimated at the date of grant using the Black-Scholes option pricing model based on the following assumptions:

	Year ended December 31,		
	2003	2002	2001
Risk-free interest rate	3.73%	3.75%	4.50%
Dividend yield	0%	0%	0%
Volatility factor	120%	131%	134%
Weighted-average expected life	6.59	4.60	6.47

For purposes of pro forma disclosures, the estimated fair value of the options is assumed to be amortized to expense over the options' vesting periods. These pro forma amounts may not be representative of the effects on reported net income (loss) for future years due to the uncertainty of stock option grant volume and potential changes in assumptions driven by market factors. The pro forma effects of recognizing compensation expense under the fair value method on net income (loss) and net earnings per common share were as follows (in thousands, except for earnings per share):

	Years ended December 31,		
	2003	2002	2001
Net loss, as reported	$ (122,808)	$ (109,787)	$ (71,972)
Deduct: Stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	23,342	11,010	9,349
Pro forma net loss	$ (146,150)	$ (120,797)	$ (81,321)
Earnings per share:			
Basic and diluted – as reported	$ (1.33)	$ (1.39)	$ (1.09)
Basic and diluted – pro forma	$ (1.58)	$ (1.53)	$ (1.23)

Recently Issued Accounting Standards

In May 2003, the Financial Accounting Standards Board ("FASB") issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities," effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003. This rule amends SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, to provide more consistent reporting of contracts as either derivatives or hybrid instruments. The adoption of SFAS No. 149 did not have a material impact on the results of operations or the financial position of the Company.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity," effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. The impact upon adoption of SFAS No. 150 did not have a material impact on the results of operations or the financial position of the Company.

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"), which is effective for the Company on January 1, 2004. FIN 46 requires a variable interest entity to be consolidated by a company if that company is subject to a majority of the risk of loss from the variable interest entity's activities or entitled to receive a majority of the entity's residual returns or both. The adoption of FIN 46 is not expected to have a material impact on the results of operations or the financial position of the Company.

2. Investments

The following is a summary of short-term investments as of December 31, 2003 and 2002 (in thousands).

	Available-for-Sale Securities			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
December 31, 2003				
U.S. Treasury securities and obligations of U.S. Government agencies	$ 67,238	$ 31	$ (42)	$ 67,227
Asset backed securities	64,047	13	(51)	64,009
Corporate and other debt securities	61,902	37	(14)	61,925
Total	$ 193,187	$ 81	$ (107)	$ 193,161
December 31, 2002				
U.S. Treasury securities and obligations of U.S. Government agencies	$ 20,813	$ 35	$ —	$ 20,848
Asset backed securities	20,415	117	—	20,532
Corporate and other debt securities	36,532	31	—	36,563
Total	$ 77,760	$ 183	$ —	$ 77,943

The gross realized gains on sales of available-for-sale securities totaled $0.2 million and $0.5 million and the gross realized losses totaled $1.6 million and $0.6 million for the years ended December 31, 2003 and 2002, respectively. Approximately $111.8 million, $58.9 million and $22.4 million mature in 2004, 2005, and thereafter, respectively.

3. Other Financial Information

Inventories consist of the following (in thousands):

	At December 31, 2003	At December 31, 2002
Raw materials	$ 6,608	$ 8,929
Finished goods	9,303	2,042
Valuation reserve	(3,337)	(1,151)
	$ 12,574	$ 9,820

Other current assets consists of the following (in thousands):

	At December 31, 2003	At December 31, 2002
Interest and other receivables	$ 2,013	$ 701
Prepaid expenses	4,185	2,502
	$ 6,198	$ 3,203

Property and equipment consists of the following (in thousands):

	At December 31, 2003	At December 31, 2002
Office equipment and furniture	$ 7,262	$ 4,626
Laboratory equipment	6,653	2,929
Production equipment	608	—
Leasehold improvements	6,673	1,334
	21,196	8,889
Less accumulated depreciation and amortization	(7,505)	(4,420)
	$ 13,691	$ 4,469

Accounts payable, accrued expenses and other current liabilities consist of the following (in thousands):

	At December 31, 2003	At December 31, 2002
Accounts payable	$ 28,713	$ 17,310
Accrued expenses	2,911	1,639
Current portion of note payable	—	540
Current portion of capital leases	12	13
	$ 31,636	$ 19,502

4. Debt and Lease Commitments

In November 1997, the Company entered into a financing agreement to provide the Company with up to $2.7 million of financing for equipment purchases. The Company made monthly payments of principal and interest and the loan was paid in full in December 2003 and the agreement terminated. At December 31, 2002, the Company had an outstanding balance of $540,000 for this debt. Monthly interest payments were calculated based on prime plus 0.5%. The credit agreement provided the lender with a security interest in all equipment financed under the agreement and requires payment of a security deposit of 50% of the remaining outstanding balance should the Company's cash and investment balances fall below $10 million.

The Company leases its facilities under operating leases. The minimum annual rent on the Company's facilities is subject to increases based on stated rental adjustment terms of certain leases, taxes, insurance and operating costs. For financial reporting purposes, rent expense is recognized on a straight-line basis over the term of the leases. Accordingly, rent expense recognized in excess of rent paid is reflected as deferred rent and is included in accounts payable, accrued expenses and other current liabilities in the accompanying consolidated balance sheets. The Company has obligations under capital leases, which total $39,000, of which $12,000 is due in 2004.

Minimum future annual obligations for operating leases for years ending after December 31, 2003 are as follows (in thousands):

2004	$	3,073
2005		4,033
2006		5,187
2007		5,425
2008		5,510
Thereafter		31,413
Total minimum lease payments	$	54,641

Rent expense for 2003, 2002, and 2001, was $4.5 million, $2.0 million, and $2.3 million, respectively.

5. Note Payable to Johnson & Johnson and Related Commitments

From June 1995 to August 1998, Amylin and Johnson & Johnson collaborated on the development and commercialization of SYMLIN pursuant to a worldwide collaboration agreement. The collaboration terminated in August 1998 and all product and other rights associated with SYMLIN and related compounds reverted to Amylin, subject to the obligation to pay amounts owed under a loan and security agreement for advances received by the Company under development and pre-marketing loan facilities during the term of the collaboration.

In July 2003, the Company repaid all its outstanding indebtedness to Johnson & Johnson for $62.7 million, representing a discount of seven percent from face value on the date of payment. This transaction resulted in a gain of $3.6 million, which is included in interest and other income in the accompanying consolidated statements of operations for the year ended December 31, 2003. At December 31, 2002, the total principal and interest due to Johnson & Johnson was approximately $64.7 million. The amount included in note payable and other long-term obligations in the consolidated balance sheet of $62.9 million at December 31, 2002 is net of a debt discount of $1.8

million, which represents the unamortized portion of the value assigned to the warrants issued to Johnson & Johnson.

In September 1998, the Company entered into an agreement with Ortho-Biotech, Inc., an affiliate of Johnson & Johnson, which provided for the possible future purchase by the Company of commercial grade SYMLIN bulk drug material purchased by Johnson & Johnson during the collaboration agreement. The Company must purchase the drug material in full on the first to occur of certain events, including the execution of an agreement with a major pharmaceutical company relating to the development, commercialization and/or sale of SYMLIN, receipt of regulatory approval for the sale of SYMLIN, or a change in control of the Company. The purchase price will be the price originally paid by Johnson & Johnson, plus a carrying cost equivalent to the five-year U.S. Treasury note rate plus 3%. If none of the aforementioned events occurs, the Company has no obligation related to this agreement. At December 31, 2003, Ortho-Biotech was holding inventory purchased under this agreement totaling $7.2 million with a purchase cost to the Company of approximately $9.4 million.

6. Convertible Senior Notes

In June 2003, the Company issued $150 million aggregate principal amount of convertible senior notes due June 30, 2008 in a private placement. In July 2003, the Company issued an additional $25 million aggregate principal amount of the notes when the initial purchasers exercised in full an option to purchase additional notes.

The Company has filed a registration statement under the Securities Act to permit registered resale of the notes and of the common stock issuable upon conversion. The Company has used a portion of the net proceeds from these transactions for research and development, the planned commercialization of SYMLIN® and for general corporate purposes. In addition, the Company used some of the net proceeds from these transactions to repay all of its outstanding indebtedness to Johnson & Johnson (see Note 5).

The sale was completed with a coupon of 2.25% per annum, payable in cash semi-annually. The notes are convertible into a total of up to 5.4 million shares of common stock at a conversion price of $32.55 per share, subject to adjustment in certain circumstances. The notes are redeemable in whole or in part on or after June 30, 2006, at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued and unpaid interest to the redemption date, at the Company's option, if the closing price of the Company's common stock has exceeded 140% of the conversion price for at least 20 trading days in any consecutive 30-day trading period. At the time of any such redemption, the Company will also make an additional payment on the redeemed notes equal to $112.94 per $1,000 principal amount of the notes, less interest actually paid or accrued but unpaid on the notes.

7. Stockholders' Equity (Deficit)

Stock Purchase Plans

In November 1991, the Company adopted the Employee Stock Purchase Plan (the "1991 Stock Purchase Plan"), under which 600,000 shares of common stock may be issued to eligible employees, including officers. Contributions to this plan may not exceed 15% of the participant's eligible compensation. The price of common stock issued under the 1991 Stock Purchase Plan is equal to the lesser of 85% of the market price on the effective date of an employee's participation in the plan or 85% of the fair market value of the common stock at the purchase date. This plan expired in January 2002. At December 31, 2003, 600,000 shares of common stock had been issued under the 1991 Stock Purchase Plan.

In March 2001, the Company adopted the 2001 Employee Stock Purchase Plan (the "2001 Stock Purchase Plan"), under which 400,000 shares of common stock may be issued to eligible employees, including officers. Contributions to this plan may not exceed 15% of the participant's eligible compensation. The Company's stockholders approved this plan at its 2001 annual meeting. The price of common stock issued under the 2001 Stock Purchase Plan is equal to the lesser of 85% of the market price on the effective date of an employee's participation in the plan or 85% of the fair market value of the common stock at the purchase date. At December 31, 2003, approximately 211,000 shares of common stock had been issued under the 2001 Stock Purchase Plan.

Stock Option Plans

Under the Company's 1991 Stock Option Plan (the "1991 Plan"), 7.8 million shares of common stock were reserved for issuance upon exercise of options granted to employees and consultants of the Company. The 1991 Plan provides for the grant of incentive and nonstatutory stock options. The exercise price of incentive stock options must equal at least the fair market value on the date of grant, and the exercise price of nonstatutory stock options may be no less than 85% of the fair market value on the date of grant. Generally, options are granted at prices equal to at least 100% of the fair market value of the stock subject to the option at the date of grant, expire not later than ten years from the date of grant and vest over a four-year period, with one-quarter becoming exercisable one year following the date of grant and the remainder becoming exercisable in monthly increments over a three-year period. From time to time, as approved by the Company's Board of Directors, options with differing terms have also been granted.

In December 2000, the Company adopted the 2001 Equity Incentive Plan (the "2001 Plan"), which provides for an additional 11.5 million shares of common stock reserved for issuance upon exercise of options granted to employees and consultants of the Company. The 2001 Plan provides for up to an additional 5.3 million shares to be reserved for issuance upon exercise of options to the extent that options issued under the 1991 Plan expire or are cancelled subsequent to the adoption of the 2001 Plan. The 2001 Plan was approved at a meeting of stockholders in January 2001 and the 2001 Plan, as amended, was approved by the Company's stockholders at its 2003 annual meeting. The exercise price of incentive stock options may not be less than 100% of the fair market value of the stock subject to the option on the date of the grant and, in some cases, may not be less than 110% of such fair market value. The exercise price of nonstatutory options may not be less than 85% of the fair market value of the stock on the date of the grant and, in some cases, may not be less than 100% of such fair market value. Options issued under the 2001 Plan are generally issued, vest and expire on the same terms as the 1991 Plan.

Under the Company's Non-Employee Directors' Stock Option Plan (the "Directors' Plan"), 450,000 shares of common stock are reserved for issuance upon exercise of nonqualified stock options granted to non-employee directors of the Company. The Directors' Plan was approved by the Company's stockholders at its 2001 annual meeting. Options granted under the Directors' Plan must have an exercise price of at least 100% of the fair market value of the stock subject to the option on the date of grant, vest ratably over periods ranging from twelve to thirty-six months and expire not later than ten years from the date of grant. Options ceased being granted under the Directors' Plan upon the approval of the 2003 Non-Employee Directors' Plan described below.

In April 2003, the Company adopted the 2003 Non-Employee Director's Plan (the "2003 Directors' Plan). The 2003 Director's Plan provides for automatic grants to non-employee directors upon their initial appointment or election to the Company's Board of Directors. Options granted under the 2003 Directors' Plan are issued under the 2001 Plan described above. Options are granted at prices that may not be less than 100% of the fair market value of the stock subject to the option at the date of grant, expire not later than ten years from the date of grant and vest over a four-year period, with one-quarter becoming exercisable one year following the date of grant and the remainder becoming exercisable in monthly increments over a three-year period.

The following table summarizes option activity for all of the option plans (in thousands, except per share data):

	Shares Under Option	Weighted Average Exercise Price
Outstanding at December 31, 2000	5,678	$ 7.10
Granted	2,209	$ 8.28
Exercised	(576)	$ 2.12
Cancelled	(247)	$ 9.15
Outstanding at December 31, 2001	7,064	$ 7.80
Granted	1,685	$ 12.93
Exercised	(593)	$ 5.86
Cancelled	(192)	$ 10.80
Outstanding at December 31, 2002	7,964	$ 8.96
Granted	3,665	$ 20.40
Exercised	(898)	$ 7.68
Cancelled	(161)	$ 11.74
Outstanding at December 31, 2003	10,570	$ 13.01

At December 31, 2003, approximately 4.5 million shares remained available for grant under the Company's stock option plans. The weighted average grant-date fair value of options granted by the Company was $18.06, $11.14 and $7.64 in the years ended December 31, 2003, 2002 and 2001 respectively. Following is a further breakdown of the options outstanding as of December 31, 2003 (in thousands, except per share data):

Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$ 0.313 - $ 2.656	1,120	4.78	$ 1.718	1,119	$ 1.718
$ 2.719 - $ 5.730	1,162	6.48	$ 5.353	744	$ 5.147
$ 5.813 - $ 9.937	1,275	6.13	$ 8.507	990	$ 8.358
$ 9.980 - $ 11.950	1,588	7.60	$ 11.252	894	$ 11.069
$ 12.000 - $ 14.281	1,213	6.20	$ 13.602	1,039	$ 13.686
$ 14.375 - $ 17.850	946	8.68	$ 16.467	213	$ 16.377
$ 17.860 - $ 22.020	2,069	9.34	$ 18.874	68	$ 18.942
$ 22.220 - $ 29.980	1,197	9.58	$ 24.648	—	$ —
	10,570			5,067	

Stock Warrants

In May 1997, in conjunction with an amendment to a license agreement, the Company issued a warrant to the licensor to purchase 20,000 shares of the Company's common stock with a fixed exercise price of $11.375 per share and a 10-year exercise period. The Company determined that the value of this warrant was not material.

In September 1997, in conjunction with the draw down under the development loan facility with Johnson & Johnson, the Company issued a warrant to Johnson & Johnson to purchase 1,530,950 shares of the Company's common stock at an exercise price of $12.00 per share, which expires on September 29, 2007 (see "Note Payable to Johnson & Johnson and Related Commitments"). The estimated fair value of the warrants at that time was $8.1 million and this amount was amortized to interest expense over the life of the development loan.

In October 2000, in conjunction with a development, manufacture and commercialization agreement, the Company issued warrants to a collaborative partner to purchase 25,000 shares of the Company's common stock with a fixed exercise price of $10.55 per share, which expires in October 2007. The Company valued the warrant under the Black-Scholes methodology at $271,000, which was expensed in 2000 as an additional cost of the transaction. In March 2001, in conjunction with the same agreement, the Company issued warrants to its collaborative partner to purchase 50,000 shares of the Company's common stock with a fixed exercise price of $10.01 per share, which expires in March 2008. The Company valued the warrant under the Black-Scholes methodology at $411,000, which was expensed in 2001 as an additional cost of the transaction. The Company is not obligated to issue additional warrants under this collaboration agreement.

Shares Reserved for Future Issuance

The following shares of common stock are reserved for future issuance at December 31, 2003 (in thousands):

Employee Stock Option Plans	14,758
Employee Stock Purchase Plans	189
Directors' Deferred Compensation Plan	24
Directors' Stock Option Plan	350
Warrants	1,626
Convertible Senior Notes	5,376
	22,323

Issuance of Common Stock

In May 2001, the Company completed a private stock offering of 4.1 million shares of common stock priced at $10.00 per share to select institutional investors. This transaction included the sale of approximately 3.5 million shares of newly issued stock by the Company and 0.6 million shares by an existing stockholder. Net proceeds to the Company from this transaction were approximately $33.8 million.

In February 2002, the Company completed a public offering of 12.075 million shares of its common stock at a price of $8.00 per share. This offering was completed pursuant to a 13.3 million share universal shelf registration statement initially filed with the Securities and Exchange Commission in December 2001. This transaction generated net proceeds of approximately $90.7 million for the Company.

In September 2002, in connection with the Lilly collaboration, Lilly purchased approximately 1.6 million shares of the Company's common stock at a purchase price of $30 million, or $18.69 per share. These shares are not registered under the Securities Act of 1933 ("the Act"), as amended and will be subject to restrictions on the transfer or resale pursuant to the Act. Lilly has certain registration rights with respect to these shares that became exercisable upon the completion of all three of the ongoing Phase 3 clinical trials for exenatide in the fourth quarter of 2003.

In January 2003, the Company completed a public offering of approximately 10.5 million shares of its common stock at a price of $16.60 per share. This offering was completed pursuant to a $175 million universal shelf registration statement initially filed with the Securities and Exchange Commission in November 2002. This transaction generated net proceeds of approximately $165 million for the Company.

Shareholder Rights Plan

In June 2002, the Company adopted a Preferred Share Purchase Rights Plan (the "Rights Plan"). The Rights Plan provides for a dividend distribution of one preferred stock purchase right (a "Right") for each outstanding share of the Company's common stock, par value $0.001 per share (the "Common Shares"), held of record at the close of business on June 28, 2002. The Rights are not currently exercisable. Under certain conditions involving an acquisition or proposed acquisition by any person or group of 15% or more of the Company's common stock, the Rights permit the holders (other than the 15% holder) to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value $0.001 per share (the "Preferred Shares") at a price of $100 per one one-hundredth of a Preferred Share, subject to adjustment. Each one one-hundredth of a share of Preferred Shares has designations and powers, preferences and rights and the qualifications, limitations and restrictions which make its value approximately equal to the value of a Common Share. Under certain conditions, the Rights may be redeemed by the Company's Board of Directors in whole, but not in part, at a price of $0.001 per Right.

8. Benefit Plans

The Company has a defined contribution 401(k) plan for the benefit of all eligible employees. Discretionary matching contributions are based on a percentage of employee contributions and are funded by newly issued shares of the Company's common stock. The fair market value of matching contributions made by the Company for the benefit of its employees in 2003, 2002 and 2001 was $873,000, $475,000 and $347,000, respectively.

In August 1997, the Company adopted a Non-Employee Directors' Deferred Compensation Plan (the "Directors' Deferral Plan") that permits participating non-employee directors to elect, on an annual basis, to defer all or a portion of their cash compensation in a deferred stock account, pursuant to which the deferred fees are credited in the form of phantom shares of the Company's common stock, based on the market price of the stock at the time the fees are earned. Deferred amounts are valued at the fair market value of the Company's common stock at each reporting date and are included in accrued compensation in the accompanying consolidated balance sheets. Upon termination of service the director's account is settled in either cash or stock, at the Company's discretion. The Company recorded expense associated with this plan of $521,000, $499,000 and $158,000 for the years ended December 31, 2003, 2002 and 2001, respectively.

The Company adopted a Deferred Compensation Plan in April 2001, which allows officers and directors to defer up to 100% of their annual compensation. The trust assets, consisting of primarily cash, mutual funds and equity securities are recorded at current market prices. The company-owned assets are placed in a "rabbi trust" and are included in other current assets in the accompanying consolidated balance sheets. The corresponding liability of $2.2 million, $772,000 and $500,000 at December 31, 2003, 2002 and 2001, respectively, is included in note payable and other long-term liabilities in the accompanying consolidated balance sheet. Total contributions to this plan, consisting solely of compensation deferred by participants, were $1.2 million, $318,000, and $466,000 for the years ended December 31, 2003, 2002 and 2001, respectively.

9. Collaborative Agreements

Collaboration with Eli Lilly and Company

In September 2002, the Company and Eli Lilly and Company ("Lilly") entered into a collaboration agreement for the global development and commercialization of exenatide, including both twice-daily and sustained release formulations. Under the terms of the agreement Amylin and Lilly will share U.S. development and commercialization costs equally. Development costs outside of the United States will be shared 80% by Lilly and 20% by Amylin and Lilly will be responsible for all commercialization costs outside of the United States.

Amylin and Lilly will share equally in operating profits from the sale of collaboration products in the United States. Operating profits from the sale of product outside of the United States will be shared at approximately 80% to Lilly and 20% to Amylin. Additionally, the companies agreed that, for a limited period of time prior to the commercialization of exenatide, Amylin will co-promote Humatrope®, Lilly's recombinant human growth hormone product, in the United States.

At signing, Lilly made initial non-refundable payments to the Company totaling $80 million and Amylin agreed to incur the first $101.2 million of development expenses for exenatide following the date of the agreement. This cumulative level of development expenses was reached during the year ended December 31, 2003. Subsequent to this $101.2 million of cumulative development expenses, Lilly is responsible to fund, on an ongoing basis, 50% of development costs in the U.S and 80% of development costs outside of the United States.

In addition to these up-front payments, Lilly agreed to make future milestone payments of up to $85 million upon the achievement of certain development milestones, including milestones relating to both twice daily and sustained release formulations of exenatide. The Company received development milestones of $35 million in December 2003 following the successful completion of the Phase 3 clinical program for exenatide. Of this amount, $30 million was recognized as revenues under collaborative agreements in the accompanying consolidated statements of operations and $5 million was deferred as long term deferred revenue in the accompanying consolidated balance sheets as it is potentially creditable against future milestone payments. Certain of the future development milestone payments may be converted into Amylin common stock, at Lilly's option, if the filing of a New Drug Application with the United States Food and Drug Administration ("FDA") for exenatide LAR is delayed beyond December 31, 2007. Lilly has also agreed to make additional future milestone payments of up to $130 million contingent upon the commercial launch of exenatide in selected territories throughout the world, including both twice-daily and sustained release formulations.

The Company recorded revenue under this collaborative agreement of $85.7 million and $13.4 million in the years ended December 31, 2003 and 2002, respectively and incurred reimbursable development expenses of $88.3 million and $22.7 million in the years ended December 31, 2003 and 2002, respectively. Reimbursable expenses consist of direct internal and external expenses for exenatide development.

The Company has a loan facility with Lilly that, subject to certain defined development and regulatory events, over time could provide the Company up to $110 million to fund a portion of its development and commercialization costs for exenatide. At December 31, 2003 a small amount was available to the Company and there were no amounts outstanding under the loan facility. The loan facility will be secured by certain patents and other tangible assets of the Company and becomes convertible into common stock of the Company, at Lilly's option, if amounts remain outstanding for more than two years.

Collaboration with Alkermes, Inc.

In May 2000, the Company signed an agreement with Alkermes, Inc., a company specializing in the development of products based on proprietary drug delivery technologies, for the development, manufacture and commercialization of an injectable long-acting formulation of exenatide, or exenatide LAR, with the goal of developing a product that would allow up to a once-a-month administration of exenatide.

Under the terms of the agreement, Alkermes has granted the Company an exclusive, worldwide license to its Medisorb ® technology for the development and commercialization of injectable sustained release formulations of exendins, such as exenatide, and other related compounds that Amylin may develop. In exchange, Alkermes receives funding for research and development and may earn future milestone payments upon achieving specified development and commercialization goals. Alkermes will also receive a combination of royalty payments and manufacturing fees based on any future product sales.

10. Income Taxes

Significant components of Amylin's deferred tax assets as of December 31, 2003 and 2002 are shown below (in thousands). A valuation allowance of $289.5 million, of which $62.9 million is related to 2003 changes, has been recognized as of December 31, 2003 to offset the deferred tax assets, as realization of such assets in the future is uncertain. The deferred tax asset includes a future tax benefit of approximately $10 million related to stock option deductions, which, if recognized, will be allocated to additional paid in capital.

	2003	2002
Deferred tax assets:		
Net operating loss carryforwards	$ 190,433	$ 153,419
Research and development credits	37,311	28,867
Deferred revenue	12,026	27,139
Capitalized research expenses	47,304	15,610
Other	4,356	2,880
Total deferred tax assets	291,430	227,915
Deferred tax liabilities:		
Intangibles	(1,926)	(1,362)
Valuation allowance for deferred tax assets	(289,504)	(226,553)
Net deferred tax assets	$ —	$ —

At December 31, 2003, Amylin had Federal net operating loss carryforwards of approximately $528 million, California net operating loss carryforwards of approximately $60 million and foreign tax net operating loss carryforwards of approximately $8 million. The difference between the Federal and California tax loss carryforwards is attributable to the capitalization of research and development expenses for California tax purposes and the fifty to sixty percent limitation on California loss carryforwards. The Company also has Federal research and development tax credit carryforwards of $29 million, of which $0.1 million will expire in 2004, and California research and development tax credit carryforwards of $13 million.

Pursuant to Internal Revenue Code Sections 382 and 383, the use of the Company's net operating loss and credit carryforwards may be limited if a cumulative change in ownership of more than 50% occurs or has occurred within a three-year period. Federal and California net operating loss carryforwards of up to $3 million and up to $8 million respectively are set to expire in 2004 if the Company determines that such a limitation has occurred and subject to the Company's ability to achieve taxable income in 2004.

11. Acquired In-Process Research and Development

In January 2003, the Company completed an acquisition from Restoragen, Inc. of a Phase 2 program utilizing continuous infusion of glucagon-like peptide 1, or GLP-1, targeted for the treatment of congestive heart failure. In connection with the transaction, the Company also acquired rights to various GLP-1 related patents. The Company paid Restoragen approximately $3.3 million at closing and an additional payment of $0.7 million was made in the first quarter of 2004.

This compound is in early Phase 2 development and no alternative future use was identified. As with many early Phase 2 compounds, launch of products, if approved is not expected in the near term. Accordingly, the Company recorded a charge for acquired in-process research and development of $3.3 million in the year ended December 31, 2003.

12. Legal Proceedings

Since August 2001, the Company has been subject to an ongoing class action lawsuit filed by certain shareholders in the United States District Court for the Southern District of California against Amylin, its Chairman and former Chief Executive Officer and one director, alleging violations of the federal securities laws related to declines in the Company's stock price. The complaint alleges securities fraud in connection with various statements and alleged omissions to the public and to the securities markets. The lawsuit is at an early stage and the extent or range of possible damages, if any, cannot yet be reasonable estimated.

In October 2002, Roman Glowacki filed a shareholder derivative lawsuit purportedly on behalf of the Company against the Chairman and former Chief Executive Officer and several other present and former members of the Board of Directors of the Company in the California State Superior Court in San Diego County. The derivative complaint alleges that the named defendants breached their fiduciary duty, abused corporate control, engaged in mismanagement, wasted corporate assets and committed "constructive" fraud as a result of the same activities alleged in the Federal class action lawsuit discussed above. The derivative complaint seeks attorney fees and the payment of damages to the Company. On February 6, 2004, the court granted defendants' demurrer, dismissing the complaint subject to plaintiff's right to amend within 45 days.

13. Quarterly Financial Data (Unaudited)

The following financial information reflects all normal recurring adjustments, which are, in the opinion of management, necessary for a fair statement of the results of the interim periods. Summarized quarterly data for fiscal 2003 and 2002 are as follows (in thousands, except per share data):

	For the quarters ended			
	March 31	June 30	September 30	December 31
2003:				
Revenue under collaborative agreements	$ 11,885	$ 17,384	$ 15,361	$ 41,022
Loss from operations	(30,052)	(36,421)	(40,424)	(16,943)
Net loss	(30,810)	(37,157)	(37,504)	(17,338)
Basic and diluted net loss per share (1)	$ (0.34)	$ (0.40)	$ (0.40)	$ (0.19)
2002:				
Revenue under collaborative agreements	$ —	$ —	$ 1,538	$ 11,857
Loss from operations	(21,220)	(26,326)	(30,446)	(28,403)
Net loss	(22,098)	(27,194)	(31,299)	(29,196)
Basic and diluted net loss per share (1)	$ (0.30)	$ (0.34)	$ (0.39)	$ (0.36)

(1) Net loss per share is computed independently for each of the quarters presented. Therefore, the sum of the quarterly per-share calculations will not necessarily equal the annual per-share calculation.

AMYLIN PHARMACEUTICALS, INC
Schedule II: Valuation Accounts
(in thousands)

	Balance at beginning of period	Additions		Deductions	Balance at end of period
		Charged to expense	Charged to other		
Year ended December 31, 2003....					
Inventory Reserve.....	$ 1,151	1,926	260(1)	—	$ 3,337
Year ended December 31, 2002....					
Inventory Reserve.....	$ 99	1,052	—	—	$ 1,151
Year ended December 31, 2001....					
Inventory Reserve.....	$ —	99	—	—	$ 99

(1) Addition related to a physical inventory adjustment

Exhibit 10.50

SUBLEASE

THIS SUBLEASE is made and entered into this 24th day of November, 2003, by and between BRISTOL-MYERS SQUIBB COMPANY, a Delaware corporation ("Sublandlord") and AMYLIN PHARMACEUTICALS, INC., a Delaware corporation ("Subtenant").

1. Basic Lease Provisions.

A. Property Address: 4570 Executive Drive, San Diego, California 92121;

B. Subtenant's Address for notices before and after the Commencement Date: 9360 Towne Centre Drive, Suite 110, San Diego, CA, 92121, Attn: Executive Director of Operations, with a copy to: Amylin Pharmaceuticals, Inc., 9360 Towne Centre Drive, Suite 110, San Diego, CA, 92121, Attn: Lloyd Rowland, Vice President and General Counsel;

C. Sublandlord's Address for notices: Bristol-Myers Squibb Company, Attention: Corporate Real Estate Department, P.O. Box 4000, Princeton, NJ 08543-4000, with a copy to Smith Stratton Wise Heher & Brennan, LLP, Attention: Christopher S. Tarr, Esq., 600 College Road East, Princeton, NJ 08540;

D. Prime Landlord: LMC-Shoreham Investment Company, LLC, and Convoy Court Investment Company, LLC, as tenants in common;

E. Prime Landlord's Address for notices: LMC-Shoreham Investment Company, LLC, 4570 Executive Drive, Suite 430, San Diego, CA 92121;

F. Identification of Prime Lease: Lease made February 23, 1999, between CombiChem, Inc., and LMC-Shoreham Investment Company, LLC, and Convoy Court Investment Company, LLC, as tenants in common;

G. Sublease Term: From the Commencement Date through January 31, 2015;

H. Commencement Date: The later to occur of: (i) the date upon which this Sublease is fully executed by and delivered to each of the parties; and (ii) the date upon which Prime Landlord's executed Consent of Prime Landlord and any lender's executed Subordination, Non-Disturbance and Attornment Agreement, each of which shall be in a form acceptable to Subtenant, are delivered to each of the parties;

I. Expiration Date: January 31, 2015;

J. Base Rent: $2,577,396.36 per annum, payable in equal monthly installments of $214,783.03 on the first day of each month during the Term and subject to escalation as provided in Section 12 of the Schedule of the Prime Lease; provided, however, that, so long as Subtenant is not in default of any of its obligations hereunder beyond all applicable cure periods, (i) 100% of the monthly installments of the Base Rent shall be abated for the period of one year commencing on the date which is sixty (60) days after the Commencement Date (the "Rent Commencement Date"); and (ii) 50% of the monthly installments of the Base Rent shall be abated for the period of one year commencing on the first anniversary of the Rent Commencement Date;

K. Payee of Rent: Sublandlord;

L. Address for Payment of Rent: By wire transfer to Bristol Myers Squibb Company, Chase Manhattan Bank of New York, ABA# 021-0000-21, Account # 323232914;

M. Sublease Share: Sixty-two and one-half percent (62.5%);

N. Description of Premises: The entire "Premises" as defined in, and leased pursuant to, the Prime Lease, consisting of 77,539 rentable square feet on second, third and fourth floors of the building (the "Building") located at 4570 Executive Drive, San Diego, California, as depicted on Exhibit A to the Prime Lease;

O. Security Deposit: $1,288,698.18 in cash or irrevocable standby letter of credit in form reasonably satisfactory to Sublandlord; provided, however, that the amount of the Security Deposit shall be reduced to $214,783.03 after, and for so long as, Subtenant obtains, and thereafter maintains, either (i) a credit rating of BBB or better from Standard & Poor's or (ii) at least $300,000,000 in annual sales;

P. Subtenant's Use: The Permitted Uses, as such term is defined in Section 13 of the Prime Lease; and

Q. Broker: Phase 3 Properties, Inc., on behalf of Sublandlord, and Burnham Real Estate Services, on behalf of Subtenant.

2. Prime Lease. Sublandlord is the tenant under a lease (the "Prime Lease") with the Prime Landlord identified in Section 1(D), bearing the date specified in Section 1(F). The Prime Lease is attached hereto as **Exhibit "A"** and is hereby incorporated herein.

3. Sublease. Sublandlord, for and in consideration of the rents herein reserved and of the covenants and agreements herein contained on the part of the Subtenant to be performed, hereby subleases to the Subtenant, and the Subtenant accepts from the Sublandlord, certain space described in Section 1(N) (the "Premises") and shown on Exhibit A to the Prime Lease.

4. Term. Subject to Section 5, the term of this Sublease (the "Term") shall commence on the date (hereinafter the "Commencement Date") which is the date specified in Section 1(H); and shall expire on the date (the "Expiration Date") specified in Section 1(I), unless sooner terminated as otherwise provided elsewhere in this Sublease.

5. Possession. In lieu of Sublandlord cleaning all floors, ceilings and walls, touching-up the paint and replacing any missing floor tiles prior to delivery of the Premises to Subtenant, Sublandlord shall provide Subtenant with a cash allowance of Nine Thousand One Hundred Dollars ($9,100.00) which shall be due and payable on the Commencement Date. Except as otherwise set forth herein, the Premises are to be delivered by Sublandlord to Subtenant "AS IS," and shall include all personal property, furniture and telephones and related equipment located in the Premises on the Commencement Date. If the Premises are not delivered on or before the date specified in Section 1(H) hereof, this Sublease shall remain in effect, Sublandlord shall have no liability to Subtenant as a result of any delay in occupancy, but unless the delay is occasioned by any act or omission of Subtenant, the Commencement Date determined in accordance with Section 4 hereof shall be delayed to the date on which such work is substantially completed; in no event shall the Expiration Date be delayed. Notwithstanding the foregoing or any provision of this Sublease to the contrary, if for any reason Sublandlord cannot deliver possession of the Premises to Subtenant by February 29, 2004, Subtenant may terminate this Sublease at Subtenant's election upon written notice to Sublandlord.

6. Subtenant's Use. The Premises shall be used and occupied only for the Subtenant's Use set forth in Section 1(P).

7. Rent. Beginning on the Rent Commencement Date, Subtenant agrees to pay the Base Rent as set forth in Section 1(J) to the Payee specified in Section 1(K), at the address specified in Section 1(L), or to such other payee or at such other address as may be designated by notice in writing from Sublandlord to Subtenant, without prior demand therefor and without any deduction or setoff whatsoever. Base Rent shall be paid in equal monthly installments in advance on the first day of each month of the Term, commencing on the Rent Commencement Date, subject, however to the abatement of Base Rent as set forth in Section 1(J). Subtenant shall pay the first installment of Base Rent on the first day of the thirteenth (13th) month after the Rent Commencement Date, which shall be in the amount of one-half (1/2) of one month's Base Rent. Base Rent shall be pro-rated for partial months at the beginning and end of the Term. All charges, costs and sums required to be paid by Subtenant to Sublandlord under this Sublease in addition to Base Rent shall be deemed "Additional Rent," and Base Rent and Additional Rent shall hereinafter collectively be referred to as "Rent." Subtenant's covenant to pay Rent shall be independent of every other covenant in this Sublease. If Rent is not paid when due, Subtenant shall pay, relative to the delinquent payment, an amount equal to the sum which would be payable by Sublandlord to Prime Landlord for an equivalent default under the Prime Lease.

8. Additional Rent.

A. If and to the extent that Sublandlord is obligated to pay additional rent under the Prime Lease, whether such additional rent is to reimburse Prime Landlord for taxes, operating expenses, common area maintenance charges or other expenses incurred by the Prime Landlord in connection with the Property, commencing on the Rent Commencement Date, Subtenant shall pay to Sublandlord, the percentage of such additional rent (to the extent such additional rent is attributable to events occurring during the term of this Sublease) which is set forth in Section 1(M) as the Sublease Share. Such payment shall be due from Subtenant to Sublandlord no fewer than five (5) days prior to the date upon which Sublandlord's payment of such additional rent is due to the Prime Landlord, provided that Subtenant shall have been billed therefor at least ten (10) days prior to such due date (which bill shall be accompanied by a copy of Prime Landlord's bill and other material furnished to Sublandlord in connection therewith). Notwithstanding the foregoing, Subtenant shall make estimated monthly payments of Operating Cost Share Rent, as such term is defined in, and in the manner set forth in, Section 2 of the Prime Lease, to Sublandlord on the first day of each month together with the payment of Base Rent.

B. The Sublease Share provided for in Section 1(M) is calculated by dividing the rentable area of the Premises by the rentable area of the Building. In the event the rentable area of the Premises or the area of the Building shall be changed during the Term, then the Sublease Share shall be recalculated.

9. Subtenant's Obligations. Subtenant shall be responsible, and shall pay, for the following:

A. The Sublease Share of all utility consumption costs, including without limitation, electric and other charges incurred in connection with lighting, and providing electrical power to the Premises. Subtenant shall hold Sublandlord harmless from all costs or expenses Sublandlord may incur from Subtenant's failure to pay utility bills or to perform any of its obligations with respect to the purchase of utilities. Subtenant shall not be required to install, or pay for the installation of, a separate meter or submeter.

B. All maintenance, repairs and replacements as to the Premises and its equipment, to the extent Sublandlord is obligated to perform the same under the Prime Lease.

10. Quiet Enjoyment. Sublandlord represents that it has full power and authority to enter into this Sublease, subject to the consent of the Prime Landlord, if required under the Prime Lease. So long as Subtenant is not in default in the performance of its covenants and agreements in this Sublease, Subtenant's quiet and peaceable enjoyment of the Premises shall not be disturbed or interfered with by Sublandlord, or by any person claiming by, through, or under Sublandlord. Sublandlord hereby represents and warrants to Subtenant, that, to the best of Sublandlord's knowledge, neither Sublandlord nor Prime Landlord is in default of its respective obligations under the Prime Lease.

11. Subtenant's Insurance. Subtenant shall procure and maintain, at its own cost and expense, such liability insurance as is required to be carried by Sublandlord under the Prime Lease, naming Sublandlord, as well as Prime Landlord, in the manner required therein, and such property insurance as is required to be carried by Sublandlord under the Prime Lease to the extent such property insurance pertains to the Premises. If the Prime Lease requires Sublandlord to insure leasehold improvements or alterations, then Subtenant shall insure such leasehold improvements that are located in the Premises, as well as alterations in the Premises made by Subtenant. Subtenant shall furnish to Sublandlord a certificate of Subtenant's insurance required hereunder not later than ten (10) days prior to Subtenant's taking possession of the Premises. Each party hereby waives claims against the other for property damage provided such waiver shall not invalidate the waiving party's property insurance; each party shall attempt to obtain from its insurance carrier a waiver of its right of subrogation. Subtenant hereby waives only those claims against Prime Landlord and Sublandlord for business interruption or property damage to the Premises or its contents, but solely to the extent that Sublandlord is required to waive such claims against Prime Landlord under Paragraph 8 of the Prime Lease. Sublandlord hereby waives such claims against Subtenant for loss of rents or damage to property sustained by Sublandlord to the same degree that such claims are waived by Prime Landlord under Paragraph 8 of the Prime Lease. Subject to the terms herein, Subtenant agrees to use reasonable efforts in good faith to obtain, for the benefit of Prime Landlord and Sublandlord, such waivers of subrogation rights from its insurer as are required of Sublandlord under the Prime Lease. Sublandlord agrees to use reasonable efforts in good faith to obtain from Prime Landlord a waiver of claims for insurable property damage losses and an agreement from Prime Landlord to obtain a waiver of subrogation rights in Prime Landlord's property insurance, if and to the extent that Prime Landlord waives such claims against Sublandlord under the Prime Lease or is required under the Prime Lease to obtain such waiver of subrogation rights.

12. Assignment Or Subletting.

A. Subtenant shall not without the prior written consent of Sublandlord (i) assign, convey or mortgage this Sublease or any interest under it; (ii) allow any transfer thereof or any lien upon Subtenant's interest by operation of law; (iii) further sublet the Premises or any part thereof; or (iv) permit the occupancy of the Premises or any part thereof by anyone other than Subtenant. Sublandlord's consent to an assignment of this Sublease or a further sublease of the Premises shall not be unreasonably withheld, and if Sublandlord consents thereto, Sublandlord shall use reasonable efforts to obtain the consent of Prime Landlord if such consent is required to be obtained under the Prime Lease. Any reasonable cost of obtaining Prime Landlord's consent shall be borne by Subtenant.

B. No permitted assignment shall be effective and no permitted sublease shall commence unless and until any default by Subtenant hereunder shall have been cured. No permitted assignment or subletting shall relieve Subtenant from Subtenant's obligations and agreements hereunder and Subtenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made.

C. Notwithstanding anything in Section 12(A) or Section 12(B) to the contrary, Subtenant may assign or sublease part or all of the Premises without Sublandlord's consent to: (i) any corporation or partnership that controls, is controlled by, or is under common control with, Subtenant; or (ii) any corporation resulting from the merger or consolidation with Subtenant or to any entity that acquires all of Subtenant's assets as a going concern of the business that is being conducted on the Premises, as long as the assignee or sublessee is a bona fide entity and assumes all of the obligations of Subtenant under this Sublease. Sublandlord's consent also shall not be required in connection with a public offering of stock by Subtenant.

13. Rules. Subtenant agrees to comply with all rules and regulations that Prime Landlord has made or may hereafter from time to time make for the building located at 4570 Executive Drive, San Diego, California (the "Building"), including without limitation the Rules and Regulations attached to the Prime Lease as Exhibit B. Sublandlord shall not be liable in any way for damage caused by the non-observance by any of the other tenants of such similar covenants in their leases or of such rules and regulations.

14. Repairs and Compliance. Subtenant shall promptly pay for the repairs set forth in Section 9(B) hereof and shall, at Subtenant's own expense, comply with all laws and ordinances, and all orders, rules and regulations of all governmental authorities and of all insurance bodies and their fire prevention engineers at any time in force, applicable to the Premises or to Subtenant's particular use or manner of use thereof. Notwithstanding the foregoing, Subtenant shall not be responsible for compliance with the Americans With Disabilities Act of 1990, as amended ("ADA") except to the extent that those requirements are based upon the Subtenant's occupancy, alteration, improvement or use of the Premises.

15. Fire or Casualty or Eminent Domain. In the event Sublandlord is entitled, under the Prime Lease, to an abatement of rent as a result of a fire or other casualty or as a result of a taking under the power of eminent domain, then Subtenant shall be entitled to an equivalent rent abatement hereunder. If the Prime Lease imposes on Sublandlord the obligation to repair or restore leasehold improvements or alterations, Subtenant shall be responsible for repair or restoration of leasehold improvements or alterations; Subtenant shall make any insurance proceeds resulting from the loss which Sublandlord is obligated to repair or restore available to Sublandlord and shall permit Sublandlord to enter the Premises to perform the same, subject to such conditions as Subtenant may reasonably impose.

16. Alterations.

A. Subtenant shall not make any alterations in or additions to the Premises ("Alterations") if to do so would constitute a default under the Prime Lease. If Subtenant's proposed Alterations would not constitute a default under the Prime Lease, Sublandlord's prior written consent thereto shall nonetheless be required, but Sublandlord's consent to such Alterations shall not be unreasonably withheld, and if Sublandlord consents thereto, Sublandlord shall use reasonable efforts to obtain the consent of Prime Landlord, if such consent is required under the Prime Lease. If Alterations by Subtenant are permitted or consented to as aforesaid, Subtenant shall comply with all of the covenants of Sublandlord contained in the Prime Lease pertaining to the performance of such Alterations. In addition, Subtenant shall indemnify, defend and hold harmless Sublandlord against liability, loss, cost, damage, liens and expense imposed on Sublandlord arising out of the performance of Alterations by Subtenant.

B. Notwithstanding anything in this Section 16 to the contrary, if (i) either Sublandlord or Prime Landlord does not approve or reject Subtenant's plans and specifications for Tenant's Work within thirty (30) days after submittal thereof to such parties, or (ii) Subtenant is unable to secure all required licenses, permits and approvals from applicable governmental authorities necessary for it to perform Tenant's Work and operate its business in the Premises (collectively, the "Required Approvals") within one (1) year from the date Subtenant submits complete applications for each of the Required Approvals and despite Subtenant's good faith and diligent efforts to secure each of the Required Approvals, then Subtenant may terminate this Sublease upon written notice to Sublandlord.

C. Sublandlord hereby grants to Subtenant all of Sublandlord's rights under Section 11(B) of the Prime Lease pertaining to signage, subject to the terms of the Prime Lease and the consent of Prime Landlord.

D. Sublandlord hereby grants to Subtenant all of Sublandlord's rights under the Prime Lease, if any, pertaining to roof access and cable, subject to the terms of the Prime Lease and the consent of Prime Landlord.

17. Surrender. Upon the expiration of this Sublease, or upon the termination of the Sublease or of the Subtenant's right to possession of the Premises, Subtenant will at once surrender and deliver up the Premises, together with all improvements thereon, to Sublandlord in good condition and repair, reasonable wear and tear excepted; conditions existing because of Subtenant's failure to perform maintenance, repairs or replacements as required of Subtenant under this Sublease shall not be deemed "reasonable wear and tear." Said improvements shall include all plumbing, lighting, electrical, heating, cooling and ventilating fixtures and equipment in the Premises. Any of Subtenant's removable trade fixtures, business equipment, inventory, furniture, and other articles of personal property installed in or on the Premises by Subtenant at its expense, shall remain the property to Subtenant. Subtenant shall surrender to Sublandlord all keys to the Premises and make known to Sublandlord the combination of all combination locks that Subtenant is permitted to leave on the Premises. All Alterations in or upon the Premises made by Subtenant shall become a part of and shall remain upon the Premises upon such termination without compensation, allowance or credit to Subtenant; provided, however, that, to the extent Prime Landlord notifies Subtenant in writing, at the time Subtenant requests Prime Landlord's consent to an Alteration, that Prime Landlord will require the removal of such Alteration, Sublandlord shall have the right to require Subtenant to remove such Alterations made by Subtenant, or any portion thereof as designated by Prime Landlord in such written notice. In such event, Subtenant shall restore the Premises to their condition prior to the making of such Alteration, repairing any damage occasioned by such removal or restoration. If Prime Landlord requires removal of any Alteration made by Subtenant, or a portion thereof, and Subtenant does not make such removal in accordance with this Section, Sublandlord may remove the same (and repair any damage occasioned thereby), and dispose thereof, or at its election, deliver the same to any other place of business of Subtenant, or warehouse the same. Subtenant shall pay the costs of such removal, repair, delivery and warehousing on demand. As between Sublandlord and Subtenant, Subtenant shall not be required to remove any Alterations performed by Sublandlord prior to the Commencement Date or to restore the Premises to their condition prior to the making of such Alterations. If, however, the term of the Sublease expires at or about the date of the expiration of the Prime Lease, and if Sublandlord is required under or pursuant to the terms of the Prime Lease to remove any Alterations performed prior to the Commencement Date, Subtenant shall permit Sublandlord to enter the Premises for a period of sixty (60) days prior to the expiration of the Sublease, subject to such conditions as Subtenant may reasonably impose, for the purpose of removing its Alterations and restoring the Premises as required.

18. Removal of Subtenant's Property. Upon the expiration of this Sublease, Subtenant shall remove Subtenant's articles of personal property incident to Subtenant's business ("Trade Fixtures"); provided, however, that Subtenant shall repair any injury or damage to the Premises which may result from such removal, and shall restore the Premises to the same condition as prior to the installation thereof. If Subtenant does not remove Subtenant's Trade Fixtures from the Premises prior to the expiration or earlier termination of the Term, Sublandlord may, at its option, remove the same (and repair any damage occasioned thereby and restore the Premises as aforesaid) and dispose thereof or deliver the same to any other place of business of Subtenant, or warehouse the same, and Subtenant shall pay the cost of such removal, repair, restoration, delivery or warehousing to Sublandlord on demand, or Sublandlord may treat said Trade Fixtures as having been conveyed to Sublandlord with this Lease as a Bill of Sale, without further payment or credit by Sublandlord to Subtenant.

19. Holding Over. Subtenant shall have no right to occupy the Premises or any portion thereof after the expiration of this Sublease or after termination of this Sublease or of Subtenant's right to possession in consequence of an Event of Default hereunder. In the event Subtenant or any party claiming by, through or under Subtenant holds over, Sublandlord may exercise any and all remedies available to it at law or in equity to recover possession of the Premises, and to recover damages, including without limitation, damages payable by Sublandlord to Prime Landlord by reason of such holdover. For each and every month or partial month that Subtenant or any party claiming by, through or under Subtenant remains in occupancy of all or any portion of the Premises after the expiration of this Sublease or after termination of this Sublease or Subtenant's right to possession, Subtenant shall pay, as minimum damages and not as a penalty, monthly rental at a rate equal to double the rate of Base Rent and Additional Rent payable by Subtenant hereunder immediately prior to the expiration or other termination of this Sublease or of Subtenant's right to possession. The acceptance by Sublandlord of any lesser sum shall be construed as payment on account and not in satisfaction of damages for such holding over.

20. Encumbering Title. Subtenant shall not do any act which shall in any way encumber the title of Prime Landlord in and to the Building, nor shall the interest or estate of Prime Landlord or Sublandlord be in any way subject to any claim by way of lien or encumbrance, whether by operation of law by virtue of any express or implied contract by Subtenant, or by reason of any other act or omission of Subtenant. Any claim to, or lien upon, the Premises or the Building arising from any act or omission of Subtenant shall accrue only against the subleasehold estate of Subtenant and shall be subject and subordinate to the paramount title and rights of Prime Landlord in and to the Building and the interest of Sublandlord in the premises leased pursuant to the Prime Lease. Without limiting the generality of the foregoing, Subtenant shall not permit the Premises or the Building to become subject to any construction, mechanics', laborers' or materialmen's lien on account of labor or material furnished to Subtenant or claimed to have been furnished to Subtenant in connection with work of any character performed or claimed to have been performed on the Premises by, or at the direction or sufferance of, Subtenant, provided, however, that if so permitted under the Prime Lease, Subtenant shall have the right to contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Subtenant shall give to Prime Landlord and Sublandlord such security as may be deemed satisfactory to each of them to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of the Premises or the Building by reason of non-payment thereof, provided further, however, that on final determination of the lien or claim of lien, Subtenant shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released and any judgment satisfied.

21. Indemnity.

A. Subtenant agrees to indemnify Sublandlord and its directors, officers, employees and affiliates (collectively, the "Sublandlord Indemnified Parties") and hold the Sublandlord Indemnified Parties harmless from any and all losses, damages, liabilities and expenses which the Sublandlord Indemnified Parties may incur, or for which the Sublandlord Indemnified Parties may be liable to Prime Landlord or any other party, arising from the acts or omissions of Subtenant which are the subject matter of any indemnity or hold harmless of Sublandlord to Prime Landlord or any other party under the Prime Lease.

B. Sublandlord agrees to indemnify Subtenant and its directors, officers, employees and affiliates (collectively, the "Subtenant Indemnified Parties") and hold the Subtenant Indemnified Parties harmless from any and all losses, damages, liabilities and expenses which the Subtenant Indemnified Parties may incur, arising from any breach or default by Sublandlord of the Prime Lease or this Sublease, except to the extent caused by the willful misconduct or negligence of Subtenant, which shall include Subtenant's failure to pay all sums due under this Sublease as and when due. In the event any action or proceeding shall be brought against Subtenant by reason of any such claim, Sublandlord shall defend the same at Sublandlord's expense by counsel reasonably satisfactory to Subtenant.

22. Sublandlord's Reserved Rights. Sublandlord reserves the right, on not less than five (5) days' prior notice, except in the event of an emergency, to inspect the Premises, or to exhibit the Premises to persons having a legitimate interest at any time during the Term, during Subtenant's customary hours of operation.

23. Defaults. Subtenant agrees that any one or more of the following events shall be considered Events of Default as said term is used herein:

A. Subtenant shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Subtenant asking reorganization of Subtenant under the Federal bankruptcy laws as now or hereafter amended, or under the laws of any State, shall be entered, and any such decree or judgment or order shall not have been vacated or stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

B. Subtenant shall file, or admit the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal bankruptcy laws now or hereafter amended, or under the laws of any State, or Subtenant shall institute any proceedings for relief of Subtenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or

C. Subtenant shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Subtenant or any of the property of Subtenant; or

D. Subtenant shall admit in writing its inability to pay its debts as they become due; or

E. The Premises are levied on by any revenue officer or similar officer; or

F. A decree or order appointing a receiver of the property of Subtenant shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of entry or granting thereof; or

G. Subtenant shall abandon the Premises during the Term hereof; or

H. Subtenant shall default in any payment of Rent required to be made by Subtenant hereunder when due as herein provided and such default shall continue for seven (7) days after the date when due; or

I. Subtenant shall default in securing insurance or in providing evidence of insurance as set forth in Section 11 of this Sublease or shall default with respect to lien claims as set forth in Section 20 of this Sublease and either such default shall continue for five (5) days after notice thereof in writing to Subtenant; or

J. Subtenant shall, by its act or omission to act, cause a default under the Prime Lease and such default shall not be cured within the time, if any, permitted for such cure under the Prime Lease; or

K. Subtenant shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Subtenant, and such default shall continue for thirty (30) days after notice thereof in writing to Subtenant.

24. Remedies. Upon the occurrence of any one or more Events of Default, Sublandlord may exercise any remedy against Subtenant that Prime Landlord may exercise for default by Sublandlord under the Prime Lease.

25. Security Deposit. To secure the full and faithful performance by Subtenant of all the covenants, conditions and agreements in this Sublease set forth and contained on the part of Subtenant to be fulfilled, kept, observed and performed including, but not by way of limitation, such covenants and agreements in this Sublease which become applicable upon the termination of the same by re-entry or otherwise, Subtenant has deposited with Sublandlord the Security Deposit as specified in Section 1(O) on the understanding that: (a) the Security Deposit or any portion thereof not previously applied, or from time to time, such one or more portions thereof, may be applied to the curing of any default that may then exist, without prejudice to any other remedy or remedies which Sublandlord may have on account thereof, and upon such application Subtenant shall pay Sublandlord on demand the amount so applied which shall be added to the Security Deposit so the same may be restored to its original amount; (b) should the Prime Lease be assigned by Sublandlord, then, provided such assignee agrees to be bound by the terms and conditions of this Sublease, including without limitation the obligation to return the Security Deposit to Subtenant as required herein, the Security Deposit or any portion thereof not previously applied may be turned over to Sublandlord's assignee and if the same be turned over as aforesaid, Subtenant hereby releases Sublandlord from any and all liability with respect to the Security Deposit and/or its application or return; (c) if permitted by law, Sublandlord or its successor shall not be obligated to hold the Security Deposit as a separate fund, but on the contrary may commingle the same with its other funds; (d) if Subtenant shall faithfully fulfill, keep, perform and observe all of the covenants, conditions and agreements in this Sublease set forth and contained on the part of Subtenant to be fulfilled, kept, performed and observed, the sum deposited or the portion thereof not previously applied, shall be returned to Subtenant without interest no later than thirty (30) days after the expiration of the Term of this Sublease, provided Subtenant has vacated the Premises and surrendered possession thereof to Sublandlord at the expiration of the Term as provided herein; (e) in the event that Sublandlord terminates this Sublease or Subtenant's right to possession by reason of an Event of Default by Subtenant, Sublandlord may apply the Security Deposit against damages suffered to the date of such termination and/or may retain the Security Deposit to apply against such damages as may be suffered or shall accrue thereafter by reason of Subtenant's default; (f) in the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Subtenant, or its successors or assigns, the Security Deposit shall be deemed to be applied first to the payment of any Rent due Sublandlord for all periods prior to the institution of such proceedings, and the balance, if any, of the Security Deposit may be retained or paid to Sublandlord in partial liquidation of Sublandlord's damages.

26. Notices and Consents. All notices, demands, requests, consents or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when received or refused if sent by United States registered or certified mail, postage prepaid, return receipt requested or if sent by overnight commercial courier service (a) if to Subtenant, addressed to Subtenant at the address specified in Section 1(B) or at such other place as Subtenant may from time to time designate by notice in writing to Sublandlord in accordance with this Section 26 or (b) if for Sublandlord, addressed to Sublandlord at the address specified in Section 1(C) or at such other place as Sublandlord may from time to time designate by notice in writing to Subtenant in accordance with this Section 26. Each party agrees promptly to deliver a copy of each notice, demand, request, consent or approval from such party to Prime Landlord and promptly to deliver to the other party a copy of any notice, demand, request, consent or approval received from Prime Landlord. Such copies shall be delivered by overnight commercial courier.

27. Provisions Regarding Prime Lease. This Sublease and all the rights of the parties hereunder are subject and subordinate to the Prime Lease. Each party agrees that it will not, by its act or omission, cause a default under the Prime Lease. In furtherance of the foregoing, the parties hereby confirm, each to the other, that it is not practical in this Sublease agreement to enumerate all of the rights and obligations of the various parties under the Prime Lease and specifically to allocate those rights and obligations in this Sublease. Accordingly, in order to afford to Subtenant the benefits of this Sublease and of those provisions of the Prime Lease which by their nature are intended to benefit the party in possession of the Premises, and in order to protect Sublandlord against a default by Subtenant which might cause a default or event of default by Sublandlord under the Prime Lease:

A. Provided Subtenant shall timely pay all Rent when and as due under this Sublease, Sublandlord shall pay, when and as due, all base rent, additional rent and other charges payable by Sublandlord to Prime Landlord under the Prime Lease;

B. Except as otherwise expressly provided herein, Sublandlord shall perform its covenants and obligations under the Prime Lease which do not require for their performance possession of the Premises and which are not otherwise to be performed hereunder by Subtenant on behalf of Sublandlord. For example, Sublandlord shall at all times keep in full force and effect all insurance required of Sublandlord as tenant under the Prime Lease.

C. Except as otherwise expressly provided herein, Subtenant shall perform all affirmative covenants and shall refrain from performing any act which is prohibited by the negative covenants of the Prime Lease, where the obligation to perform or refrain from performing is by its nature imposed upon the party in possession of the Premises. If practicable, Subtenant shall perform affirmative covenants that are also covenants of Sublandlord under the Prime Lease within ten (10) days after delivery by Sublandlord of written notice thereof, unless the Prime Lease or this Sublease specifies the date when performance of such covenant is required under the Prime Lease. Sublandlord shall have the right to enter the Premises to cure any default by Subtenant under this Section after giving Subtenant at least ten (10) days' prior written notice of such default and Sublandlord's intent to cure.

D. Sublandlord shall not agree to an amendment to the Prime Lease which might have an adverse effect on Subtenant's occupancy of the Premises or its use of the Premises for their intended purpose, unless Sublandlord shall first obtain Subtenant's prior written approval thereof.

E. Sublandlord hereby grants to Subtenant the right to receive all of the services and benefits with respect to the Premises that are to be provided by Prime Landlord under the Prime Lease. Sublandlord shall have no duty to perform any obligations of Prime Landlord that Prime Landlord has agreed to provide under the Prime Lease or that are, by their nature, the obligation of an owner or manager of real property. For example, Sublandlord shall not be required to provide the services or repairs that the Prime Landlord is required to provide under the Prime Lease.

F. In the event and solely to the extent that Sublandlord is entitled to any rent abatement or credit under the Prime Lease, Subtenant shall be entitled to an equivalent abatement or credit hereunder.

28. Additional Services. Sublandlord shall cooperate with Subtenant to cause Prime Landlord to provide services required by Subtenant in addition to those otherwise required to be provided by Prime Landlord under the Prime Lease. Subtenant shall pay Prime Landlord's charge for such services promptly after having been billed therefor by Prime Landlord or by Sublandlord. If at any time a charge for such additional services is attributable to the use of such services both by Sublandlord and by Subtenant, the cost thereof shall be equitably divided between Sublandlord and Subtenant.

29. Prime Landlord's Consent. This Sublease and the obligations of the parties hereunder are expressly conditioned upon Sublandlord's obtaining prior written consent hereto by Prime Landlord, if such written consent is required under the Prime Lease. Subtenant shall promptly deliver to Sublandlord any information reasonably requested by Prime Landlord (in connection with Prime Landlord's consent to this Sublease) with respect to the nature and operation of Subtenant's business and/or the financial condition of Subtenant. Sublandlord and Subtenant hereby agree, for the benefit of Prime Landlord, that this Sublease and Prime Landlord's consent hereto shall not (a) create privity of contract between Prime Landlord and Subtenant; (b) be deemed to have amended the Prime Lease in any regard (unless Prime Landlord shall have expressly agreed in writing to such amendment); or (c) be construed as a waiver of Prime Landlord's right to consent to any assignment of the Prime Lease by Sublandlord or any further subletting of premises leased pursuant to the Prime Lease, or as a waiver of Prime Landlord's right to consent to any assignment by Subtenant of this Sublease or any sub-subletting of the Premises or any part thereof. Prime Landlord's consent shall, however, be deemed to evidence Prime Landlord's agreement that Subtenant may use the Premises for the purpose set forth in Section 1(R) and that Subtenant shall be entitled to any waiver of claims and of the right of subrogation for damage to Prime Landlord's property if and to the extent that the Prime Lease provides such waivers for the benefit of Sublandlord. If Prime Landlord fails to consent to this Sublease within thirty (30) days after the execution and delivery of this Sublease, either party shall have the right to terminate this Sublease by giving written notice thereof to the other at any time thereafter, but before Prime Landlord grants such consent.

30. Brokerage. Each party warrants to the other that it has had no dealings with any broker or agent in connection with this Sublease other than the Broker as specified in Section 1(Q), whose commission shall be paid by Sublandlord pursuant to a separate agreement between Sublandlord and Broker, and covenants to pay, hold harmless and indemnify the other party from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Sublease or the negotiation thereof on behalf of such party.

31. Force Majeure. Neither party shall be deemed in default with respect to any of the terms, covenants and conditions of this Sublease on such party's part to be performed, with the exception of Subtenant's obligation to pay Rent, if such party's failure to timely perform same is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, terrorism, shortages, accidents, casualties, acts of God, acts caused directly by the other party or the other party's agents, employees and invitees or any other cause beyond the reasonable control of the party failing to perform. This Section shall not be applicable, however, if Sublandlord's failure timely to perform creates a default by Sublandlord under the Prime Lease.

32. Estoppel Certificates and Non-Disturbance Agreement. Within ten (10) days following any written request either party may make to the other from time to time, Sublandlord and Subtenant without any charge therefor, shall execute, acknowledge, and deliver a statement certifying to the other the following: (a) the Commencement Date of this Sublease; (b) the fact that this Sublease is unmodified and in full force and effect or, if there have been modifications hereto, that this Sublease is in full force and effect, as modified, and stating the date and nature of such modifications; (c) the date to which the Rent and other sums payable under this Sublease have been paid; (d) the fact that there are no current defaults under this Sublease by either Sublandlord or Subtenant except as specified in the statement; and (e) such other matters as may be reasonably requested by Sublandlord or Subtenant. Sublandlord shall also obtain from Prime Landlord and Landlord's lender, if any, a subordination, non-disturbance and attornment agreement with Subtenant in substantially the form attached hereto.

33. Hazardous Materials.

A. Sublandlord hereby represents and warrants to Subtenant that, during its occupancy of the Premises, Sublandlord conducted all of its activities and operations at the Premises in compliance with all applicable federal, state and local laws, regulations, statutes and ordinances pertaining to the protection of land, water, air, health, safety or the environment (collectively, "Environmental Laws") and that any handling, transportation, storage, treatment or use of any hazardous materials or substances, as such terms are defined by the Environmental Laws ("Hazardous Materials") that has occurred in the Premises during Sublandlord's occupancy thereof was in compliance with all Environmental Laws. Sublandlord hereby covenants and agrees, at its sole cost and expense, to indemnify, defend, protect, save and hold harmless the Subtenant Indemnified Parties from and against any and all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including attorneys' fees and disbursements and consultants' fees (including any such fees and disbursements incurred in connection with the enforcement by Subtenant of its rights under this Section 33(A), any of which are incurred at any time, arising from or out of or in any way relating to any contamination, or threatened release of any Hazardous Materials, on, in, under, affecting or migrating or threatening to migrate to or from all or any portion of the Premises to the extent such Hazardous Materials are present as the result of the intentional acts or negligence of Sublandlord, its officers, employees or agents, and any violation of, or noncompliance with, or alleged violation of, or noncompliance with, any Environmental Laws, due to any act or omission of Sublandlord, its employees, invitees, agents or contractors, but in every case, Sublandlord's responsibilities herein shall relate only to any such acts or failure to act after the Commencement Date of the Prime Lease and prior to the Commencement Date of this Sublease. Notwithstanding anything in this Section 33(A) to the contrary, Sublandlord may not settle or compromise any claim arising from or out of or in any way relating to the matters contemplated by this Section 33(A) without the prior written consent of the Subtenant (such consent not to be unreasonably withheld). This paragraph shall survive the expiration or earlier termination of this Sublease.

B. Sublandlord, at its sole cost and expense, has obtained a Phase I environmental site assessment of the Premises and a copy of the results of that assessment have been delivered to Subtenant prior to the execution of this Sublease. Prior to the Commencement Date, Sublandlord, at its sole cost and expense, shall conduct a soils test of the area adjacent to the chemical waste shed and if such test indicates any contamination, Sublandlord shall remediate and remove any Hazardous Materials which are present. If Sublandlord fails to complete such remediation by the Rent Commencement Date, Subtenant shall receive an abatement of Base Rent for each day after the Rent Commencement Date until Sublandlord completes such remediation.

C. Subtenant hereby covenants and agrees (i) to cause all of its activities at the Premises during the Term to be conducted in compliance with all Environmental Laws; (ii) to obtain all permits and file all business plans necessary for the continued operation and maintenance of the emergency generator located at the Premises; and (iii) to provide Sublandlord with copies of all: (a) correspondence, notices of violation, summons, orders, complaints or other documents received by the Subtenant pertaining to compliance with any Environmental Laws; and (b) licenses, certificates and permits required by the Environmental Laws.

D. Subtenant hereby covenants and agrees, at its sole cost and expense, to indemnify, defend, protect, save and hold harmless the Sublandlord Indemnified Parties from and against any and all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including attorneys' fees and disbursements and consultants' fees (including any such fees and disbursements incurred in connection with the enforcement by Sublandlord of its rights under this Section 33(D), any of which are incurred at any time, arising from or out of or in any way relating to any contamination, or threatened release of any Hazardous Materials, on, in, under, affecting or migrating or threatening to migrate to or from all or any portion of the Premises to the extent such Hazardous Materials are present as the result of the intentional acts or negligence of Subtenant, its officers, employees or agents, and any violation of, or noncompliance with, or alleged violation of, or noncompliance with, any Environmental Laws, due to any act or omission of Subtenant, its employees, invitees, agents or contractors. Notwithstanding anything in this Section 33(D) to the contrary, Subtenant may not settle or compromise any claim arising from or out of or in any way relating to the matters contemplated by this Section 33(D) without the prior written consent of the Sublandlord (such consent not to be unreasonably withheld). This paragraph shall survive the expiration or earlier termination of the Term of this Sublease.

D. The parties acknowledge and agree that the Premises were previously occupied by Sublandlord and Sublandlord's predecessors and successors, and as a result thereof, there are residuals of chemicals existing in the Premises that would be difficult, if not impossible, to remove; accordingly, Sublandlord shall not be required to remove such residuals prior to the Commencement Date provided Subtenant shall not be required to remove any residuals which resulted from either party's use or occupancy of the Premises either before or after the expiration or termination of this Sublease.

34. Additional Provisions.

A. Counterparts. This Sublease may be executed in counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same agreement.

B. Entire Agreement. This Sublease constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations of the parties with respect thereto.

C. Effectiveness. This Sublease shall become effective on and only on its execution and delivery by each party hereto.

D. Amendment. This Sublease may not be altered, amended, changed, terminated, modified or supplemented in any respect, unless the same shall be in writing and signed by each party hereto.

E. Severability. No determination by any court that any provision hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision hereof, or such provision in any circumstance not controlled by such determination.

F. Successors and Assigns. This Sublease shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. Headings. The headings of the Sections of this Sublease are included solely for convenience of reference and are not intended to govern, limit or aid in the construction of any of the terms or provisions hereof.

35. Parking. Sublandlord hereby grants to Subtenant all of Sublandlord's rights under Section 4(G) of the Prime Lease pertaining to parking, subject to the terms of the Prime Lease.

IN WITNESS WHEREOF, the parties have executed this Sublease the day and year first above written.

WITNESS:

SUBLANDLORD:

BRISTOL-MYERS SQUIBB COMPANY

By:
Name:
Title:

SUBTENANT:

AMYLIN PHARMACEUTICALS, INC.

By:
Name:
Title:

Exhibit 10.51

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is dated, for reference purposes only, as of 14th day of November, 2003, between ARE-9363/9373/9393 TOWNE CENTRE, LLC, a Delaware limited liability company ("**Landlord**"), and AMYLIN PHARMACEUTICALS, INC., a Delaware corporation ("**Tenant**").

RECITALS

A. The Premises (as defined below in the Basic Lease Provisions) is subject to that certain Lease dated as of January 2, 1989, between Nexus/Gadco-UTC, a California Joint Venture, and its successor in interest Nippon Landic (U.S.A.) Inc. (collectively, "**Original Landlord**"), as landlord, and Tenant, as tenant, as amended by that certain Amendment to Lease dated as of February 23, 1989, that certain Second Amendment to Lease dated as of July 29, 1991, that certain Third Amendment to Lease dated as of August 22, 1991, that certain Fourth Amendment to Lease dated as of February 26, 1997, that certain Fifth Amendment to Lease dated as of February 8, 1999, that certain Sixth Amendment to Lease dated as of October 11, 1999, that certain Seventh Amendment to Lease dated as of March 1, 2000, that certain Eighth Amendment to Lease dated as of May 2, 2000, that certain Ninth Amendment to Lease dated as of October 15, 2001, that certain Tenth Amendment to Lease dated August 20, 2002, and that certain Eleventh Amendment to Lease dated January 23, 2003 (as amended, the "**Prior Lease**"). Landlord has succeeded to the interest of Original Landlord under the Prior Lease.

B. Tenant has requested and Landlord has agreed, subject to the terms and conditions set forth herein, to terminate the Prior Lease and enter into this Lease.

BASIC LEASE PROVISIONS

Address: 9363 and 9373 Towne Centre Drive, San Diego, California

Premises: That portion of the Project, containing approximately 77,173 rentable square feet, consisting of (i) approximately 45,030 rentable square feet (the "**9363 Premises**") located in the building at 9363 Towne Centre Drive, San Diego, California (the "**9363 Building**"), more particularly shown on shown on **Exhibit A-1**, and (ii) approximately 32,173 rentable square feet (the "**9373 Premises**") located in the building at 9373 Towne Centre Drive, San Diego, California (the "**9373 Building**"), more particularly shown on shown on **Exhibit A-2**.

Project: The real property on which the 9363 Building and 9373 Building (collectively, the "**Building**") in which the Premises are located and on which the building located at 9393 Towne Centre Drive is located, together with all improvements thereon and appurtenances thereto as described on **Exhibit B**.

Base Rent: For 9363 Premises: $2.40 per rentable square foot per month, subject to adjustment pursuant to Section 4.

For 9373 Premises: $63,799.94 per month, subject to adjustment pursuant to Sections 3(b) and 4.

Rentable Area of Premises: 77,173 sq. ft.

Rentable Area of 9363 Building: 45,030 sq. ft. **9363 Building's Share of Project:** 32.38%

Rentable Area of 9373 Building: 52,228 sq. ft. **9373 Building's Share of Project:** 37.56%

Rentable Area of Project: 139,038 sq. ft.

Tenant's Share of Operating Expenses: 55.5%

Security Deposit: $250,000.00

Rent Adjustment Percentage: 3%

Commencement Date: September 1, 2003

Base Term: Beginning on the Commencement Date and ending on January 31, 2015.

Permitted Use: Research and development laboratory, related office and other related uses consistent with the character of the Project and otherwise in compliance with the provisions of Section 7.

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

Landlord's Notice Address:
135 N. Los Robles Avenue, Suite 250
Pasadena, CA 91101
Attention: Corporate Secretary

Tenant's Notice Address:
9360 Towne Centre Drive, Suite 110
San Diego, California 92121
Attention: Reed Vickerman

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

☒ **EXHIBIT A – 1** DESCRIPTION OF 9363 PREMISES
☒ **EXHIBIT A – 2** DESCRIPTION OF 9373 PREMISES
☒ **EXHIBIT B** - DESCRIPTION OF PROJECT
☒ **EXHIBIT C** – WORK LETTER
☒ **EXHIBIT D** – INTENTIONALLY OMITTED
☒ **EXHIBIT E** - RULES AND REGULATIONS
☒ **EXHIBIT F** – TENANT'S PERSONAL PROPERTY
☒ **EXHIBIT G** – SUBLEASE PREMISES DESCRIPTION
☒ **EXHIBIT H** – AVAILABLE SPACE DESCRIPTION
☒ **EXHIBIT I** – HVAC EQUIPMENT

1. **Lease of Premises.** Upon and subject to all of the terms and conditions hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The portions of the Project which are for the non-exclusive use of tenants of the Project are collectively referred to herein as the "**Common Areas.**" Subject to Landlord's obligations under Section 10 with respect to providing substitute parking, Landlord reserves the right to modify Common Areas; provided, however, that such modifications do not materially adversely affect (i) Tenant's access to the Premises other than on a temporary basis, or (ii) Tenant's use of the Premises for the Permitted Use.

2. **Prior Lease; Lease Term; Acceptance of Premises**.

(a) **Prior Lease.**

(i) Landlord and Tenant hereby acknowledge and agree that, as of the Prior Lease Termination Date (as hereinafter defined), the Prior Lease contains the complete agreement between Landlord and Tenant with respect to the Premises, and is in full force and effect, subject to subsection 2(a)(iii).

(ii) Tenant hereby certifies to Landlord (and its successors and assigns) that, as of the Prior Lease Termination Date, (A) Tenant has no right, title, or interest in or to the Premises or the Project other than as a lessee of the Premises under the Prior Lease and as a sublessee of the Sublease Premises (as defined in Section 42), (B) Tenant has no option, right of first refusal, right of first offer, or other right to acquire or purchase all or any portion of, or interest in, the Premises or the Project, (C) Tenant has not sublet any portion of the Premises or assigned any portion of the Prior Lease to any sublessee or assignee, and (D) Landlord has performed all obligations required of Landlord pursuant to the Prior Lease. Landlord and Tenant hereby certify to one another (and their respective successors and assigns) that, as of the Prior Lease Termination Date, (x) each has the full right, power and authority to enter into this Lease and to perform its obligations hereunder and has obtained all necessary consents and approvals required under the documents governing its affairs in order to execute this Lease and to perform its obligations hereunder, and (y) each of the persons executing this Lease on its behalf has the full right, power and authority so to do. To Landlord's actual knowledge, without any duty of inquiry or investigation, Tenant has performed all obligations as of the date hereof required to be performed by Tenant under the Prior Lease and there are currently no monetary defaults under the Prior Lease. The matters described in the foregoing certifications shall remain and be true and correct, in all material respects, as of the Commencement Date.

(iii) As of 11:59 p.m. on August 31, 2003 (the "**Prior Lease Termination Date**"), the Prior Lease shall terminate and be of no further force or effect and neither Landlord nor Tenant shall have any other right, title, or interest, of any kind, direct or indirect, in any portion of the Premises or the Project under the Prior Lease, except as expressly provided in this Lease. All obligations of the parties under the Prior Lease which are by their terms intended to survive the termination of the Prior Lease (including, without limitation, indemnity obligations and obligations concerning the condition and repair of the Premises and/or the Project) (the "**Prior Lease Obligations**") shall survive such termination of the Prior Lease for the benefit of Landlord and Tenant, as the case may be. Landlord and Tenant each hereby reserves all rights and claims that such party may have against the other party for any such Prior Lease Obligations. Landlord and Tenant acknowledge and agree that their obligations to one another with respect to reconciling Operating Expenses (as defined under the Prior Lease) for the period from January 1, 2003, until the Prior Lease Termination Date shall survive the termination of the Prior Lease. Landlord and Tenant also acknowledge and agree that Tenant's obligation under the Prior Lease to pay to Landlord $1,606 on the first day of each month through and including March 1, 2004, for remodeling the common areas of the 9373 Building shall survive the termination of the Prior Lease. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings, and negotiations that are not contained herein including, without limitation, the Prior Lease.

(b) **Term.** The "**Term**" of this Lease shall be the Base Term, as defined above in the Basic Lease Provisions and, if applicable, the Extension Term(s) (as hereinafter defined) which Tenant may elect pursuant to Section 45.

(c) **Acceptance of Premises.** Tenant has been in possession of, and conducting business in, the Premises under the Prior Lease and intends to continue conducting business in the Premises, without interruption between the Prior Lease Termination Date and the Commencement Date. Tenant accepts the Premises "as is", in their condition as of the Commencement Date, without any qualifications, restrictions, or limitations, subject to all applicable Legal Requirements (as defined in Section 7) and Landlord's repair and maintenance obligations under Section 13 and with respect to the exterior walls, roof structure (excluding the roof membrane) and the foundation. Further, since the Premises will not be empty and/or unoccupied at any time prior to the Commencement Date and Landlord will have no opportunity to inspect, examine, and/or audit the Premises in order to establish the condition of the Premises as of the Commencement Date, Landlord shall have no liability for any defects in the Premises (whether latent or patent). Nothing in the preceding sentence is intended to limit or reduce Landlord's repair and maintenance obligations under Section 13 and with respect to the exterior walls, roof structure (excluding the roof membrane) and the foundation. Except for Landlord's HVAC Work (as defined in Section 2(e)), the Roof Work (as defined in Section 2(f)), and any obligations under the Work Letter, Landlord shall have no obligation to perform any work or to refurbish, finish, or otherwise alter the Premises in order to prepare the Premises for Tenant's use or occupancy. Tenant agrees and acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. Landlord, in executing this Lease, does so in reliance upon Tenant's representations, warranties, acknowledgments, and agreements contained herein. Nothing contained in this paragraph is intended to limit or reduce Landlord's obligations under Section 13 or make Tenant responsible for the matters described as exclusions to Operating Expenses in Section 5(a) - (x).

(d) **Tenant Improvements to 9373 Premises.** In accordance with the Work Letter, Tenant shall cause the Tenant Improvements (as defined in the Work Letter) to be constructed in the 9373 Premises at a cost to Landlord not to exceed $1,286,920 which shall include the cost of construction, construction management by Landlord (for which Landlord shall be paid Administrative Rent (as defined in the Work Letter) not to exceed $25,000), cost of space planning, architect, engineering and other related services, building permits and other planning and inspection fees. Tenant shall be required to provide Landlord with prior written notice of the date on which the construction of the Tenant Improvements shall commence (the "**TI Commencement Date**"), which date shall be no later than April 15, 2004. The period commencing on the TI Commencement Date and ending 8 months thereafter is hereinafter referred to as the "**TI Work Period**."

(e) **Landlord's HVAC Work.** Landlord shall, at Landlord's sole cost and expense, (i) utilize the infrastructure in the existing central plant at the 9363 Building and add a chiller, cooling tower and air handler (with the specifications and capacity as more particularly described on **Exhibit I**) to service the first floor at the 9373 Building (collectively, the "**Central Plant Modifications**"), and (ii) provide new package units to service the office improvements on the second floor of the 9373 Building ((i) and (ii) are hereinafter collectively referred to as the "**HVAC Work**"). Tenant acknowledges and agrees that the central plant at the 9363 Building, as modified by the Central Plant Modifications, will not have the capacity to accommodate conversion of the second floor of either the 9363 Building or 9373 Building to laboratory space. Landlord shall endeavor to cause the HVAC Work to be completed during the TI Work Period. Tenant acknowledges that the construction of the HVAC Work may adversely impact the construction of the Tenant Improvements and Tenant's use and enjoyment of the Premises and Tenant agrees to cooperate with Landlord and to permit Landlord and its contractors to enter the Premises so that the Central Plant Modifications may be completed.

(f) **Roof.** Landlord shall, at Landlord's sole cost and expense, replace and install a new roof on the 9373 Building (the "**Roof Work**"). The Roof Work shall be undertaken and completed during the TI Work Period. Tenant acknowledges that the Roof Work may adversely impact the construction of the Tenant Improvements and Tenant's use and enjoyment of the 9373 Premises and Tenant agrees to cooperate with Landlord and to permit Landlord and its contractors to access the 9373 Premises to do the Roof Work.

3. **Rent**.

(a) **Base Rent**. Tenant shall pay to Landlord in advance, without demand, abatement, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month during the Term hereof in lawful money of the United States of America, at the office of Landlord for payment of Rent set forth above, or to such other person or at such other place as Landlord may from time to time designate in writing. Payments of Base Rent for any fractional calendar month shall be prorated. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent (as defined in Section 5) due hereunder except for any abatement as may be expressly provided in this Lease.

(b) **Rent Abatement for 9373 Premises.** During the period commencing on January 1, 2004, and ending on August 31, 2004, Tenant shall not be required to pay Base Rent or Operating Expenses for the 9373 Premises only. Tenant's obligation to resume paying Base Rent and Operating Expenses for the 9373 Premises shall commence on September 1, 2004 (the "**Rent Resumption Date**") and Tenant shall be required to pay Base Rent for the 9373 Premises at that time in the amount of $2.10 per rentable square foot per month.

(c) **Additional Rent.** In addition to Base Rent, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) Tenant's Share of "Operating Expenses" (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period.

4. **Base Rent Adjustments**. Base Rent shall be increased on September 1 of each year during the Term of this Lease (each an "**Adjustment Date**") by multiplying the Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such Adjustment Date. Notwithstanding anything to the contrary contained in the preceding sentence, the first Adjustment Date for Base Rent for the 9373 Premises shall occur on September 1, 2005. Base Rent, as so adjusted, shall thereafter be due as provided herein. Base Rent adjustments for any fractional calendar month shall be prorated.

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

The term "**Operating Expenses**" means all costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the Building (including the Building's Share of all costs and expenses of any kind or description incurred or accrued by Landlord with respect to the Project which are not specific to the Building or any other building located in the Project) (including, without duplication, Taxes (as defined in Section 9), capital repairs and improvements amortized over the lesser of 7 years and the useful life of such capital items, and administrative rent in the amount of 3.0% of Base Rent), excluding only:

(a) the original construction costs of the Project, renovation and remodeling prior to the date of the Lease and during the Term, and costs of correcting defects in such original construction, renovation or remodeling;

(b) the cost of maintenance of the structural elements of the following portions of the Project: exterior walls, roof structures (excluding the roof membrane) and foundation;

(c) capital expenditures for expansion of the Project;

(d) interest, principal payments of Mortgage (as defined in Section 27) debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured and all payments of base rent (but not taxes or operating expenses except to the extent that they are duplicative of Taxes or Operating Expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(e) depreciation of the Project (except for capital improvements, the cost of which are includable in Operating Expenses to the extent permitted herein);

(f) advertising, legal and space planning expenses and leasing commissions and other costs and expenses incurred in procuring and leasing space to tenants for the Project, including any leasing office maintained in the Project, free rent, construction allowances for tenants, and advertising and marketing expenses;

(g) legal and other expenses incurred in the negotiation or enforcement of leases;

(h) completing, fixturing, improving, renovating, painting, redecorating or other work, which Landlord pays for or performs for other tenants within their premises, and costs of correcting defects in such work, and costs for any special service provided to a tenant of the Project which is not provided generally to tenants of the Project;

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

(j) costs to be reimbursed by other tenants of the Project or Taxes to be paid directly by Tenant or other tenants of the Project, whether or not actually paid;

(k) salaries, wages, benefits and other compensation paid to officers and employees of Landlord who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project;

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

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

(n) fines, expenses and costs incurred by Landlord due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of any lease of space in the Project or any Legal Requirement (as defined in Section 7);

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

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

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

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

(s) costs incurred in the sale or refinancing of the Project;

(t) net income taxes of Landlord or the owner of any interest in the Project, franchise, capital stock, gift, estate or inheritance taxes or any federal, state or local documentary taxes imposed against the Project or any portion thereof or interest therein;

(u) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project, except as set forth in Section 5(j) above;

(v) costs incurred in connection with environmental clean up, response action or remediation on, in or under or about the Project (other than the Premises), except to the extent caused or contributed to or exacerbated by Tenant or any Tenant Party in which case Tenant shall be solely responsible for the costs thereof;

(w) costs which would be recoverable by Landlord pursuant to its insurance policies (provided, however, that nothing contained in this clause (w) is intended to require Landlord to submit claims for matters which Landlord does not reasonably believe are covered by its insurance policies);

(x) any costs, fees or expenses for management, supervision, overhead or administration which are in addition to or which are duplicative of the 3.0% administrative fee described above.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within 30 days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of actual Operating Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within 90 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor. If, during such 90 day period, Tenant reasonably and in good faith questions or contests the accuracy of Landlord's statement of Tenant's Share of Operating Expenses, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project and such information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). If after Tenant's review of such Expense Information, Landlord and Tenant cannot agree upon the amount of Tenant's Share of Operating Expenses, then Tenant shall have the right to have an independent public accounting firm selected by Tenant from among the 5 largest in the United States, working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense), audit and/or review the Expense Information for the year in question (the "**Independent Review**"). The results of any such Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded Tenant's Share of Operating Expenses for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (ii) pay the excess to Tenant within 30 days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than Tenant's Share of Operating Expenses for the calendar year, Tenant shall pay the deficiency to Landlord within 30 days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than 5% then Landlord shall reimburse Tenant for all costs incurred by Tenant for the Independent Review. Operating Expenses for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated. Notwithstanding anything set forth herein to the contrary, if the Building is not at least 95% occupied on average during any year of the Term, Tenant's Share of Operating Expenses for such year shall be computed as though the Building had been 95% occupied on average during such year.

"**Tenant's Share**" shall be the percentage set forth in the Basic Lease Provisions of this Lease as Tenant's Share as reasonably adjusted by Landlord for changes in the physical size of the Premises or the Project occurring thereafter. Landlord may equitably increase Tenant's Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project that includes the Premises or that varies with occupancy or use. Base Rent, Tenant's Share of Operating Expenses and all other amounts payable by Tenant to Landlord hereunder are collectively referred to herein as "**Rent**."

6. **Security Deposit**. Tenant shall deposit with Landlord, upon delivery of an executed copy of this Lease to Landlord, a security deposit (the "**Security Deposit**") for the performance of all of Tenant's obligations hereunder in the amount set forth in the Basic Lease Provisions of this Lease, which Security Deposit shall be in the form of cash. Notwithstanding anything to the contrary contained in the preceding sentence, Landlord acknowledges that Landlord is holding a security deposit under the Prior Lease in the amount of $95,000 and that, at Tenant's request, such amount shall be applied toward the amount of the Security Deposit required to be deposited by Tenant with Landlord under this Lease. The Security Deposit shall be held by Landlord in a separate account and Tenant shall be entitled to any interest earned on the Security Deposit. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of a Default (as defined in Section 20), Landlord may use all or any part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Default, without prejudice to any other remedy provided herein or provided by law. Upon any such use of all or any portion of the Security Deposit, Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to the amount set forth on Page 1 of this Lease. Tenant hereby waives the provisions of any law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. Upon bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for periods prior to the filing of such proceedings. Upon any such use of all or any portion of the Security Deposit, Tenant shall, within 5 days after demand from Landlord, restore the Security Deposit to its original amount. If Tenant shall fully perform every provision of this Lease to be performed by Tenant, the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 60 days after the expiration or earlier termination of this Lease.

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

7. **Use**. The Premises shall be used solely for the Permitted Use set forth in the Basic Lease Provisions of this Lease, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "**ADA**") (collectively, "**Legal Requirements**" and each, a "**Legal Requirement**"). Tenant shall, upon 5 days' written notice from Landlord, discontinue any use of the Premises which is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall not permit any part of the Premises to be used as a "place of public accommodation", as defined in the ADA or any similar legal requirement. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section or otherwise caused by Tenant's use and/or occupancy of the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord or other tenants or occupants of the Project, including conducting or giving notice of any auction, liquidation, or going out of business sale on the Premises, or using or allowing the Premises to be used for any unlawful purpose. Tenant shall cause any equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations from the Premises from extending into Common Areas, or other space in the Project. Tenant shall not place any machinery or equipment in or upon the Premises if the weight of the same exceeds the structural capacity of the Building or move such items through the Common Areas of the Project or in the Project elevators without the prior written consent of Landlord. Except as may be provided under the Work Letter, Tenant shall not, without the prior written consent of Landlord and Tenant's agreement to pay the additional cost thereof, use the Premises in any manner which will require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Project as proportionately allocated to the Premises based upon Tenant's Share as usually furnished for the Permitted Use.

Landlord shall, as an Operating Expense, be responsible for and shall make any alterations or modifications to the Common Areas or the exterior of the Building that are required by Legal Requirements, including the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq. (together with regulations promulgated pursuant thereto, "**ADA**")). Tenant, at its sole expense, shall make any alterations or modifications to the Premises that are required by Legal Requirements (including, without limitation, compliance of the Premises with the ADA) related to Tenant's use or occupancy of the Premises. Notwithstanding any other provision herein to the contrary, Tenant shall be responsible for any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, "**Claims**") arising out of or in connection with Legal Requirements, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirement.

8. **Holding Over**. If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as Landlord may indicate, in Landlord's sole and absolute discretion, in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, (A) Tenant shall become a tenant at sufferance upon the terms of this Lease except that the monthly rental shall be equal to 150% of Rent in effect during the last 30 days of the Term, and (B) Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over; provided, however, that Landlord shall not be entitled to consequential damages unless Landlord has provided Tenant with written notice, prior to expiration or earlier termination of the Term, advising Tenant of the facts that could result in a claim for consequential damages. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

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

10. **Parking**. Landlord covenants and agrees that Landlord shall, during the Term of this Lease, maintain the number of parking spaces at the Project required by applicable Legal Requirements. Subject to all matters of record, Force Majeure, a Taking (as defined in Section 19) and the exercise by Landlord of its rights hereunder, Tenant shall have the right, in common with other tenants of the Project, to use 254 parking spaces at the Project, at no cost to Tenant during the Base Term, subject in each case to Landlord's reasonable rules and regulations which shall not be enforced on a discriminatory basis. Of the parking spaces allocated to Tenant pursuant to the preceding sentence, (i) 2 parking spaces shall be reserved spaces in the garage, (ii) 7 parking spaces shall be on the parking deck, (iii) 217 parking spaces shall be useable parking spaces in areas designated for non-reserved parking, and (iv) 28 parking spaces shall be for Tenant's use for equipment and storage purposes. Notwithstanding anything to the contrary contained herein, Tenant shall be required to pay to Landlord $400 per month ("**Parking Rent**") for its use of 8 of the parking spaces described in clause (iv) of the preceding sentence. On September 1 of each year during the Base Term, Parking Rent shall be increased by the Rent Adjustment Percentage. Tenant may use additional parking spaces for equipment and storage purposes; provided, however, that such additional parking spaces also count towards the total number of parking spaces allocated to Tenant pursuant to the first sentence of this Section 10. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, including other tenants of the Project. If Tenant leases directly from Landlord other premises at the Project such as the Available Space and/or the Sublease Space (as such terms are hereinafter defined), Tenant shall have the right, in common with other tenants at the Project pro rata in accordance with the rentable area of such other space and the rentable areas of the Project occupied by such other tenants, to park in those areas designated for non-reserved parking.

If any of the parking spaces allocated to Tenant pursuant to this Section 10 are eliminated during the Term solely as a result of the matters within Landlord's reasonable control (as opposed to matters not within Landlord's reasonable control such as condemnation or casualty) and not in connection with a benefit being provided by Landlord specifically for Tenant (e.g., at Tenant's request or in connection with the Bridge), Landlord shall make substitute parking (for the number of spaces eliminated) available for use by Tenant.

11. **Utilities, Services.** The Premises are stubbed to receive water, electricity, heat, light, power, telephone and sewer service. Landlord shall provide, subject to the terms of this Section 11, water, electricity, heat, light, power, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services), refuse and trash collection and janitorial services for the Common Areas (collectively, "**Utilities**"). Landlord shall pay, as Operating Expenses or subject to Tenant's reimbursement obligation, for all Utilities used on the Premises, all maintenance charges for Utilities, and any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, and any taxes, penalties, surcharges or similar charges thereon. Landlord may cause, at Landlord's expense, any Utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay directly to the Utility provider, prior to delinquency, any separately metered Utilities and services which may be furnished to Tenant or the Premises during the Term. Tenant shall pay, as part of Operating Expenses, its share of all charges for jointly metered Utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of Utilities, from any cause whatsoever other than Landlord's willful misconduct, shall result in eviction or constructive eviction of Tenant, termination of this Lease or the abatement of Rent. Except in the case of an emergency, Landlord shall provide Tenant with written notice at least 3 business days prior to Landlord intentionally interrupting any Utilities to the Premises. Tenant agrees to limit use of water and sewer with respect to Common Areas to normal restroom use.

Landlord's sole obligation for either providing emergency generators or providing emergency back-up power to Tenant shall be: (i) to provide emergency generators for the 9363 Building with not less than the capacity of the emergency generators located in the 9363 Building as of the Commencement Date, and (ii) to contract with a third party to maintain the emergency generators as per the manufacturer's standard maintenance guidelines. Landlord shall have no obligation to provide Tenant with operational emergency generators or back-up power or to supervise, oversee or confirm that the third party maintaining the emergency generators is maintaining the generators as per the manufacturer's standard guidelines or otherwise. During any period of replacement, repair or maintenance of the emergency generators when the emergency generators are not operational, including any delays thereto due to the inability to obtain parts or replacement equipment, Landlord shall have no obligation to provide Tenant with an alternative back-up generator or generators or alternative sources of back-up power. Landlord shall provide Tenant with written notice at least 5 business days prior to any replacement, repair or maintenance of the emergency generators during which the emergency generators are scheduled not to be operational.

12. **Alterations and Tenant's Property**. Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems (other than removal of furniture systems owned or paid for by Landlord) not involving any modifications to the structure or connections (other then by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration affects the structure or Building Systems. Tenant may construct nonstructural Alterations in the Premises without Landlord's prior approval if the aggregate cost of all such work does not exceed $25,000 for any single Alteration and does not exceed $100,000 for all Alterations in any 12 month period (collectively, a "**Notice-Only Alteration**"), provided Tenant notifies Landlord in writing of such intended Notice-Only Alteration, and such notice shall be accompanied by plans and specifications (if the subject Alterations require plans and specifications), work contracts and such other information concerning the nature and cost of the Notice-Only Alteration as may be reasonably requested by Landlord, which notice and accompanying materials shall be delivered to Landlord not less than 10 business days in advance of any proposed construction. If Landlord approves any Alterations, Landlord may impose such conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's sole and absolute discretion. Any request for approval shall be in writing, delivered not less than 15 business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all persons performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. With respect to any non-cosmetic Alteration and/or any Alteration which requires a permit or plans, Tenant shall pay to Landlord, as Additional Rent, on demand an amount equal to 3% of all charges incurred by Tenant or its contractors or agents in connection with such Alteration to cover Landlord's overhead and expenses for plan review, coordination, scheduling and supervision. (The preceding sentence shall not apply to the Tenant Improvements being constructed pursuant to the Work Letter. With respect to the Tenant Improvements, Tenant shall pay Administrative Rent as provided for in the Work Letter.) Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

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

Other than (i) the items, if any, listed on **Exhibit F** attached hereto, (ii) any items agreed by Landlord in writing to be included on **Exhibit F** in the future, and (iii) any trade fixtures, machinery, equipment and other personal property not paid for out of the TI Allowance (as defined in the Work Letter) which may be removed without material damage to the Premises, which damage shall be repaired (including capping or terminating utility hook-ups on the surface of walls or floors) by Tenant during the Term (collectively, "**Tenant's Property**"), all property of any kind paid for with the TI Allowance, all Alterations, real property fixtures, built-in machinery and equipment, built-in casework and cabinets and other similar additions and improvements built into the Premises so as to become an integral part of the Premises such as fume hoods which penetrate the roof or plenum area, built-in cold rooms, built-in warm rooms, walk-in cold rooms, walk-in warm rooms, deionized water systems, glass washing equipment, autoclaves, chillers, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch (collectively, "**Installations**") shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term and shall remain upon and be surrendered with the Premises as a part thereof in accordance with Section 28 following the expiration or earlier termination of this Lease; provided, however, that Landlord shall, at the time its approval of such Installation is requested or at the time it receives notice of a Notice-Only Alteration notify Tenant in writing if Landlord has elected to cause Tenant to remove such Installation upon the expiration or earlier termination of this Lease. If Landlord so elects and notifies Tenant in writing of such election at the time of its approval of such Installation is requested or at the time it receives notice of a Notice-Only Alteration, Tenant shall remove such Installation upon the expiration or earlier termination of this Lease and restore any damage caused by or occasioned as a result of such removal, including, when removing any of Tenant's Property which was plumbed, wired or otherwise connected to any of the Building Systems, capping off all such connections on the surface of the walls of the Premises and repairing any holes. Tenant shall perform such removal and repair work prior to the expiration or termination of this Lease and if such work continues after the expiration or termination of this Lease, Tenant shall pay Rent to Landlord as provided herein for such period as if said space were otherwise occupied by Tenant.

13. **Landlord's Repairs**. Landlord, as an Operating Expense, shall maintain all of the structural (except as provided for in Section 5(b)), exterior, parking and other Common Areas of the Project, including HVAC, plumbing, fire sprinklers, elevators and all other building systems serving the Premises and other portions of the Project ("**Building Systems**"), in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's agents, servants, employees, invitees and contractors (collectively, "**Tenant Parties**") excluded. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense, subject to the waiver of subrogation requirements herein. Notwithstanding anything to the contrary contained in the first sentence of this Section 13, Landlord may, at any time and from time to time, request that Tenant maintain the HVAC and/or some or all of the other Building Systems and, unless Tenant agrees to do so, Tenant shall have no obligation to undertake the requested maintenance. Landlord reserves the right to stop Building Systems services when necessary (i) by reason of accident or emergency, or (ii) for planned repairs, alterations or improvements, which are, in the judgment of Landlord, desirable or necessary to be made, until said repairs, alterations or improvements shall have been completed, provided such repairs are diligently prosecuted to completion. Landlord shall have no responsibility or liability for failure to supply Building Systems services during any such period of interruption; provided, however, that Landlord shall, except in case of emergency, make a commercially reasonable effort to give Tenant 24 hours advance notice of any planned stoppage of Building Systems services for routine maintenance, repairs, alterations or improvements. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Section, after which Landlord shall make a commercially reasonable effort to effect such repair. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after Tenant's written notice of the need for such repairs or maintenance. Tenant waives its rights under any state or local law to terminate this Lease or to make such repairs at Landlord's expense and agrees that the parties' respective rights with respect to such matters shall be solely as set forth herein. Repairs required as the result of fire, earthquake, flood, vandalism, war, or similar cause of damage or destruction shall be controlled by Section 18.

Notwithstanding anything to the contrary contained in this Section 13, Landlord shall use commercially reasonable efforts to commence and diligently prosecute to completion, within 30 days after receipt of written notice from Tenant specifying the repairs required to be performed, any repairs required to be performed by Landlord under this Lease; provided, however, if such repairs require a period of time in excess of 30 days to complete, then Landlord shall have such additional period of period of time as is reasonably necessary to complete such repairs.

14. **Tenant's Repairs**. Subject to Section 13, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, interior windows, interior walls, and the interior side of demising walls. Such repair and replacement may include capital expenditures and repairs whose benefit may extend beyond the Term. Notwithstanding anything to the contrary contained in the preceding sentence, Tenant shall not be required to make any structural repairs or replacements within the Premises unless such repairs or replacements are required as a result of the Tenant Improvements, Alterations, Tenant's particular use of the Premises or Tenant's negligence or willful misconduct. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within 10 days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may perform such work and shall be reimbursed by Tenant within 10 days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party and any repair that benefits only the Premises.

15. **Mechanic's Liens**. Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within 10 days after the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification**. Tenant hereby indemnifies and agrees to defend, save and hold Landlord harmless from and against any and all Claims for injury or death to persons or damage to property occurring within or about the Premises, arising directly or indirectly out of use or occupancy of the Premises or a breach or default by Tenant in the performance of any of its obligations hereunder, except to the extent caused by the willful misconduct or negligence of Landlord.

Landlord hereby indemnifies and agrees to defend, save and hold Tenant harmless from and against any and all Claims for injury or death to persons or damage to property occurring within the Project arising directly and solely out of the negligence or willful misconduct of Landlord while in or on the Project, except those occurring within the Premises and except if caused by the willful misconduct or negligence of Tenant or any of the Tenant Parties.

Notwithstanding anything to the contrary contained herein, Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records). Landlord shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project or of any other third party.

17. **Insurance**. Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project or such lesser coverage amount as Landlord may elect provided such coverage amount is not less than 90% of such full replacement cost. Landlord shall further procure and maintain commercial general liability insurance with a single loss limit of not less than $5,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or which are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; commercial general liability insurance, with a minimum limit of not less than $2,000,000 per occurrence for bodily injury and property damage with respect to the Premises and pollution legal liability insurance with a minimum limit of not less than $2,000,000 per occurrence. The commercial general liability insurance policy shall name Landlord, its officers, directors, employees, managers, agents and Alexandria Real Estate Equities, Inc., as additional insureds. The commercial general liability and pollution legal liability insurance policies shall insure on an occurrence basis, if available, and not a claims-made basis; shall be issued by insurance companies which have a rating of not less than policyholder rating of A and financial category rating of at least Class X in "Best's Insurance Guide"; shall not be cancelable for nonpayment of premium unless 10 days prior written notice shall have been given to Landlord from the insurer; contain a hostile fire endorsement and a contractual liability endorsement; and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). Copies of such policies (if requested by Landlord), or certificates of insurance showing the limits of coverage required hereunder and showing Landlord as an additional insured, along with reasonable evidence of the payment of premiums for the applicable period, shall be delivered to Landlord by Tenant upon commencement of the Term and upon each renewal of said insurance. Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall, at least 5 days prior to the expiration of such policies, furnish Landlord with renewal certificates.

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

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

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

Notwithstanding anything to the contrary contained herein, unless otherwise agreed to in writing by Landlord and Tenant, Tenant shall not be required to pay (i) a deductible exceeding $100,000 in connection with any claim made by Landlord under any pollution legal liability insurance policy which Landlord may elect to carry, (ii) a deductible exceeding 5% of Landlord's good faith estimate (at the time of the earthquake claim) of the replacement cost of the Building in connection with any claim made by Landlord under any earthquake insurance policy which Landlord may elect to carry, or (iii) a deductible exceeding 5% of Landlord's good faith estimate (at the time of the flood claim) of the replacement cost of the Building in connection with any claim made by Landlord under any flood insurance policy which Landlord may elect to carry.

18. **Restoration**. If at any time during the Term the Project or the Premises are damaged or destroyed by a fire or other insured casualty, Landlord shall notify Tenant within 60 days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "**Restoration Period**"). If the Restoration Period is estimated to exceed 12 months (the "**Maximum Restoration Period**"), Landlord may, in such notice, elect to terminate this Lease as of the date that is 75 days after the date of discovery of such damage or destruction; provided, however, that notwithstanding Landlord's election to restore, Tenant may elect to terminate this Lease by written notice to Landlord delivered within 5 business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless either Landlord or Tenant so elects to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any deductible to be treated as a current Operating Expense), promptly restore the Premises (excluding the improvements installed by Tenant or by Landlord and paid for by Tenant), subject to delays arising from the collection of insurance proceeds, from Force Majeure events or as needed to obtain any license, clearance or other authorization of any kind required to enter into and restore the Premises issued by any Governmental Authority having jurisdiction over the use, storage, handling, treatment, generation, release, disposal, removal or remediation of Hazardous Materials (as defined in Section 30) in, on or about the Premises (collectively referred to herein as "**Hazardous Materials Clearances"**); provided, however, that if repair or restoration of the Premises is not substantially complete as of the end of the Maximum Restoration Period or, if longer, the Restoration Period, Landlord may, in its sole and absolute discretion, elect not to proceed with such repair and restoration, or Tenant may by written notice to Landlord delivered within 5 business days of the expiration of the Maximum Restoration Period or, if longer, the Restoration Period, elect to terminate this Lease, in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 75 days after the later of: (i) discovery of such damage or destruction, or (ii) the date all required Hazardous Materials Clearances are obtained, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Landlord or Tenant.

Notwithstanding the foregoing, Landlord or Tenant may terminate this Lease if the Premises are damaged during the last 1 year of the Term and Landlord reasonably estimates that it will take more than 2 months to repair such damage, or if insurance proceeds are not available for such restoration; provided, however, that the party electing to terminate this Lease provides written notice of such election to the other party within 5 business days after Landlord notifies Tenant of the amount of time required to repair such damage.

Tenant, at its expense, shall promptly perform, subject to delays arising from the collection of insurance proceeds, from Force Majeure (as defined in Section 34) events or to obtain Hazardous Material Clearances, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Rent shall be abated from the date all required Hazardous Material Clearances, if any, are obtained until the Premises are repaired and restored, in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises, unless Landlord provides Tenant with other space during the period of repair that is suitable for the temporary conduct of Tenant's business. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

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

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

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

(a) **Payment Defaults**. Tenant shall fail to pay any installment of Rent or any other payment hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay Rent within 5 days of any such notice not more than once in any 12 month period.

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

(c) **Abandonment**. Tenant shall abandon the Premises except in the event that Tenant has performed all of its obligations under Section 28 prior to such abandonment and continues to perform all of its other obligations under this Lease during such abandonment.

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

(e) **Liens**. Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within 10 days after any such lien is filed against the Premises.

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

(g) **Estoppel Certificate or Subordination Agreement.** Tenant fails to execute any document required from Tenant under Sections 23 or 27 within 5 days after a second notice requesting such document.

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

Any notice given under Section 20(h) shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice; provided that if the nature of Tenant's default pursuant to Section 20(h) is such that it cannot reasonably be cured within such 30 day period, then Tenant shall not be deemed to be in Default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes the same to completion.

21. **Landlord's Remedies.**

(a) **Payment By Landlord; Interest**. Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, after delivering written notice to Tenant, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to 12% per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as Additional Rent. Except as specifically provided in the last sentence of Section 21(d), nothing herein shall be construed to create or impose a duty on Landlord to mitigate any damages resulting from Tenant's Default hereunder.

(b) **Late Payment Rent**. Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within 5 days after the date such payment is due, Tenant shall pay to Landlord an additional sum equal to 6% of the overdue Rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the 5th day after the date due until paid.

(c) **Remedies**. Upon the occurrence of a Default, Landlord, at its option, without further notice or demand to Tenant, shall have in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(i) Terminate this Lease, or at Landlord's option, Tenant's right to possession only, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor;

(ii) Upon any termination of this Lease, whether pursuant to the foregoing Section 21(c)(i) or otherwise, Landlord may recover from Tenant the following:

(A) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(B) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(C) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, the unamortized amount of brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and the unamortized amount of any special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 21 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 21(c)(ii)(A) and (B), above, the "**worth at the time of award**" shall be computed by allowing interest at the Default Rate. As used in Section 21(c)(ii)(C) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(iii) Landlord may continue this Lease in effect after Tenant's Default and recover rent as it becomes due (Landlord and Tenant hereby agreeing that Tenant has the right to sublet or assign hereunder, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease following a Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(iv) Whether or not Landlord elects to terminate this Lease following a Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. Upon Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

(v) Independent of the exercise of any other remedy of Landlord hereunder or under applicable law, Landlord may conduct an environmental test of the Premises as generally described in Section 30(d), at Tenant's expense.

(d) **Effect of Exercise**. Exercise by Landlord of any remedies hereunder or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, it being understood that such surrender and/or termination can be effected only by the express written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same and shall not be deemed a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter, re-take or otherwise obtain possession of the Premises as provided in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise. Landlord shall use commercially reasonable efforts to mitigate Landlord's damages arising by reason of Tenant's Default; provided, however, that Landlord shall not be required to relet the Premises or any portion thereof to any tenant and/or on any terms and conditions if such tenant and/or terms and conditions do not satisfy Landlord's then current underwriting criteria.

22. **Assignment and Subletting**.

(a) **General Prohibition**. Without Landlord's prior written consent subject to and on the conditions described in this Section 22, Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. Except in the case of a Control Permitted Assignment (as defined below), if Tenant is a corporation, partnership or limited liability company, the shares or other ownership interests thereof which are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby 49% or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities which were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22. Notwithstanding the foregoing, any public offering of shares or other ownership interest in Tenant shall not be deemed an assignment.

(b) **Permitted Transfers**. If Tenant desires to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises, then at least 15 business days, but not more than 45 business days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within 15 business days after receipt of the Assignment Notice: (i) grant such consent, (ii) refuse such consent, in its sole and absolute discretion, if the proposed assignment, hypothecation or other transfer or subletting concerns more than (together with all other then effective subleases) 50% of the Premises, (iii) refuse such consent, in its reasonable discretion, if the proposed subletting concerns (together with all other then effective subleases) 50% or less of the Premises (provided that Landlord shall further have the right to review and approve or disapprove the proposed form of sublease prior to the effective date of any such subletting), or (iv) terminate this Lease with respect to the space described in the Assignment Notice as of the Assignment Date (an "**Assignment Termination**"). If Landlord delivers notice of its election to exercise an Assignment Termination, Tenant shall have the right to withdraw such Assignment Notice by written notice to Landlord of such election within 5 business days after Landlord's notice electing to exercise the Assignment Termination. If Tenant withdraws such Assignment Notice, this Lease shall continue in full force and effect. If Tenant does not withdraw such Assignment Notice, this Lease, and the term and estate herein granted, shall terminate as of the Assignment Date with respect to the space described in such Assignment Notice. No failure of Landlord to exercise any such option to terminate this Lease, or to deliver a timely notice in response to the Assignment Notice, shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with its consideration of any Assignment Notice, but not to exceed $2,500 per Assignment Notice.

Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to any entity controlling, controlled by or under common control with Tenant (a "**Control Permitted Assignment**") shall not be required; provided, however, that Tenant provides Landlord with a copy of the agreement documenting such sublease or assignment and the same specifically provides that (A) Tenant is not released from Tenant's obligations hereunder and that the primary liability of Tenant to pay the Rent due Landlord hereunder and to perform all other obligations to be performed by Tenant hereunder is not altered, and (B) the 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 perform 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. In addition, Tenant shall have the right to assign this Lease, upon 30 days prior written notice to Landlord but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a valid business purpose and not principally for the purpose of transferring the Lease, and (ii) the net worth (as determined in accordance with generally accepted accounting principles ("**GAAP**")) of the assignee is not less than the net worth (as determined in accordance with GAAP) of Tenant as of the date of Tenant's most current quarterly or annual financial statements, and (iii) such assignee shall agree in writing to assume all of the terms, covenants and conditions of this Lease arising after the effective date of the assignment (a "**Corporate Permitted Assignment**"). A Control Permitted Assignment and a Corporate Permitted Assignment are hereinafter collectively referred to as a "**Permitted Assignment**." Notwithstanding anything to the contrary contained in this paragraph, if the provisions of (i) and/or (ii) of Section 22(f) apply to a Permitted Assignment, Landlord shall have the absolute right to refuse to consent to such Permitted Assignment.

Landlord acknowledges and agrees that (x) Landlord's right under the preceding paragraph to receive notice in the case of a Corporate Permitted Assignment is not intended to create a consent right in favor of Landlord as to the transaction constituting the Corporate Permitted Assignment but rather the right to receive prior notice of a Corporate Permitted Assignment, and (y) Landlord shall keep all non-public information made available by Tenant to Landlord regarding the proposed Permitted Assignment confidential until the effective date of said Permitted Assignment.

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

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

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

(d) **No Release of Tenant, Sharing of Excess Rents**. Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. If the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the sum of the rental payable under this Lease (excluding however, any Rent payable under this Section) and actual and reasonable brokerage fees, legal costs and any design or construction fees directly related to and required pursuant to the terms of any such sublease or assignment ("**Excess Rent**"), then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder 50% of such Excess Rent within 10 days following receipt thereof by Tenant. The preceding sentence shall not apply to Permitted Assignments. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any such subletting, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

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

(f) **Prior Conduct of Proposed Transferee.** Notwithstanding any other provision of this Section 22, if (i) the proposed assignee or sublessee of Tenant has been required by any prior landlord, lender or Governmental Authority to take remedial action in connection with Hazardous Materials contaminating a property, where the contamination resulted from such party's action or use of the property in question, and such remedial action has not been successfully completed and/or any applicable Governmental Authority has not issued a case closed or no further action letter in connection with the same, or (ii) the proposed assignee or sublessee is subject to an enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority), Landlord shall have the absolute right to refuse to consent to any assignment or subletting to any such party. Notwithstanding anything to the contrary contained in the preceding sentence, Landlord shall not have the right to refuse to consent to an assignment or subletting if (x) the contamination described in clause (i) of the preceding sentence or the matter which is the reason for the enforcement order described in clause (ii) of the preceding sentence is generally considered not to be material, or (y) in the case of any contamination which has not been completely remediated by the proposed assignee or sublessee, such party is diligently remediating such contamination.

23. **Estoppel Certificate.** Tenant shall, within 10 business days of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant's failure to deliver such statement within such time shall, at the option of Landlord, constitute a Default under this Lease, and, in any event, shall be conclusive upon Tenant that the Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution.

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

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

26. **Rules and Regulations**. Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto as **Exhibit E**. Said rules and regulations shall not interfere with the exercise by Tenant of the rights granted to Tenant under this Lease. If there is any conflict between said rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project provided Landlord shall not enforce such rules and regulations in a discriminatory manner.

27. **Subordination**. Landlord represents and warrants to Tenant that, as of the date of this Lease, the Project is not encumbered by a deed of trust. This Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however that Tenant receives a commercially reasonable non-disturbance agreement which provides, among other things, that so long as there is no Default hereunder, this Lease shall not be terminated and Tenant's right to possession of the Premises shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the request of the Holder of any such Mortgage, to attorn to any such Holder; provided, however that so long as there is no Default hereunder, Tenant's right to possession of the Premises shall not be disturbed by the Holder of any such Mortgage. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination, and such instruments of attornment as shall be requested by any such Holder, provided any such instruments are commercially reasonable and contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 and this Section 27. Tenant hereby appoints Landlord attorney-in-fact for Tenant irrevocably (such power of attorney being coupled with an interest) to execute, acknowledge and deliver any such instrument and instruments for and in the name of Tenant and to cause any such instrument to be recorded. Notwithstanding the foregoing, any such Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust and any purchaser at a foreclosure or trustee's sale .

28. **Surrender**. Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Installations permitted by Landlord to remain in the Premises, free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by any person other than a Landlord Party (collectively, "**Tenant HazMat Operations**") and released of all Hazardous Materials Clearances, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted. At least 3 months prior to the surrender of the Premises, Tenant shall deliver to Landlord a narrative description of the actions proposed (or required by any Governmental Authority) to be taken by Tenant in order to surrender the Premises (including any Installations permitted by Landlord to remain in the Premises) at the expiration or earlier termination of the Term, free from any residual impact from the Tenant HazMat Operations and otherwise released for unrestricted use and occupancy (the "**Surrender Plan**"). Such Surrender Plan shall be accompanied by a current listing of (i) all Hazardous Materials licenses and permits held by or on behalf of any Tenant Party with respect to the Premises, and (ii) all Hazardous Materials used, stored, handled, treated, generated, released or disposed of from the Premises, and shall be subject to the review and approval of Landlord's environmental consultant. In connection with the review and approval of the Surrender Plan, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such additional non-proprietary information concerning Tenant HazMat Operations as Landlord shall request. On or before such surrender, Tenant shall deliver to Landlord evidence that the approved Surrender Plan shall have been satisfactorily completed and Landlord shall have the right, subject to reimbursement at Tenant's expense as set forth below, to cause Landlord's environmental consultant to inspect the Premises and perform such additional procedures as may be deemed reasonably necessary to confirm that the Premises are, as of the effective date of such surrender or early termination of the Lease, free from any residual impact from Tenant HazMat Operations. Tenant shall reimburse Landlord, as Additional Rent, for the actual out-of pocket expense incurred by Landlord for Landlord's environmental consultant to review and approve the Surrender Plan and to visit the Premises and verify satisfactory completion of the same, which cost shall not exceed $5,000. Landlord shall have the unrestricted right to deliver such Surrender Plan and any report by Landlord's environmental consultant with respect to the surrender of the Premises to third parties.

If Tenant shall fail to prepare or submit a Surrender Plan approved by Landlord, or if Tenant shall fail to complete the approved Surrender Plan, or if such Surrender Plan, whether or not approved by Landlord, shall fail to adequately address any residual effect of Tenant HazMat Operations in, on or about the Premises, Landlord shall have the right to take such actions as Landlord may deem reasonable or appropriate to assure that the Premises and the Project are surrendered free from any residual impact from Tenant HazMat Operations, the cost of which actions shall be reimbursed by Tenant as Additional Rent, without regard to the limitation set forth in the first paragraph of this Section 28.

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

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

30. **Environmental Requirements**.

(a) **Prohibition/Compliance/Indemnity**. Tenant shall not cause or, as to any Tenant Party, permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises or the Project in violation of applicable Environmental Requirements (as hereinafter defined) by Tenant or any Tenant Party. If Tenant breaches the obligation stated in the preceding sentence, or if the presence of Hazardous Materials in the Premises results in contamination of the Premises, the Project or any adjacent property or if contamination of the Premises, the Project or any adjacent property by Hazardous Materials brought into, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises by anyone other than Landlord and Landlord's employees, agents and contractors otherwise occurs during the Term or any holding over, Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, damages based upon diminution in value of the Premises or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses (collectively, "**Environmental Claims**") which arise during or after the Term as a result of such contamination, except to the extent the Hazardous Materials are present as the result of the acts of Landlord or Landlord's employees, agents and contractors. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Building, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Building, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense, except to the extent the Hazardous Materials are present as the result of the acts of Landlord or Landlord's employees, agents and contractors, and in accordance with applicable Environmental Requirements as are necessary to return the Premises, the Building, the Project or any adjacent property to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises, the Building or the Project. Notwithstanding anything to the contrary contained in this Section 30, Tenant shall not be responsible for, and the indemnification and hold harmless obligation set forth in this paragraph shall not apply to, the presence of any Hazardous Materials in, on or about the Project (other than within the Premises) unless the presence of such Hazardous Materials (i) is the result of a breach by Tenant of any of its obligations under this Lease, (ii) was caused by Tenant or any Tenant Party, (iii) was contributed to by Tenant or any Tenant Party (but Tenant's responsibility and indemnification and hold harmless obligation shall be limited to the extent that Tenant or any Tenant Party contributed to the presence of such Hazardous Materials), (iii) was exacerbated by Tenant or any Tenant Party (except if Tenant or the Tenant Party had no prior knowledge (and can reasonably demonstrate that they had no prior knowledge) of the existence of such Hazardous Materials, or (iv) originates from the Premises during Tenant's (or any assignee's or sublessee's) occupancy of the Premises (or any portion thereof).

(b) **Business.** Landlord acknowledges that it is not the intent of this Section 30 to prohibit Tenant from using the Premises for the Permitted Use. Tenant may operate its business according to prudent industry practices so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all then applicable Environmental Requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be brought upon, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises and setting forth any and all governmental approvals or permits required in connection with the presence, use, storage, handling, treatment, generation, release or disposal of such Hazardous Materials on or from the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at least once a year and shall also deliver an updated list before any new Hazardous Material is brought onto, kept, used, stored, handled, treated, generated on, or released or disposed of from, the Premises. Tenant shall deliver to Landlord true and correct copies of the following documents (the "**Haz Mat Documents**"), if any, relating to the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials prior to the Commencement Date, or if unavailable at that time, concurrent with the receipt from or submission to a Governmental Authority: permits; approvals; reports and correspondence; storage and management plans, notice of violations of any Legal Requirements; plans relating to the installation of any storage tanks to be installed in or under the Project (provided, said installation of tanks shall only be permitted after Landlord has given Tenant its written consent to do so, which consent may be withheld in Landlord's sole and absolute discretion); all closure plans or any other documents required by any and all federal, state and local Governmental Authorities for any storage tanks installed in, on or under the Project for the closure of any such tanks; and a Surrender Plan (to the extent surrender in accordance with Section 28 cannot be accomplished in 3 months). Tenant is not required, however, to provide Landlord with any portion(s) of the Haz Mat Documents containing information of a proprietary nature which, in and of themselves, do not contain a reference to any Hazardous Materials or hazardous activities. It is not the intent of this Section to provide Landlord with information which could be detrimental to Tenant's business should such information become possessed by Tenant's competitors.

(c) **Tenant Representation and Warranty**. Tenant hereby represents and warrants to Landlord that (i) neither Tenant nor any of its legal predecessors has been required by any prior landlord, lender or Governmental Authority at any time to take remedial action in connection with Hazardous Materials contaminating a property which contamination was permitted by Tenant of such predecessor or resulted from Tenant's or such predecessor's action or use of the property in question, and (ii) Tenant is not subject to any enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority). If Landlord determines that this representation and warranty was not true as of the date of this lease, Landlord shall have the right to terminate this Lease in Landlord's sole and absolute discretion.

(d) **Testing**. Landlord shall have the right to conduct annual tests of the Premises to determine whether any contamination of the Premises or the Project has occurred as a result of Tenant's use. Such tests shall be conducted at Landlord's expense, unless such tests are conducted pursuant to Section 21 hereof or reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such tests. Landlord and Tenant shall cooperate with one another to schedule such testing at a mutually acceptable time. Tenant shall have the right to have a representative present during such testing. If Tenant, at Tenant's expense, conducts its own tests of the Premises using third party contractors and test procedures acceptable to Landlord which tests are certified to Landlord, Landlord shall accept such tests in lieu of the annual tests. In addition, at any time, and from time to time, prior to the expiration or earlier termination of the Term, Landlord shall have the right to conduct appropriate tests of the Premises and the Project to determine if contamination has occurred as a result of Tenant's use of the Premises. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. If contamination has occurred for which Tenant is liable under this Section 30, Tenant shall pay all costs to conduct such tests. If no such contamination is found, Landlord shall pay the costs of such tests (which shall not constitute an Operating Expense). Landlord shall provide Tenant with a copy of all third party, non-confidential reports and tests of the Premises made by or on behalf of Landlord during the Term without representation or warranty and subject to a confidentiality agreement. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions identified by such testing in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights which Landlord may have against Tenant.

(e) **Tanks**. Tenant shall have no right to install or use any underground storage tanks at the Premises or the Project. If other storage tanks storing Hazardous Materials located on the Premises or the Project are used by Tenant or are hereafter placed on the Premises or the Project by Tenant, Tenant shall install, use, monitor, operate, maintain, upgrade and manage such storage tanks, maintain appropriate records, obtain and maintain appropriate insurance, implement reporting procedures, properly close any storage tanks, and take or cause to be taken all other actions necessary or required under applicable state and federal Legal Requirements, as such now exists or may hereafter be adopted or amended in connection with the installation, use, maintenance, management, operation, upgrading and closure of such storage tanks.

(f) **Tenant's Obligations**. Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of the Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials which Tenant is required under this Lease to remove (including, without limitation, the release and termination of any licenses or permits restricting the use of the Premises and the completion of the approved Surrender Plan), Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

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

(h) **Phase I Report**. Landlord has provided Tenant with a copy of the Phase I Report.

(i) **Testing of the Available Space**. Tenant shall have the right, for a 30 day period commencing on the date Tenant has actual knowledge of the expiration or earlier termination of the Vical Lease, to inspect and conduct tests in the Available Space to determine whether any contamination of the Available Space has occurred.. Such inspection and tests shall be conducted at Tenant's expense. Landlord or a representative of Landlord shall be present during all inspections and tests. All of such inspections and tests shall be conducted at times mutually agreed to by Landlord and Tenant and shall be subject to any reasonable requirements and testing procedures requested by Landlord including, without limitation, the splitting of any samples taken. If the Available Space is determined to be contaminated as a result of Vical's use or occupancy of the same and such contamination is required by a Governmental Authority to be remediated, Landlord shall cause such contamination to be remediated in accordance with applicable Environmental Requirements. If the testing and inspections described in this Section 30(i) identify contamination in the Available Space and Landlord is not required by a Governmental Authority to cause the same to be remediated, Tenant's indemnification and hold harmless obligations under this Section 30 shall not apply to such contamination.

31. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or Landlord a period of 60 days in which to cure such default (unless such performance will, due to the nature of the obligation, require a period of time in excess of 60 days, in which case such Holder and/or Landlord shall have such period of time as is reasonably necessary to effect a cure provided that Holder and/or Landlord is diligent in attempting to effect such cure); provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

Notwithstanding the foregoing, if any claimed Landlord default hereunder will immediately, materially and adversely affect Tenant's ability to conduct its business in the Premises (a "**Material Landlord Default"**), Tenant shall, as soon as reasonably possible, but in any event within 2 business days of obtaining knowledge of such claimed Material Landlord Default, give Landlord written notice of such claim and telephonic notice to Tenant's principal contact with Landlord. The written notice shall be required to specifically provide that a Material Landlord Default exists. Landlord shall then have 2 business days to commence cure of such claimed Material Landlord Default and shall diligently prosecute such cure to completion. If such claimed Material Landlord Default is not a default by Landlord hereunder, or if Tenant failed to give Landlord the notice required hereunder within 2 business days of learning of the conditions giving rise to the claimed Material Landlord Default, Landlord shall be entitled to recover from Tenant, as Additional Rent, any costs incurred by Landlord in connection with such cure in excess of the costs, if any, that Landlord would otherwise have been liable to pay hereunder. If Landlord fails to commence cure of any claimed Material Landlord Default as provided above, Tenant may commence and prosecute such cure to completion, and shall be entitled to recover the costs of such cure (but not any consequential or other damages) from Landlord, to the extent of Landlord's obligation to cure such claimed Material Landlord Default hereunder, subject to the limitations set forth in the immediately preceding sentence of this paragraph and the other provisions of this Lease.

During the period from January 31, 2014 until January 31, 2015, if (i) Landlord (and any Holder) is in default under this Lease beyond any applicable notice and cure period provided to Landlord (and any Holder) under this Lease, and (ii) the reasonably estimated cost to cure the matter which is the subject of such default exceeds Tenant's remaining Rent obligations under this Lease, Tenant shall have the right to terminate this Lease upon not less than 30 days written notice to Landlord (and any Holder) in which case this Lease shall terminate on the date (the "**Termination Date**") set forth in such notice if the matter which is the subject of the default has not been cured by the Termination Date. If the Lease is terminated as provided for in the preceding sentence, (y) Base Rent and Operating Expenses shall be prorated as of the Termination Date, and (z) except for obligations arising prior to the Termination Date and the obligations under this Lease which survive the expiration or earlier termination of this Lease, neither party shall have any further obligations under this Lease after the Termination Date. If Tenant fails to exercise its right to elect to terminate this Lease within 20 business days after the date that Tenant first has the right to do so under this paragraph, Tenant shall be deemed to have waived its right to terminate this Lease under this paragraph.

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

32. **Inspection and Access**. Except in the case of an emergency, Landlord and its agents, representatives, and contractors may enter the Premises during business hours on not less than 48 hours advance written notice to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last year of the Term, to prospective tenants or for any other business purpose. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Subject to Landlord's obligations under Section 10 with respect to providing substitute parking, Landlord may grant easements, make public dedications, designate Common Areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects (i) Tenant's access to the Premises other than on a temporary basis, or (ii) Tenant's use or occupancy of the Premises for the Permitted Use. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions. Tenant shall at all times, except in the case of emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder. For purposes of this Section 32, the prior written notice required to be given by Landlord to Tenant may be given by e-mail.

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

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

35. **Brokers, Entire Agreement, Amendment**. Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker)** in connection with this transaction and that no Broker brought about this transaction, other than Burnham Real Estate Services, whose commission shall be paid by Landlord pursuant to a separate written agreement between Landlord and Broker. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than the broker, if any named in this Section 35, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction.

36. **Limitation on Landlord's Liability.** NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY: (A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, SCIENTIFIC RESEARCH, SCIENTIFIC EXPERIMENTS, LABORATORY ANIMALS, PRODUCT, SPECIMENS, SAMPLES, AND/OR SCIENTIFIC, BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PROJECT OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE PROJECT OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

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

38. **Signs; Exterior Appearance**. Tenant shall not, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion: (i) attach any awnings, exterior lights, decorations, balloons, flags, pennants, banners, painting or other projection to any outside wall of the Project, (ii) use any curtains, blinds, shades or screens other than Landlord's standard window coverings, (iii) coat or otherwise sunscreen the interior or exterior of any windows, (iv) place any bottles, parcels, or other articles on the window sills, (v) place any equipment, furniture or other items of personal property on any exterior balcony, or (vi) paint, affix or exhibit on any part of the Premises or the Project any signs, notices, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Notwithstanding the foregoing, Landlord hereby confirms its consent to any of the foregoing currently located at the Premises, including but not limited to Tenant's current Suite Sign (defined below), the Building Sign (defined below) and any other existing exterior signage. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for Tenant by Landlord at the sole cost and expense of Tenant, and shall be of a size, color and type reasonably acceptable to Landlord. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering. The directory tablet shall be provided exclusively for the display of the name and location of tenants.

Notwithstanding anything to the contrary contained in the preceding paragraph, during the Term of this Lease, Tenant shall be entitled, at Tenant's sole cost and expense, (i) to have one sign with Tenant's trade name and/or corporate trademark on the entrance (inside the 9363 Building) to the first floor portion of the 9363 Premises and the second floor portion of the 9363 Premises (collectively, the "**Suite Sign**"), and (ii) to have one sign with Tenant's name on the exterior of the 9363 Building (the "**Building Sign**"). The Suite Sign and the Building Sign shall be referred to herein collectively as "**Tenant's Signs**." Tenant Signs shall be subject to Landlord's prior written approval with respect to signage contents (other than the appearance of Tenant's trade name and corporate trademark), which approval shall not be unreasonably withheld. Any of Tenant's Signs currently located on the Project are deemed approved. If, in addition to Tenant's Signs, Tenant desires to place any other sign on the Premises ("**Additional Sign**") and Landlord is willing at that time to consent to allow Tenant to do so (which consent shall not be unreasonably withheld, such Additional Sign shall conform to Landlord's portfolio design criteria. Tenant shall be solely responsible for all costs, fees, charges, expenses or other sums related to Tenant's Signs, the Blue Sign (as defined below) and the Additional Sign, including without limitation, costs related to (i) manufacture, installation and maintenance of Tenant's Signs, the Blue Sign and the Additional Sign, (ii) removal of Tenant's Signs, the Blue Sign and the Additional Sign upon the expiration or earlier termination of the Lease or the termination of Tenant's right thereto, (iii) permits required by any governmental authority with respect to Tenant's Signs, the Blue Sign and the Additional Sign, and (iv) assuring that Tenant's Signs, the Blue Sign and the Additional Sign conform to all legal requirements applicable to the Project.

Notwithstanding anything to the contrary contained in this Section 38, from and after the date that Tenant is the sole tenant of the 9363 Building and the 9373 Building, (i) Tenant shall have the right to install and maintain a blue sign in the lobby of the 9373 Building (the "**Blue Sign**") provided that such sign is identical to the blue sign currently located in the lobby of the 9363 Building, and (ii) any approval sought by Tenant from Landlord under this Section 38 shall not be unreasonably withheld.

39. **First Right to Negotiate to Lease the Available Space**.

(a) **Expansion in the 9373 Building**. Tenant shall have the right, but not the obligation, to negotiate with Landlord to expand the Premises (the "**Negotiation Right**") to include the Available Space in the 9373 Building upon the terms and conditions in this Section. For purposes of this Section 39(a), "**Available Space**" shall mean the portion of the 9373 Building (excluding the Sublease Premises (as defined in Section 42)) currently being leased by Landlord to Vical Incorporated, a Delaware corporation ("**Vical**"), pursuant to that certain Lease dated December 4, 1987 (as amended and assigned, the "**Vical Lease**"). The Available Space contains approximately 10,494 rentable square feet and is more particularly described on **Exhibit H** attached hereto.

Promptly following the earlier to occur of the expiration of any right which Vical has under the Vical Lease to elect to extend the term of the Vical Lease or the date on which Vical notifies Landlord in writing that it does not wish to extend the term of the Vical Lease, Landlord shall, so long as Tenant's rights hereunder are preserved, deliver to Tenant written notice (the "**Negotiation Notice**") of such Available Space, together with the terms and conditions on which Landlord is prepared to lease to Tenant such Available Space. Landlord and Tenant shall have 30 days from the date of the Negotiation Notice to attempt to agree upon terms and conditions, acceptable to both in their sole and absolute discretion, for the leasing of the Available Space. Notwithstanding anything to the contrary contained in the preceding sentence, Landlord and Tenant hereby agree that, if Tenant leases the Available Space pursuant to this Section 39, Tenant shall only be required to commence paying Base Rent and Operating Expenses for the Available Space 90 days after the Vical Lease has terminated and Vical has vacated the Available Space.

(b) **Amended Lease**. If, after the expiration of a period of 30 days from the date of the Negotiation Notice, no lease amendment or lease agreement for the Available Space has been executed by Landlord and Tenant, Tenant shall be deemed to have waived its right under this Section 39 to lease the Available Space and, subject to the provisions of Section 40, Landlord shall have the right to lease the Available Space to any third party and on any terms and conditions acceptable to Landlord.

(c) **Exceptions**. Notwithstanding the above, the Negotiation Right shall not be in effect and may not be exercised by Tenant:

(i) during any period of time that Tenant is in Default beyond any applicable cure period under any provision of the Lease; or

(ii) if Tenant has been in Default beyond any applicable cure period under any provision of the Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period prior to the date on which Tenant seeks to exercise the Negotiation Right.

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

(e) **Rights Personal.** The Negotiation Right is personal to Tenant and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

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

40. **Right of First Refusal to Lease the Available Space**.

(a) **Available Space in the 9373 Building**. Each time during the Term hereof that Landlord intends to accept a bona fide offer or otherwise agree (the "**Pending Deal**") to lease the Available Space to any third party (excluding any renewal option exercised by Vical), Landlord shall, so long as Tenant's rights hereunder are preserved, deliver to Tenant written notice (the "**Pending Deal Notice**") of the material terms of such Pending Deal. Within 5 business days after Tenant's receipt of the Pending Deal Notice, Tenant shall deliver to Landlord written notice (the "**Pending Deal Acceptance**") if Tenant elects to lease the Available Space pursuant to the terms set forth in the Pending Deal. Tenant's right to receive the Pending Deal Notice and election to lease or not lease the Available Space pursuant to this Section 40 is hereinafter referred to as the "**Right of First Refusal**." If Tenant elects to lease the Available Space by delivering the Pending Deal Acceptance within the required 5 business day period, Tenant shall be deemed to agree to lease the Available Space on the same terms and conditions set forth in this Lease as modified by the terms and conditions set forth in the Pending Deal Notice. Tenant's failure to deliver a Pending Deal Acceptance to Landlord within the required 5 business day period shall be deemed to be an election by Tenant not to exercise Tenant's right to lease the Available Space and Landlord shall have the right to lease the Available Space to any third party and on any terms and conditions acceptable to Landlord; provided, however, that the economic terms of the lease to such third party are substantially similar to the terms set forth in the Pending Deal Notice. For purposes of the preceding sentence, the economic terms shall be considered substantially similar if the difference in base rent is five percent (5%) or less.

(b) **Amended Lease**. If Tenant elects to exercise Tenant's right to lease the Available Space in the manner and timeframe required in Section 40(a), Landlord and Tenant shall enter into an amendment to this Lease confirming the terms and conditions upon which Tenant is leasing the Available Space.

(c) **Exceptions**. Notwithstanding the above, the Right of First Refusal shall not be in effect and may not be exercised by Tenant:

(i) during any period of time that Tenant is in Default beyond any applicable cure period under any provision of the Lease; or

(ii) if Tenant has been in Default beyond any applicable cure period under any provision of the Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period prior to the date on which Tenant seeks to exercise the Right of First Refusal.

(d) **Termination.** Tenant's right to lease the Available Space pursuant to this Section 40 shall terminate and be of no further force or effect even after Tenant's due and timely exercise of it right to lease the Available Space pursuant to this Section 40, if, after such exercise, but prior to the commencement date of the lease of the Available Space, (i) Tenant fails to timely cure any default by Tenant under the Lease; or (ii) Tenant has Defaulted 3 beyond any applicable cure period or more times during the period from the date of the Pending Offer Acceptance to the date of the commencement of the lease of the Available Space, whether or not such Defaults are cured.

(e) **Rights Personal.** The Right of First Refusal is personal to Tenant and is not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

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

41. **Must Take Available Space**.

(a) If, within 6 months after the expiration or earlier termination of the Vical Lease with respect to the Available Space, (i) Landlord and Tenant have not entered into a lease for the Available Space pursuant to Sections 39 or 40, and (ii) Landlord has not entered into a lease for the Available Space with a third party, the Available Space shall, subject to the provisions of this Section 41, automatically become part of, and included within the definition of, the Premises on the date that is 6 months after the expiration or earlier termination of the Vical Lease with respect to the Available Space.

If the Available Space shall become part of, and be included within the definition of, the Premises as provided for in this Section 41(a), Tenant shall lease the Available Space subject to all of the terms and conditions of this Lease, except: (a) that the 9373 Premises (and the Premises) under the Lease shall be increased to include the rentable square feet of the Available Space; (b) Base Rent shall be increased based on the addition of the Available Space to the Premises (meaning that Tenant shall pay Base Rent for the Available Space during the Term at the same per square foot rental rates applicable to the balance of the 9373 Premises; and (c) Tenant's Share of Operating Expenses shall be increased based upon the addition of the Available Space to the Premises. Tenant shall be entitled to a tenant improvement allowance not to exceed of $419,760 (the "**Available Space TI Allowance**") for the construction of tenant improvements of a permanent and fixed nature (the "**Available Space Improvements**") which shall remain in the Available Space after the expiration or earlier termination of this Lease. In addition, if Tenant leases the Available Space pursuant to this Section 41, Tenant shall only be required to commence paying Base Rent and Operating Expenses for the Available Space 90 days after the date that the Available Space becomes part of the Premises. In all other respects, the Lease shall remain in full force and effect, and shall apply to the Available Space.

(b) Upon the delivery of the Available Space to Tenant as provided herein, Landlord and Tenant shall execute and deliver an amendment to this Lease confirming the delivery and commencement date with respect thereto, and the other changes in the Lease terms described above.

(c) Tenant acknowledges and agrees that the Available Space Improvements shall be treated as Alterations and shall be undertaken pursuant to Section 12 above. If Tenant desires an advance of all or any portion of the Available Space TI Allowance, Tenant shall, in addition to the documents to be provided to Landlord pursuant to Section 12, deliver to Landlord a written request for Landlord to fund all or a portion of the Available Space TI Allowance for such Alteration; provided, however, that no such request shall be for less than $100,000 except for the final disbursement. Landlord shall review the proposed Alteration and shall inform Tenant, at the same time Landlord gives its consent, if any, to such Alteration, what portion of the cost, if any, of such Alteration is attributable to Available Space Improvements and may be funded from the Available Space TI Allowance. Thereafter, Landlord shall fund such amounts upon presentation to Landlord of draw requests containing unconditional lien waivers and such other documents as are customary for construction projects in the San Diego area. Tenant shall provide Landlord with "as-built" plans promptly following completion of any Alterations to the Available Space.

42. **Early Termination of Vical Lease With Respect to Space Subleased to Tenant**.

(a) Pursuant to that certain Sublease Agreement dated March 14, 2003 (the "**Sublease**"), between Tenant and Vical, Tenant subleases from Vical approximately 9,561 rentable square feet (the "**Sublease Premises**") in the 9373 Building. The Sublease Premises are more particularly described on **Exhibit G** attached hereto.

(b) Following the execution hereof, Landlord and Tenant shall use reasonable efforts to cause Vical to agree to terminate Vical's lease with Landlord (the "**Vical Lease**") with respect to the Sublease Premises pursuant to an amendment to the Vical Lease documenting such termination (the "**Vical Termination Agreement**") and, upon such termination (the "**Termination Date**"), the Sublease Premises shall automatically become part of the Premises subject to all of the terms and conditions hereof; provided, however, that (i) Landlord shall have no obligation to enter into the Vical Termination Agreement unless all of the terms and conditions of the Vical Termination Agreement are acceptable to Landlord in its sole and absolute discretion, (ii) Tenant shall reimburse Landlord for any costs and expenses which Landlord incurs in connection with such efforts, (iii) Tenant shall be responsible for paying to Vical any sums required to be paid to Vical in connection with the termination of the Sublease including, without limitation any unamortized tenant improvement expenses and/or brokerage fees, (iv) Tenant agrees to pay to Landlord Recapture Rent (as hereinafter defined) to cover any financial detriment to Landlord as result of the termination of the Vical Lease with the respect to the Sublease Premises, and (v) Tenant shall have no obligation to lease the Sublease Premises unless Landlord has notified Tenant in writing of the amount that will be required to be paid by Tenant pursuant to (ii), (iii) and (iv) of this paragraph and Tenant has agreed in writing to pay such amount.

(c) As used herein, "**Recapture Rent**" means the amount necessary to fully amortize the Economic Impact Amount (as hereinafter defined) at a rate of 10% over the period from the Termination Date to January 31, 2015. Recapture Rent shall be paid monthly on the first of each calendar month during the Base Term. As used herein, "**Economic Impact Amount**" shall mean the amount, as determined by Landlord, which represents the total economic difference (loss) to Landlord, during the period from the Termination Date until November 30, 2004, between (i) terminating the Vical Lease with respect to the Sublease Premises and leasing the Sublease Premises to Tenant as contemplated by this Section 42, and (ii) not terminating the Vical Lease with respect to the Sublease Premises.

(d) Subject to the conditions set forth in Section 42(b), concurrently with the surrender of the Sublease Premises by Vical pursuant to the Vical Termination Agreement (or upon the expiration or other termination of the Vical Lease with respect to the Sublease Premises as contemplated in Section 43), the Sublease Premises shall become part of, and be included within the definition of, the Premises subject to all of the terms and conditions of this Lease, except: (a) that the 9373 Premises (and the Premises) under the Lease shall be increased to include the rentable square feet of the Sublease Premises; (b) Base Rent shall be increased based on the addition of the Sublease Premises to the Premises (meaning that Tenant shall pay Base Rent for the Sublease Premises during the Term at the same per square foot rental rates applicable to the balance of the 9373 Premises; (c) Tenant's Share of Operating Expenses shall be increased based upon the addition of the Sublease Premises to the Premises, and (d) relative to the Sublease Space for the period prior to the Rent Resumption Date, Tenant will pay Base Rent at the rate of $1.99 per square foot per month for the Sublease Space, and thereafter Tenant will pay Base Rent for the Sublease Space at the same rate applicable to the rest of the 9373 Premises. In all other respects, the Lease shall remain in full force and effect, and shall apply to the Sublease Premises. Upon the delivery of the Sublease Premises to Tenant as provided herein, Landlord and Tenant shall execute and deliver an amendment to this Lease confirming the delivery and commencement date with respect thereto, and the other changes in the Lease terms described above.

43. **Inclusion of Sublease Space at Expiration of Vical Lease**. If Landlord and Tenant are not able to effectuate the inclusion of the Sublease Premises as part of the Premises by terminating Vical Lease with respect to the Sublease Space as contemplated in Section 42, then, upon the expiration or earlier termination of the Vical Lease with respect to the Sublease Premises, the Sublease Premises shall automatically become part of the Premises and all of the provisions of Section 42(d) shall be applicable and are incorporated by this reference into this Section 43.

44. **Intentionally Omitted.**

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

(a) **Extension Rights**. Tenant shall have 2 consecutive rights (each, an "**Extension Right**") to extend the term of this Lease each for a period of not less than 3 years and not more than 5 years (each, an "**Extension Term**") on the same terms and conditions as this Lease (other than Base Rent) by giving Landlord written notice (each, an "**Extension Notice**") of its election to exercise each Extension Right at least 12 months prior, and no earlier than 9 months prior, to the expiration of the Base Term of the Lease or the expiration of any prior Extension Term. If Tenant fails to specify the length of the Extension Term in an Extension Notice, Tenant shall be deemed to have elected an Extension Term of 5 years.

Upon the commencement of any Extension Term, Base Rent shall be payable at the Market Rate (as defined below). Base Rent shall thereafter be adjusted on each annual anniversary of the commencement of such Extension Term by a percentage as determined by Landlord and agreed to by Tenant at the time the Market Rate is determined. As used herein, "**Market Rate**" shall mean the then market rental rate as determined by Landlord and agreed to by Tenant. In addition, Landlord may impose a market rent for the parking rights provided hereunder.

If, on or before the date which is 180 days prior to the expiration of the Base Term of this Lease, or the expiration of any prior Extension Term, Tenant has not agreed with Landlord's determination of the Market Rate and the rent escalations during such subsequent Extension Term after negotiating in good faith, Tenant shall be deemed to have elected arbitration as described in Section 45(b). Tenant acknowledges and agrees that, if Tenant has elected to exercise an Extension Right by delivering notice to Landlord as required in this Section 45(a), Tenant shall have no right thereafter to rescind or elect not to extend the term of the Lease for the applicable Extension Term.

(b) **Arbitration.**

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

(ii) The decision of the Arbitrator(s) shall be made within 30 days after the appointment of a single Arbitrator or the third Arbitrator, as applicable. The decision of the single Arbitrator shall be final and binding upon the parties. The average of the two closest Arbitrators in a three Arbitrator panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the Arbitrator appointed by or on behalf of such party and the fees and expenses of the third Arbitrator shall be borne equally by both parties. If the Market Rate and escalations are not determined by the first day of the Extension Term, then Tenant shall pay Landlord Base Rent in an amount equal to the Base Rent in effect immediately prior to the Extension Term and increased by the Rent Adjustment Percentage until such determination is made. After the determination of the Market Rate and escalations, the parties shall make any necessary adjustments to such payments made by Tenant. Landlord and Tenant shall then execute an amendment recognizing the Market Rate and escalations for the Extension Term.

(iii) An "**Arbitrator**" shall be any person appointed by or on behalf of either party or appointed pursuant to the provisions hereof and: (i) shall be (A) a member of the American Institute of Real Estate Appraisers with not less than 10 years of experience in the appraisal of improved office, R&D and office/laboratory real estate in the greater San Diego metropolitan area, or (B) a licensed commercial real estate broker with not less than 15 years experience representing landlords and/or tenants in the leasing of R&D or life sciences space in the greater San Diego metropolitan area, (ii) devoting substantially all of their time to professional appraisal or brokerage work, as applicable, at the time of appointment and (iii) be in all respects impartial and disinterested.

(c) **Rights Personal.** Extension Rights are personal to Tenant and are not assignable without Landlord's consent, which may be granted or withheld in Landlord's sole discretion separate and apart from any consent by Landlord to an assignment of Tenant's interest in the Lease, except that they may be assigned in connection with any Permitted Assignment of this Lease.

(d) **Exceptions**. Notwithstanding anything set forth above to the contrary, Extension Rights shall not be in effect and Tenant may not exercise any of the Extension Rights:

(i) during any period of time that Tenant is in Default beyond any applicable cure period under any provision of this Lease; or

(ii) if Tenant has been in Default beyond any applicable cure period under any provision of this Lease 3 or more times, whether or not the Defaults are cured, during the 12 month period immediately prior to the date that Tenant intends to exercise an Extension Right, whether or not the Defaults are cured.

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

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

46. **Tenant Relocation Rights**. If, during the Base Term of this Lease, Tenant determines that it needs total rentable space in an amount which exceeds 200% of the rentable square feet of the Premises at the time of such determination, Tenant may elect to give Landlord notice of its desire to relocate to another facility owned by Landlord or an affiliate of Landlord (the "**Relocation Space**"). Upon receipt of such notice, Landlord shall have the option to either given Tenant written notice that Landlord elects not to relocate Tenant, or to give Tenant notice within 60 days of Landlord's receipt of such notice, describing: (i) the available space(s), if any, Landlord or any affiliate of Landlord may have or would construct which could be used for such Relocation Space, (ii) the time period within which such space(s) could be available for lease by Tenant and (iii) the economic and other material business terms of any proposed lease thereof to Tenant ("**Relocation Notice**"). The decision whether to give a Relocation Notice and the terms thereof shall be determined by Landlord in Landlord's sole discretion. Tenant shall have 30 days following receipt of any Relocation Notice given by Landlord to deliver to Landlord written notification of Tenant's acceptance ("**Acceptance Notice**") of such Relocation Notice and agreement to lease such Relocation Space upon the business terms set forth in the Relocation Notice. Upon Tenant's occupancy of such Relocation Space, the Lease for the Premises shall terminate. If Tenant does not deliver an Acceptance Notice to Landlord within the required 30 day period, Tenant shall be deemed to have elected to remain in the Premises (and not lease the Relocation Space).

47. **Pedestrian Bridge**. Tenant has advised Landlord that Tenant may desire to construct a pedestrian bridge (the "**Bridge**") across Towne Centre Drive in order to connect the Project with buildings to the west. The Bridge may not be constructed without Landlord's prior written consent which consent shall not be unreasonably withheld. Tenant shall be required to seek and obtain Landlord's consent to the construction of the Bridge prior to seeking any of the required governmental approvals necessary for the construction of the Bridge. Landlord may consider, among other things, the following matters in connection with granting or withholding its consent to the construction of the Bridge: (i) the proposed location of the Bridge (or pathway to the Bridge) on the Project, (ii) any requirements or obligations, financial or otherwise, which will be imposed on Landlord and/or the Project as a result of the Bridge, (iii) any adverse effects the Bridge may have on the Project, and (iv) obtaining reimbursement from Tenant for any costs associated with removing the Bridge and restoring the Project. If, after Landlord has consented to the construction of the Bridge, governmental approval of the construction of the Bridge requires or results in any material changes or modifications to any of the plans or specifications or any other material matters considered or approved by Landlord or results in any changes to the Bridge that are visible from the exterior or results in the imposition of any material conditions or raises matters not specifically considered and approved by Landlord in connection with Landlord's original consent to the construction of the Bridge, Landlord shall have the right to review and approve the same and determine whether Landlord is still willing to consent to the construction of the Bridge. The determination right granted to Landlord in the preceding sentence is not a right to consider matters previously considered and approved by Landlord in connection with the construction of the Bridge but rather a right to consider those matters (as more particularly described in the preceding sentence) which arise in connection with obtaining governmental approval of the Bridge. Tenant shall be solely responsible for all costs and expenses in connection with the construction and maintenance of the Bridge (including, without limitation, any ADA-related costs and expenses) and shall reimburse Landlord for all costs and expenses actually incurred by Landlord at any time in connection with Bridge. Tenant acknowledges and agrees that Landlord may impose any reasonable conditions or requirements on Tenant in connection with the construction and maintenance of the Bridge.

Notwithstanding anything to the contrary contained in this Section 47, with respect to the construction of the Bridge, Tenant shall only be responsible for reimbursing Landlord's costs and expenses up to the greater of 5% of the total project cost for the construction of the Bridge or $50,000. The cap set forth in the preceding sentence shall only apply to Landlord's costs and expenses in connection with the construction of the Bridge (and not maintenance or any other costs associated with the Bridge).

48. **Miscellaneous**.

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

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

(c) **Recordation**. Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

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

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

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

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

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

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

(j) **Hazardous Activities**. Notwithstanding any other provision of this Lease, Landlord, for itself and its employees, agents and contractors, reserves the right to refuse to perform any repairs or services in any portion of the Premises which, pursuant to Tenant's routine safety guidelines, practices or custom or prudent industry practices, require any form of protective clothing or equipment other than safety glasses. In any such case, Tenant shall contract with parties who are acceptable to Landlord, in Landlord's reasonable discretion, for all such repairs and services, and Landlord shall, to the extent required, equitably adjust Tenant's Share of Operating Expenses in respect of such repairs or services to reflect that Landlord is not providing such repairs or services to Tenant.

[Signatures on next page]

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

TENANT:

AMYLIN PHARMACEUTICALS, INC.,
a Delaware corporation

By: _____
Its: _____

LANDLORD:

ARE-9363/9373/9393 TOWNE CENTRE, LLC,
a Delaware limited liability company

By: ALEXANDRIA REAL ESTATE EQUITIES, L.P.,
a Delaware limited partnership,
as Managing Member

By: ARE-QRS CORP.,
a Maryland corporation,
as General Partner

By: _____
Its: _____

Exhibit 10.48

***Text Omitted and Filed Separately
Confidential Treatment Requested
Under 17 C.F.R. §§ 200.80(b)(4)
And 240.24b-2

C O N F I D E N T I A L

EXENATIDE MANUFACTURING AGREEMENT

THIS AGREEMENT effective October 1, 2003, the ("Effective Date") is made by and between **Amylin Pharmaceuticals, Inc.,** a Delaware corporation having a principal place of business at 9360 Towne Centre Drive, Suite 110, San Diego, California 92121 ("AMYLIN") and **Mallinckrodt Inc.,** a Delaware corporation, having a principal place of business at 675 McDonnell Blvd., St. Louis, Missouri 63134 ("MALLINCKRODT").

WHEREAS, AMYLIN requires the manufacture of commercial supplies of Product (as defined below) on a non-exclusive basis;

WHEREAS, MALLINCKRODT desires to manufacture for AMYLIN commercial supplies of Product on a non-exclusive basis; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, MALLINCKRODT and AMYLIN agree as follows:

1. Definitions

As used in this Agreement, the following words and phrases shall have the following meanings:

1.1 [***]

1.2 "Affiliate" means any party that directly (or indirectly through one or more intermediaries) controls, is controlled by, or is under common control with a party. For purposes of this definition only, the terms "controls," "controlled," and "control" means (i) the direct or indirect ability or power to direct or cause the direction of the management and policies of an entity or otherwise direct the affairs of such entity, whether through ownership of equity, voting securities, or beneficial interest, by contract, or otherwise, or (ii) the ownership, directly or indirectly, of at least 50% of the voting securities (or other comparable ownership interest for an entity other than a corporation) of a party.

1.3 "Agreement" means this Agreement, together with all exhibits.

1.4 "AMYLIN Indemnitees" shall have the meaning ascribed to it in Paragraph 9.2 hereof.

1.5 [***]

1.6 "Applicable Laws" means all United States, European, and any other jurisdiction's federal, state, local and other laws, statutes, rules, regulations, ordinances, (including any amendments thereto), applicable to the import, export, manufacture and distribution of Product, including, without limitation, the applicable regulations and guidance of the FDA and all applicable cGMPs, but only where MALLINCKRODT has authorized reference of its Drug Master File for Product (it being understood that MALLINCKRODT will authorize reference of its Drug Master File in the United States and the European Union).

1.7 "cGMP" means "current Good Manufacturing Practices" as defined and in effect from time to time in regulations and guidelines promulgated by the FDA under the FDCA governing the manufacture and testing of Product, including without limitation, those specified in The Rules Governing Medicinal Products in the European Union, the principles of which are specified in Chapter II of European Commission Directive 91/356/EEC, and any other laws, regulations, and guidelines applicable to the manufacture and testing of Product but only where MALLINCKRODT has authorized reference of its Drug Master File for Product.

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1.8 “COA” means the certificate of analysis furnished by MALLINCKRODT to AMYLIN in connection with any Lot hereunder indicating the Lot number, specifications, and all results of analytical and other Product testing required under this Agreement.

1.9 “Collaboration Partner” means Eli Lilly and Company, with whom AMYLIN has entered into a collaboration arrangement regarding Product.

1.10 “Confidential Information” shall have the meaning ascribed to it in Paragraph 10.1 hereof.

1.11 “Contaminant” means a substance contained in Product that (i) causes Product to fail to meet any Product Requirements or (ii) causes Product to be adulterated within the meaning of the FDCA.

1.12 “Contract Year” means each consecutive calendar year during the term of this Agreement commencing on October 1 and ending on September 30.

1.13 “Contract Year Forecast” shall have the meaning ascribed to it in Paragraph 2.6 hereof.

1.14 “Damage Claim” shall have the meaning ascribed to it in Paragraph 9.3.

1.15 “Damages” shall have the meaning ascribed to it in Paragraph 9.1.

1.16 “Defective Product” shall have the meaning ascribed to it in Paragraph 6.1 hereof.

1.17 “Drug Master File” means the drug master file (as such term is defined in 21 C.F.R. Part 314.420) relating to Product manufactured hereunder.

1.18 “Effective Date” means the date first written above.

1.19 “Exenatide Injection Drug” means finished formulated injectable drug product containing Product, for use and administration twice daily (BID).

1.20 “Facility” means MALLINCKRODT’s manufacturing, testing, and storage facility located in St. Louis, Missouri.

1.21 “FDA” means the United States Food and Drug Administration and any successor entity.

1.22 “FDCA” means the Federal Food Drug and Cosmetics Act, as amended from time to time, and all regulations promulgated thereunder (or any successor law and all regulations promulgated thereunder).

1.23 “Force Majeure” shall have the meaning ascribed to it in Article 11 hereof.

1.24 “Governmental Agency” means any federal, state, foreign or local government agency or authority that has jurisdiction over the manufacture, testing, distribution, sale or use of Product where MALLINCKRODT has authorized reference to its Drug Master File for Product.

1.25 “Hidden Defect” means any defect in any Lot that could not reasonably be expected to have been found by diligent and adequate inspection and testing by AMYLIN, such as failure to follow CGMPs.

1.26 “Indemnified Party” shall have the meaning ascribed to it in Paragraph 9.3.

1.27 “Indemnifying Party” shall have the meaning ascribed to it in Paragraph 9.3.

1.28 “Lot” means that quantity of Product produced from a single homogeneous solution in a single cycle of lyophilization.

1.29 “MALLINCKRODT Indemnitees” shall have the meaning ascribed to it in Section 9.1 hereof.

1.30 "MALLINCKRODT Technology" means all technical information, whether tangible or intangible and whether or not patentable, including patents, patent applications and any method, procedure, process, assay, composition of matter, trade secret, invention, technology, information or other subject matter, including license application materials and all supporting documents, specifications for materials (including purification techniques), data, information (including information contained in registration dossiers, drug master files and other documents filed with regulatory authorities), quality control, validation and equipment necessary or useful for the manufacture, production, scale-up and processing of Product, which is conceived, reduced to practice, developed, owned or licensed by MALLINCKRODT and necessary or useful in the manufacture of Product.

1.31 "NDA" means AMYLIN's New Drug Application for Exenatide Injection Drug filed with the FDA and any other functionally equivalent applications for approval to market Exenatide Injection Drug outside of the United States.

1.32 "Nominal Lot" means a Lot containing [***] as specified in any applicable Purchase Order.

1.33 "OUS Sales" means Exenatide Injection Drug commercially sold outside of the United States.

1.34 "Product" means AMYLIN's exenatide compound with the structure described in Exhibit A manufactured in accordance with this Agreement.

1.35 [***]

1.36 "Product Price" shall have the meaning ascribed to it in Paragraph 2.4 hereof.

1.37 "Product Requirements" means all of the requirements set forth, contained, and referenced in Paragraph 8.1(i)(a - d) of this Agreement.

1.38 "Product Specifications" means the written specifications for Product set forth in Exhibit B, as amended from time to time pursuant to Paragraph 3.1.

1.39 "Product Validation Lots" means those Lots manufactured under this Agreement for the purpose of validating the manufacturing and testing activities under this Agreement to ensure that Product is manufactured in accordance with all Product Requirements and Applicable Laws for use in commercial production of Exenatide Injection Drug.

1.40 "Quality Agreement" means the Quality Agreement dated as of the Effective Date between AMYLIN and MALLINCKRODT containing, identifying, and outlining the specifications, and certain of the technical and regulatory terms and conditions, for the manufacture of Product under this Agreement. The Quality Agreement is incorporated into this Agreement and made a part hereof. However, it is understood that in the event of any conflict of inconsistency between the terms of the Quality Agreement and any other terms or conditions of this Agreement, the latter shall prevail.

1.41 "Purchase Order" shall have the meaning ascribed to it in Paragraph 2.2 hereof.

1.42 "Recall Action" shall have the meaning ascribed to it in Paragraph 4.1 hereof.

1.43 "Third Party" means any person or entity other than MALLINCKRODT or AMYLIN, or their respective Affiliates.

1.44 "Validation Batch Production Records" means the documented procedures used to produce Product Validation Lots that fully comply with Product Specifications and Validation Requirements.

1.45 "Validation Requirements" means all processes, procedures, yield requirements, in-process sampling and analysis, and other actions required to be completed or performed for the manufacture of all Product Validation Lots in accordance with Applicable Laws, including, without limitation, any re-manufacturing and other actions required to bring Product into conformance with Governmental Agency requirements.

2. Purchase and Sale of Product

2.1 MALLINCKRODT understands and agrees that AMYLIN shall have the right to manufacture Product itself or have Product manufactured by other manufacturers.

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2.2 MALLINCKRODT agrees to manufacture and supply to AMYLIN the amounts of Product as ordered by AMYLIN pursuant to written purchase orders issued hereunder by AMYLIN using a form of purchase order mutually acceptable to both parties ("Purchase Order"), specifying the quantity, Nominal Lot quantity, and delivery date. AMYLIN shall submit each Purchase Order to MALLINCKRODT at least [***] in advance of the shipment date specified in the Purchase Order and otherwise in accordance with the requirements hereof. In the event that AMYLIN requests a change to a Purchase Order, MALLINCKRODT shall use commercially reasonable efforts to accommodate such request. All Purchase Orders shall be subject to written acceptance by MALLINCKRODT, which acceptance shall not unreasonably be withheld or delayed. Notwithstanding any other provision hereof, except with respect to Product volumes, delivery dates and shipping instructions, no term or condition of any Purchase Order issued by AMYLIN, any acknowledgement by MALLINCKRODT or any other document of either party that is in any manner additional to, different from or varies the terms and conditions hereof shall be deemed to be of any force or effect.

2.3 Notwithstanding the provisions of Paragraph 2.2 above, AMYLIN agrees to purchase from MALLINCKRODT (except to the extent MALLINCKRODT does not accept a Purchase Order pursuant to Paragraph 2.2 above):

[***]

Notwithstanding the above, AMYLIN shall not be required to purchase Product under this Agreement unless MALLINCKRODT manufactures and delivers all Product Validation Lots meeting all Product Requirements and Validation Requirements in accordance with this Agreement.

2.4 For each gram of Product supplied hereunder by MALLINCKRODT, AMYLIN will pay to MALLINCKRODT a price per gram based on the cumulative volume of Product ordered for supply during any given Contract Year. The per gram price to be billed to AMYLIN for any Lot or other discrete volume of Product shipped to AMYLIN during any Contract Year will be at the applicable price for Product based on the most recent Contract Year Forecast submitted by AMYLIN prior to the shipment by MALLINCKRODT of any such amount of Product. Based on the foregoing, AMYLIN will pay to MALLINCKRODT a per gram price for Product ("Product Price") in accordance with the following:

[***]

The Product Prices set forth in the immediately preceding sentence shall be firm through [***].

2.5 If, with respect to any given Contract Year, it is clear that the annual volume assumptions on which the Product Prices reflected in any one or more invoices for Product shipped to AMYLIN during such Contract Year are based are incorrect, then within thirty (30) days after the end of such Contract Year, MALLINCKRODT will send corrected invoices to AMYLIN indicating the actual per gram price for Product shipped during such Contract Year with respect to such invoices based on the actual volume of Product ordered for delivery during such Contract Year. If, on the basis of all such corrected invoices with respect to a particular Contract Year, when considered in the aggregate, the amount paid or payable by AMYLIN for Product shipped during such Contract Year against invoices previously issued by MALLINCKRODT is in excess of the amount payable by AMYLIN pursuant to all such corrected invoices then MALLINCKRODT shall, contemporaneous with the delivery of such corrected invoices and at AMYLIN's option, give AMYLIN a full refund of the excess amount or, with respect to any previously issued but as yet unpaid invoice, issue an appropriate credit equal to the excess amount of any such invoice. If, on the basis of all such corrected invoices with respect to a particular Contract Year, when considered in the aggregate, the amount paid or payable by AMYLIN for Product shipped during such Contract Year against invoices previously issued by MALLINCKRODT is less than the amount payable by AMYLIN pursuant to all such corrected invoices, then AMYLIN shall, within thirty (30) days after the receipt of such corrected invoices, pay to MALLINCKRODT the full additional amount due as reflected on such corrected invoices.

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2.6 Notwithstanding Paragraph 2.5 set forth immediately above, AMYLIN shall have the right (through any independent agents or representatives that are reasonably acceptable to MALLINCKRODT and upon advance written notice to MALLINCKRODT), with respect to any Contract Year ending not more than [***] prior to the date of notice requesting an audit, to audit the books and records of MALLINCKRODT to determine whether or not the amounts reflected on any original invoices relevant to any such Contract Year or any corrected invoices issued by MALLINCKRODT to AMYLIN in accordance with Paragraph 2.5 set forth immediately above are accurate, and in particular (without limitation) whether or not the Product Costs as reflected in any Annual Adjustment Notice have been reported and invoiced correctly by MALLINCKRODT, as applicable in any given case. In the event that, as a consequence of any such audit or examination, AMYLIN reasonably disagrees with any amounts set forth on original or corrected invoices issued by MALLINCKRODT, AMYLIN shall inform MALLINCKRODT in writing and in reasonable detail of the amounts to be refunded and, unless and to the extent MALLINCKRODT disputes the amounts set forth by AMYLIN in any such notice, MALLINCKRODT will refund to AMYLIN any such undisputed amounts within fifteen (15) days of the receipt of any such notice from AMYLIN. In the event MALLINCKRODT does dispute all or any portion of any refund claimed by AMYLIN, MALLINCKRODT will so notify AMYLIN within such fifteen (15) day period and the parties will attempt thereafter to resolve such dispute amicably and, if they cannot do so, may agree to submit the dispute to binding arbitration or independently pursue any other remedies available to them to resolve such dispute. AMYLIN shall bear the expense of such audit; provided, however, that, if such audit reflects overpayments by AMYLIN, which are undisputed or confirmed as overpayments pursuant to the dispute resolution procedure referred to in the preceding sentence, in excess of [***] of the payments actually due by AMYLIN hereunder for the applicable period, then MALLINCKRODT shall reimburse AMYLIN for the reasonable expenses of such audit.

2.7 At the time of shipment by MALLINCKRODT to AMYLIN of any Lot hereunder, MALLINCKRODT shall submit to AMYLIN an invoice setting forth the total amount of Product being shipped to AMYLIN and the amount due to MALLINCKRODT pursuant to the volume assumptions made in accordance with Paragraph 2.4 hereof. Each such invoice shall also contain a certification that the Product for which AMYLIN is being billed has been produced fully in conformance with Product Requirements. Any such invoice shall be payable by AMYLIN within sixty (60) days after AMYLIN's receipt of such invoice.

2.8 Within thirty (30) days after the Effective Date, AMYLIN shall submit to MALLINCKRODT a rolling forecast of Product that AMYLIN in good faith estimates it will order from MALLINCKRODT for the first Contract Year (as updated on a rolling basis, the "Contract Year Forecast"). Thereafter, on and as of the first day of [***], AMYLIN will furnish MALLINCKRODT with an updated Contract Year Forecast indicating AMYLIN's good faith estimate of the amounts of Product it expects to order during the next [***] period. The Contract Year Forecast will be non-binding and will be used by MALLINCKRODT for production planning, but in all circumstances AMYLIN shall act in good faith and with reasonable care to submit forecasts for Product which are as accurate as possible under the circumstances.

3. Manufacture of Product; Recordkeeping; Regulatory

3.1 Each party shall notify the other in advance of any proposed changes in Product Specifications, release testing, stability testing, packaging or processes in manufacturing of Product under this Agreement. No changes in Product Specifications, release testing, stability testing, packaging or the processes used to manufacture Product under this Agreement, except changes required by government or compendial standards, will be made unless AMYLIN and MALLINCKRODT have agreed to such changes in writing prior to adoption of modified release testing, stability testing, packaging, Product Specifications or process changes. Any such changes to the Product Specifications, release testing, stability testing, packaging or processes of manufacturing Product shall be handled in accordance with the procedures established in the Quality Agreement, with costs paid as described below:

(i) in the event AMYLIN requests any such changes be made, other than changes requested by any Governmental Agency or required to bring the Facility into compliance with Applicable Laws, MALLINCKRODT shall, to the extent technologically feasible, accommodate AMYLIN's requested changes, provided that AMYLIN shall promptly reimburse MALLINCKRODT (i.e., upon presentation of an invoice from MALLINCKRODT with appropriate supporting documentation) for any incremental capital and other costs reasonably required in connection with such changes (provided Mallinckrodt has given AMYLIN advance written notice of the nature of such capital and other costs and provided further that AMYLIN shall have the right to withdraw any request for a change before implementation has begun if AMYLIN disagrees with or is unwilling to pay all of such capital and other costs); and provided further that, any ongoing costs incurred by MALLINCKRODT and reasonably required in connection with such changes shall be deemed to be [***] for all purposes hereof;

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(ii) in the event MALLINCKRODT requests any such changes be made, other than changes requested by any Governmental Agency or required to bring the Facility into compliance with Applicable Laws or to meet Validation Requirements, all costs reasonably required in connection with such changes shall be paid as mutually agreed by both parties; and

(iii) in the event changes are requested by a Governmental Agency or required to bring the Facility into compliance with Applicable Laws, or additional changes, activities, or manufacturing is required to bring the process into compliance with Applicable Laws, cGMP, Product Specifications, or other Product Requirements, MALLINCKRODT shall, to the extent technologically feasible, accommodate such changes, and all costs reasonably required in connection with such changes, activities, or manufacturing shall be deemed to be [***] for all purposes hereof.

3.2 MALLINCKRODT shall maintain true and accurate books, records, test and laboratory data, reports and all other information relating to manufacturing under this Agreement, including without limitation all Validation Production Batch Records and all information required to be maintained by Applicable Laws. Such information shall be maintained in accordance with MALLINCKRODT's standard operating procedures for a period of at least five (5) years after the term of this Agreement, or longer if required under Applicable Laws.

3.3 MALLINCKRODT shall be responsible for obtaining and maintaining any establishment licenses or permits required by the FDA, Applicable Laws or Governmental Agencies that pertain to the manufacturing, handling and storage of the Product at the Facility. MALLINCKRODT hereby grants to AMYLIN and its Collaboration Partner the right to
reference such establishment files for the purpose of obtaining and maintaining any regulatory approvals.

3.4 MALLINCKRODT shall advise AMYLIN within three (3) business days after an agent of any Governmental Agency visits a facility where manufacturing activity with respect to Product takes place. In such circumstance, MALLINCKRODT shall furnish to AMYLIN a copy of sections of any report issued by such Governmental Agency that relate to the Product or MALLINCKRODT's performance hereunder, if any, within ten (10) days of receipt of such report. MALLINCKRODT shall provide to AMYLIN such notice as is reasonably practical under the circumstances of any action by a Governmental Agency resulting from an inspection of the Facility if such action may reasonably be anticipated to affect adversely either MALLINCKRODT's ability to perform its obligations under this Agreement or AMYLIN's rights hereunder.

3.5 MALLINCKRODT shall permit personnel and representatives of AMYLIN and its Collaboration Partner, upon reasonable advance notice, at reasonable intervals, and for reasonable duration during regular business hours, to visit the Facility or any other relevant MALLINCKRODT locations to audit compliance with this Agreement, including but not limited to the Product Specifications, cGMPs and Applicable Laws; provided, however, that such audits shall be conducted not more than once in any twelve (12) month period, except that AMYLIN and its Collaboration Partner shall be entitled to conduct "for cause" audits at any reasonable time and upon advance notice (i) following the implementation of measures in response to Form 483's or similar reports delivered by Governmental Agencies to MALLINCKRODT pertaining to the manufacture of Product or (ii) if circumstances exist that are reasonably likely to adversely affect the manufacture of Product or AMYLIN's rights hereunder, and AMYLIN first discusses the reasons with MALLINCKRODT. All such audits by AMYLIN and its Collaboration Partner shall be conducted in a manner reasonably calculated not to interfere with MALLINCKRODT's business activities and in compliance with MALLINCKRODT's security and safety policies and procedures. All information obtained by AMYLIN or its Collaboration Partner in any such review (including, without limitation, the findings and results related thereto but excluding all Confidential Information of AMYLIN and its Collaboration Partner), shall be deemed MALLINCKRODT's Confidential Information, provided, however. AMYLIN and its Collaboration Partner shall not be precluded from disclosing such MALLINCKRODT Confidential Information to Governmental Agencies to the extent and only to the extent required by law or for their regulatory filings. MALLINCKRODT will have the responsibility to audit its permitted subcontractors and suppliers at reasonable intervals for compliance with the Product Requirements, CGMPs and Applicable Laws. AMYLIN shall have the right to confirm audits of subcontractors and suppliers of MALLINCKRODT for any Products manufactured under this Agreement during its audits of MALLINCKRODT's facilities.

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3.6 MALLINCKRODT agrees to use its commercially reasonable efforts to assist AMYLIN and its Collaboration Partner in obtaining regulatory approvals from all Governmental Agencies with respect to the Product, including FDA approval of the NDA, subject to reimbursement by AMYLIN of all reasonable costs incurred in connection therewith. MALLINCKRODT specifically agrees to cooperate with any inspection by the FDA or other Governmental Agency, including but not limited to any pre-approval inspection in connection with the NDA. MALLINCKRODT shall, on a timely basis, provide AMYLIN and its Collaboration Partner with documentation, data, and such other information relating to Product that is reasonably necessary for and relevant to AMYLIN's or its Collaboration Partner's efforts to obtain, maintain, and support regulatory approvals relating to Product. MALLINCKRODT shall also provide, upon request by AMYLIN or its Collaboration Partner, non-proprietary and nonconfidential information concerning its production processes and quality control procedures with respect to Product. Without limiting the generality of the foregoing, MALLINCKRODT agrees to establish and maintain a Drug Master File (including, upon six (6) months advance notice from AMYLIN a foreign equivalent of a Drug Master File in those countries reasonably requested by AMYLIN) for the Product in accordance with the requirements of the FDA and any other applicable Governmental Agency, and to provide AMYLIN and its Collaboration Partner with letters of authorization to, and rights to reference, the Drug Master File and any foreign equivalents thereof. Further, AMYLIN and its Collaboration Partner shall have the right to review the open Drug Master File, and all stability data, release testing results, impurity profiles, facility and equipment data, validation data and all information related to the validation of analytical method with respect to the Product. MALLINCKRODT shall update the Drug Master File and any foreign equivalents thereof in a timely manner to support any NDA filing. All information regarding all aspects of manufacture of Product necessary for and/or related to AMYLIN's and/or its Collaboration Partner's regulatory filings shall, at MALLINCKRODT's option, either be (i) maintained by MALLINCKRODT in a Drug Master File or (ii) provided to AMYLIN or its Collaboration Partner for inclusion in their respective regulatory filings. During the course of a Governmental Agency's review of the NDA, MALLINCKRODT shall inform AMYLIN and its Collaboration Partner of any comments (including indication of deficiencies) to the Drug Master File or any foreign equivalents thereof from any such Governmental Agencies, and MALLINCKRODT shall consult with AMYLIN and, in the case of Governmental Agencies outside of the United States, its Collaboration Partner, in drafting responses to any such comments.

3.7 AMYLIN and MALLINCKRODT shall promptly (and in any event within two (2) business days) advise the other of any safety or toxicity problem of which such party becomes aware regarding Product.

3.8 The obligations of MALLINCKRODT and AMYLIN set forth in this Section 3 are intended to comply with the Applicable Laws of each country where the Product is distributed, but only where MALLINCKRODT has authorized reference of its Drug Master File for Product. The requirements of this Section 3 shall therefore be construed and interpreted to comply with all such Applicable Laws, but only where MALLINCKRODT has authorized reference of its Drug Master File for Product.

3.9 Any and all release testing methods, Product Specifications, and stability data provided by AMYLIN or generated from information or data provided by AMYLIN shall be the Confidential Information of AMYLIN.

4. Recalls and Similar Actions

4.1 If there is a recall, withdrawal or field correction with respect to, or any governmental seizure of, Exenatide Injection Drug ("Recall Action"), which Recall Action is due in part to (i) the failure of Product manufactured by MALLINCKRODT to meet any of the Product Requirements, or (ii) the alleged negligent or intentional wrongful act or omission of MALLINCKRODT in connection with the manufacture of Product, then AMYLIN or, in the case of OUS Sales subject to a Recall Action, Collaboration Partner, will notify MALLINCKRODT promptly of the details regarding such Recall Action, including providing copies of all relevant documentation concerning such Recall Action. MALLINCKRODT will assist AMYLIN and its Collaboration Partner in investigating any such Recall Action, if AMYLIN or its Collaboration Partner so requests, and all regulatory contacts that are made and all activities concerning such Recall Action will be initiated and coordinated by AMYLIN or, in the case of OUS Sales subject to a Recall Action, Collaboration Partner with MALLINCKRODT's involvement and assistance, as reasonably requested by AMYLIN or its Collaboration Partner.

4.2 If any Recall Action occurs which is due in part to (i) the failure of Product manufactured by MALLINCKRODT to meet any of the Product Specifications or Product Requirements, (ii) the failure of MALLINCKRODT to comply with cGMP requirements and the requirements of any other Applicable Laws, rules or regulations or (iii) the negligent or intentional wrongful act or omission of MALLINCKRODT in connection with the manufacture of Product, then MALLINCKRODT shall, to the extent and only to the extent of its relative responsibility, bear the cost and expense of any such Recall Action. Therefore, if both MALLINCKRODT and AMYLIN contribute to the cause of such a Recall Action, the cost and expense thereof will be shared in proportion to each party's contribution to the problem.

5. Shipment and Delivery

On or before the delivery date of each shipment of Product MALLINCKRODT shall deliver to AMYLIN the COA for each Lot of Product being shipped. Delivery of the COA by MALLINCKRODT to AMYLIN shall mean MALLINCKRODT has tested and analyzed such Lot of Product to ensure compliance with Product Specifications as defined in Exhibit B and other Product Requirements and, if applicable, Validation Requirements. MALLINCKRODT shall be primarily responsible for all such initial testing of Product; provided, however, AMYLIN shall have the right to subsequent inspection and final acceptance or rejection of such Product pursuant to the terms of this Agreement. MALLINCKRODT shall deliver each Lot of Product to the location specified by AMYLIN in its Purchase Order for such Lot. Each Lot of Product will be packed by MALLINCKRODT in accordance with AMYLIN's specific instructions and standard operating procedure (currently AMYLIN SOP-QUM-146), a copy of which shall be provided to MALLINCKRODT. Product shall be delivered F.C.A. (Incoterms 2000) MALLINCKRODT's Facility. Freight shall be pre-paid to the destination specified by AMYLIN in its Purchase Order. MALLINCKRODT will be responsible for arrangements regarding the shipping of Product to designated destinations but AMYLIN shall reimburse MALLINCKRODT for all applicable shipping charges.

6. Acceptance/Rejection of Product

6.1 Not later than [***] after receipt of each Lot of Product (other than Product Validation Lots), if AMYLIN believes that any such Lot does not comply with all of the Product Requirements (any Product failing to comply with the foregoing a "Defective Product"), AMYLIN shall notify MALLINCKRODT in writing of AMYLIN's rejection of such Lot and the specific reasons therefor. If MALLINCKRODT does not agree that any such rejected Lot is Defective Product, both MALLINCKRODT and AMYLIN shall submit a sample of such Lot and other relevant information for analysis by an independent expert mutually satisfactory to the parties, and the decision of this independent expert as to whether such Lot of Product is Defective Product shall be final and binding upon the parties. The fees of such expert shall be borne by AMYLIN if such Lot is determined by such expert not to be Defective Product, or by MALLINCKRODT if such Lot is determined to be Defective Product.

6.2 If a Lot of Product (other than a Product Validation Lot) is rejected by AMYLIN as Defective Product and either MALLINCKRODT agrees to the rejection or the independent expert determines that such Lot constitutes Defective Product, MALLINCKRODT shall, upon request from AMYLIN and at AMYLIN's option, (i) promptly replace such Lot of Product at no additional expense to AMYLIN, (ii) promptly remedy the deficiency at MALLINCKRODT's expense or (iii) immediately refund any amounts paid by AMYLIN for such rejected Lot. It is agreed that the remedies set forth in this Paragraph 6.2 are AMYLIN's sole remedies in the event of any rejection by AMYLIN of Defective Product (but are subject to AMYLIN's rights set forth in Paragraph 6.3). If AMYLIN has properly rejected Product and the deficiency causing it to be Defective Product cannot be remedied, AMYLIN will, at MALLINCKRODT's option, either return such Defective Product to MALLINCKRODT or destroy or dispose of it in the least expensive and most environmentally sound manner and, in any event, MALLINCKRODT shall be responsible for the expense of any such return, destruction or disposal. Failure of AMYLIN to notify MALLINCKRODT in writing of rejection of a Lot as set forth herein within [***] of receipt of such Lot shall constitute acceptance of such Product Lot and such Lot cannot subsequently be rejected except for a Hidden Defect in accordance with Paragraph 6.3 set forth immediately below.

6.3 If, after AMYLIN's acceptance of a Lot (including without limitation any Product Validation Lot), AMYLIN discovers in such Lot a Hidden Defect such as a Contaminant at any time after acceptance, AMYLIN shall notify MALLINCKRODT within [***] of such discovery of the Hidden Defect, and AMYLIN has the right to reject the Lot under the procedures regarding rejection set forth immediately above in Paragraph 6.2 and, in the case of a Product Validation Lot, in Paragraph 6.4.

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6.4 With respect to all Product Validation Lots manufactured under this Agreement, AMYLIN shall have the right to reject any such Product Validation Lot, if such Lot, upon delivery to AMYLIN, does not comply with all Validation Requirements or Product Requirements. AMYLIN will have the right to reject any such Product Validation Lot by providing written notice to MALLINCKRODT not later than the later of either (i) [***] after receipt of such Lot, or (ii) [***] after the date when AMYLIN discovers or receives notice that the Lot does not meet all Product Requirements or all Validation Requirements (e.g., Governmental Agency deems that Lot does not satisfy all Validation Requirements and requires the re-manufacture of the Lot). If, after AMYLIN's acceptance of any Product Validation Lot, AMYLIN rejects any of the other Product Validation Lots, then AMYLIN will have the right to reject any or all Product Validation Lots that were previously accepted as not being in compliance with the requirement in Paragraph 8.1(vi) that all Product Validation Lots meet all Validation Requirements upon delivery to AMYLIN. For all Product Validation Lots rejected by AMYLIN, MALLINCKRODT shall, upon request from AMYLIN and at AMYLIN's option, (x) promptly replace such Lot at no additional expense to AMYLIN, (y) promptly remedy the deficiency at MALLINCKRODT's expense, or (z) immediately refund any amounts paid by AMYLIN for such rejected Lot. It is agreed that the remedies set forth in the immediately preceding sentence are AMYLIN's sole remedies in the event of any rejection by AMYLIN of Product Validation Lot(s). Disposal of rejected Product Validation Lots and all work associated with completing all Validation Requirements to ensure that Product Validation Lots meet all Validation Requirements (including without limitation re-manufacture of Product Validation Lots to bring such Lots into conformance with Governmental Agency requirements) shall be at the sole cost and expense of MALLINCKRODT.

7. Term and Termination

7.1 This Agreement shall commence on the Effective Date, and unless earlier terminated as stated below, will continue for a period of five (5) Contract Years ("Initial Term), automatically renewing on an annual basis thereafter for additional single Contract Year terms.

7.2 This Agreement may be terminated as follows:

(i) either party may terminate this Agreement by written notice to the other party effective immediately (a) upon the institution by such other party of voluntary proceedings in bankruptcy or insolvency, or (b) sixty (60) days after the filing of an involuntary petition under any bankruptcy or insolvency law (unless such petition is dismissed or set aside within such 60-day period) against the other party, or (c) sixty (60) days after the appointment of a receiver or trustee for the assets of business of the other party (unless such appointment is dismissed or set aside within such 60-day period);

(ii) if either party shall have committed a material breach and such material breach remains uncured and continues for a period of thirty (30) days following receipt of notice thereof by the non-breaching party, the non-breaching party may terminate this Agreement upon additional written notice given on or after the expiration of such thirty (30)-day period; or

(iii) AMYLIN may terminate this Agreement at any time by giving MALLINCKRODT at least thirty (30) days written notice in each of the following situations:
- (a) upon notice by the FDA or other applicable Government Agency that MALLINCKRODT has failed successfully to complete its Pre-Approval Inspection or equivalent non-United States inspection by failing adequately to respond to any FDA or other applicable Government Agency findings within thirty (30) days of inspection, and therefore is not an approved commercial supplier of Product,
- (b) upon notification by the FDA or other applicable Government Agency that it will not approve any NDA filed in the United States relative to Product,
- (c) upon withdrawal by AMYLIN of any Investigational New Drug Application containing Product,
- (d) if AMYLIN reasonably determines that discontinuation of all development and commercialization of Product is in the best interests of AMYLIN, and AMYLIN takes reasonable steps in order to discontinue all development and commercialization efforts by AMYLIN, its agents and licensees, or
- (e) in the event of a Force Majeure event preventing or impairing MALLINCKRODT's performance hereunder which event has existed for at least ninety (90) continuous days;

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(iv) AMYLIN may terminate this Agreement, in its sole discretion, at any time following the Initial Term, without cause, by providing at least ninety (90) days prior written notice to MALLINCKRODT; or

(v) either party may terminate this Agreement, effective as of the end of the Initial Term or any Contract Year renewal term following the Initial Term, by providing written notice to the other party hereunder at least one (1) year prior to the effective date of such termination, which notice may be sent at any time on or after the fourth (4^{th}) Contract Year of this Agreement.

The parties acknowledge that the Collaboration Partner shall have the right, but not the obligation, to cure a breach of any material provision of this Agreement by Amylin if Amylin does not do so.

7.3 In the event of a termination by AMYLIN pursuant to subclauses (b), (c) and (d) of subparagraph (iii), subparagraph (iv) or subparagraph (v) of Paragraph 7.2 above, AMYLIN shall compensate MALLINCKRODT for (i) all inventory of finished Product then held by MALLINCKRODT at [***], (ii) Mallinckrodt's [***] for all then existing work-in-process with respect to Product and (iii) all [***] of MALLINCKRODT for existing raw materials inventory to be used in any manner in connection with manufacture hereunder, in each case as the foregoing exist on and as of the effective date of such termination, and in each case to the extent related to purchase orders received by MALLINCKRODT through the effective date of termination.

7.4 Termination or expiration of this Agreement through any means or for any reason shall not relieve the parties of any obligation accruing prior thereto and shall be without prejudice to the rights and remedies of any party with respect to any antecedent breach of any of the provisions of this Agreement. The representations and warranties of the parties, which by their terms have effect after termination or expiration hereof, and the parties' confidentiality and indemnification obligations, as well as this Paragraph 7.4, shall survive termination or expiration of this Agreement.

8. Warranties

8.1 MALLINCKRODT represents, warrants, and covenants that

(i) upon delivery to AMYLIN, all Product shall:

a) meet all Product Specifications at the time of delivery and shall have been manufactured and packaged at the Facility in accordance with the Product Specifications,
b) be manufactured in accordance with all applicable requirements of the FDCA (including but not limited to cGMPs) and all other Applicable Laws, and be free from any Contaminants,
c) not be adulterated within the meaning of the FDCA or any Applicable Laws in which the definition of adulteration is substantially the same as in the FDCA (as such Applicable Laws are constituted and effective at the time of delivery), and will not be an article which may not, under the FDCA or any other Applicable Laws, be introduced into interstate commerce,
d) be manufactured using starting materials that are certified to be free of any TSE/BSE (transmittable spongiform encephalitis/bovine spongiform encephalitis) and originate from sources that are not of human, bovine, or ruminant animal tissue, and
e) be in undamaged containers;

(ii) each COA shall accurately and completely reflect the results of the tests conducted on the Lot of Product to which it relates;

(iii) the records maintained by MALLINCKRODT will reflect in all material respects the processes and procedures followed by it in manufacturing Product;

(iv) the use of the MALLINCKRODT Technology in connection herewith will not infringe any third party patent, copyright, trademark or other known intellectual property rights of any Third Party as such rights currently exist;

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(v) all Product delivered shall be received by AMYLIN no later than either (a) [***] after the date of its actual manufacture if the applicable use period of such Product is [***], or (b) [***] after the date of its actual manufacture if the applicable use period of such Product is [***]; and (vi) in addition to complying with the terms of 8.1 (i)(a) through (e) above, all Product Validation Lots shall meet all Validation Requirements upon delivery to AMYLIN.

8.2 EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MALLINCKRODT MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO PRODUCT OR ITS PERFORMANCE HEREUNDER, AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY MALLINCKRODT.

8.3 EXCEPT FOR ANY DAMAGES AWARDED OR PAID TO A THIRD PARTY FOR WHICH A MALLINCKRODT INDEMNITEE (AS DEFINED BELOW) IS SEEKING INDEMNIFICATION PURSUANT TO THE PROVISIONS OF CLAUSE (iv) of PARAGRAPH 9.1, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY PARTY OR PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR BUSINESS INTERRUPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF, UNDER ANY PARTICULAR SET OF CIRCUMSTANCES, SUCH DAMAGES ARE REASONABLY FORESEEABLE. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO LIMIT A PARTY'S RIGHT TO SEEK ANY AVAILABLE REMEDIES FOR BREACH OF CONFIDENTIALITY AND NON-USE OBLIGATIONS.

9. Indemnification

9.1 AMYLIN shall defend, indemnify, and hold MALLINCKRODT and its Affiliates and its and their directors, officers, shareholders, insurers, employees, and agents ("MALLINCKRODT Indemnitees") harmless against any liability, judgment, demand, action, suit, loss, damage, cost or other expense, including reasonable attorney's fees ("Damages"), resulting from any Third Party claims made or proceedings brought against a MALLINCKRODT Indemnitee to the extent that such liability arises from (i) AMYLIN's negligence or willful act or omission regarding Product supplied under this Agreement, (ii) AMYLIN's breach of any warranty or provision of this Agreement, (iii) AMYLIN's violation of any Applicable Laws, rules or regulations and (iv) the manufacture (other than the manufacture of Product by MALLINCKRODT under this Agreement), sale, promotion, distribution or use of any product containing Product supplied under this Agreement by or on behalf of AMYLIN, including all product liability claims or proceedings; provided, however, that AMYLIN shall have no liability under this Paragraph 9.1 with respect to any Damages to the extent arising from matters as to which MALLINCKRODT has the obligation to indemnify pursuant to Paragraph 9.2 set forth immediately below.

9.2 MALLINCKRODT shall defend, indemnify, and hold AMYLIN and its Collaboration Partner and their respective Affiliates and its and their directors, officers, shareholders, insurers, employees, and agents ("AMYLIN Indemnitees") harmless against any Damages resulting from any Third Party claims made or proceedings brought against an AMYLIN Indemnitee to the extent that such liability arises from (i) MALLINCKRODT's negligence or willful act or omission in the manufacture, storage or delivery of Product, (ii) MALLINCKRODT's breach of any warranty or provision of this Agreement, or (iii) MALLINCKRODT's violation of any Applicable Laws, rules or regulation.

9.3 **Procedures.**

9.3.1 A party (the "Indemnified Party") that intends to claim indemnification under this Section shall promptly notify the other party (the "Indemnifying Party") in writing of any claim of a Third Party which may reasonably be expected to result in a claim for Damages ("Damage Claim") by the Indemnified Party. Notice by the Indemnified Party to the Indemnifying Party shall include a copy of the Third Party claim. An Indemnifying Party shall have the right to direct the defense, compromise or settlement of such claim with counsel selected by it, provided the Indemnifying Party gives written notice to the Indemnified Party of its election to do so within twenty (20) days after receipt of notice in accordance with the preceding sentence. If the Indemnifying Party fails to so notify the Indemnified Party of its election to defend any such Third Party claim, the Indemnified Party will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and expense of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such claim at any time prior to settlement, compromise or final determination thereof if and only if such assumption would not prejudice the defense of such claim or the rights of the Indemnified Party.

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9.3.2 In the event an Indemnifying Party has assumed the defense of any such claim, the Indemnified Party shall nonetheless have the right to select its own counsel and participate in the defense of such claim at and for its own expense and account. Where the Indemnifying Party has assumed defense of any Damage Claim, the Indemnified Party and its counsel, if retained, shall consult and cooperate with counsel for the Indemnifying Party in defending against any such Third Party claim. Such cooperation shall include, without limitation, providing documents, making employees available for interviews, depositions and testimony and consultation on technical matters.

9.3.3 An Indemnifying Party shall not under any circumstances, without the written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment which might in any material way prejudice or adversely affect the Indemnified Party or its continued business activities and which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect of such claim, in form and substance reasonably satisfactory to the Indemnified Party.

9.3.4 Notwithstanding anything to the contrary contained herein, with respect to a Third Party claim that can be settled by the payment of money, if a Third Party claim is made which the Third Party is unequivocally willing to settle but an Indemnified Party elects not to settle, then the Indemnifying Party shall not be liable hereunder, with respect to any Damage Claim arising from such Third Party claim, for more than the amount which such Third Party at any time unequivocally agrees in writing to accept in payment or compromise of the claim plus any related costs and expenses incurred by the Indemnified Party as of the date of such offer of settlement.

9.3.5 All Damage Claims for indemnification hereunder shall be made in a written notice setting forth, with particularity, the nature of the claim for which indemnification is sought. The parties agree that no Damage Claim for indemnification shall be made hereunder unless the party requesting indemnification shall have a good faith belief that it is entitled to indemnification hereunder.

10. Confidential Information

10.1 Any and all knowledge, know-how, practices, specifications, methods, release testing methods, stability data, processes or other confidential or proprietary information of MALLINCKRODT, or AMYLIN and its Collaboration Partner (hereinafter referred to as "Confidential Information") disclosed orally, by means of inspection or submitted in writing or in other tangible form by the disclosing party to the receiving party shall be deemed to be confidential and shall be received and maintained in strict confidence and shall not be disclosed to any Third Party without the prior written consent of the disclosing party, which consent shall not unreasonably be withheld or delayed. The recipient shall not use said Confidential Information for any purpose other than to facilitate the recipient's performance under this Agreement, and the disclosing party's Confidential Information shall at all times be and remain the sole and exclusive property of the disclosing party. The recipient may disclose Confidential Information to employees and/or consultants requiring access thereto for the purposes of this Agreement, and in the case of AMYLIN, to its Collaboration Partner; provided, however, that prior to making any such disclosures, Collaboration Partner and each such employee and consultant shall be apprised of the duty and obligation to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement. In any event, the recipient of any Confidential Information shall be fully responsible for the improper disclosure or use of the Confidential Information by anyone to whom such Confidential Information is disclosed by the recipient. Each party shall take all steps reasonably necessary to assure that the Confidential Information received will be maintained in confidence by such party, including taking such steps as it normally takes to prevent the disclosure of its own proprietary and confidential information of like character.

10.2 The nondisclosure and non-use obligations of Paragraph 10.1 above shall not apply to Confidential Information which:

(i) is publicly known prior to disclosure or, subsequent to disclosure hereunder, has become publicly known and the recipient can demonstrate became publicly known without fault on the part of the receiving party,

(ii) the recipient can demonstrate was otherwise known by the receiving party prior to disclosure hereunder or was generated for the receiving party by persons who have not had access to or knowledge of the Confidential Information, or

(iii) the recipient party can demonstrate was received by the receiving party at any time from a source other than the disclosing party or its agents, lawfully having possession of such information and under no obligation of confidentiality with respect to such information.

Notwithstanding Paragraph 10.1, the recipient party may disclose Confidential Information of the disclosing party, without violating the obligations of this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body having jurisdiction, by any Governmental Agency or by Applicable Laws; provided that, the recipient party gives reasonable prior written notice to the disclosing party of such required disclosure and makes a reasonable effort to obtain, or to assist the disclosing party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation requires, or for which the order was issued.

10.3 The obligations of this Article 10 shall be in effect during the term of this Agreement and for a period of five (5) years from the expiration or any earlier termination of this Agreement.

10.4 The parties hereto acknowledge and agree that any breach by either of them of the obligations set forth in this Article 10 may cause the other party irreparable damage of a type that cannot be adequately compensated by monetary damages and, therefore, in the event of such breach, the non-defaulting party shall have the right to seek an injunction or other appropriate equitable relief (without the requirement of posting a bond or any other financial assurance), in addition to any other remedies at law the non-defaulting party may have.

11. Force Majeure

If the performance by either party of any obligation under this Agreement is prevented or impaired by an event of "Force Majeure", such party shall be excused from performance so long as such event continues to prevent or impair performance, provided the party claiming such excuse shall have promptly notified the other party of the existence, nature, expected duration and other significant details of such event and shall at all times use diligent and commercially reasonable efforts to resume performance. If either party anticipates that a Force Majeure event may occur, that party shall notify the other immediately and explain the nature, significant details and expected duration thereof. The party affected by an event of Force Majeure will advise the other from time to time as to its progress in remedying the situation and as to the time when the affected party expects to resume its performance of its obligations. Additionally, the party affected by an event of Force Majeure shall notify the other party of the expiration of any event of Force Majeure as soon as the affected party knows the date thereof. For purposes hereof, an event of "Force Majeure" shall mean an event beyond the reasonable control of a party including, but not limited to, fire, flood, sabotage, shipwreck, embargo, acts of terrorism, explosion, accident, riot, act of governmental authority, acts of God, acts of war, and unusually severe weather; provided that, MALLINCKRODT's capacity constraints shall not be considered an event of Force Majeure hereunder. Notwithstanding the occurrence of a Force Majeure event, if MALLINCKRODT shall be unable to supply during any Contract Year any Product ordered by AMYLIN that is not in excess of those estimated amounts stated in the applicable Contract Year Forecasts, AMYLIN and MALLINCKRODT will consult with each other to determine what measures may reasonably be taken to solve the supply problem. Notwithstanding the foregoing, if MALLINCKRODT undergoes a Force Majeure event that results in MALLINCKRODT failing to manufacture Product pursuant to any Purchase Order under this Agreement, the volume of any Product purchased by AMYLIN from alternate Third-Party suppliers during the duration of the Force Majeure event shall be applied towards the minimum purchase amounts in Paragraph 2.3 above for the applicable Contract Year. Further notwithstanding the foregoing, a party's failure to pay to the other party any amounts payable hereunder as and when due shall in no event be excused by the occurrence of an event of Force Majeure.

12. Insurance. Upon AMYLIN's request, MALLINCKRODT shall provide to AMYLIN written evidence reasonably satisfactory to AMYLIN of the sufficiency of MALLINCKRODT's insurance program.

13. **Notices**

All notices, consents, approvals or other notifications required to be sent by one party to the other party hereunder shall be in writing and shall be deemed served upon the other party if delivered by hand or sent by United States registered or certified mail, postage prepaid, with return receipt requested, or by facsimile, air courier or telex, addressed to such other party at the address set out below, or the last address of such party as shall have been communicated to the other party. If a party changes its address, written notice shall be given promptly to the other party of the new address. Notice shall be deemed given on the day it is sent (in the case of delivery by method other than hand delivery) or the date of delivery (in the case of delivery by hand) in accordance with the provisions of this paragraph. The addresses for notices are as follows:

If to AMYLIN:	Amylin Pharmaceuticals, Inc. 9360 Towne Centre Drive, Suite 110 San Diego, California 92121 Attn: John Grove, Senior Director of Manufacturing Fax No.: (858) 558-0290
With a copy to:	Amylin Pharmaceuticals, Inc. 9360 Towne Centre Drive, Suite 110 San Diego, California 92121 Attn: Lloyd A. Rowland, Esq., Vice President and General Counsel Fax No.: (858) 552-1936
If to MALLINCKRODT:	Mallinckrodt Inc. P.O. Box 5840 675 McDonnell Blvd. St. Louis, Missouri 63134 Attn: Michael J. Collins Fax No.: 314-654-6020
With a copy to:	Mallinckrodt Inc. P.O. Box 5840 675 McDonnell Blvd. St. Louis, MO 63134 Attn: C. Stephen Kriegh Fax No.: 314-654-7181

14. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest. Collaboration Partner is an intended Third Party beneficiary of the provisions and only those provisions of this Agreement specifically referring to Collaboration Partner.

15. Independent Contractor

In all matters relating to this Agreement, MALLINCKRODT shall be acting as an independent contractor and not as an employee of AMYLIN.

16. Assignment

Neither party shall assign this Agreement or any part thereof without the prior written consent of the other party; provided, however, that either party, without such consent, may assign or transfer the same: (i) in connection with the transfer or sale of substantially its entire business to which this Agreement pertains or in the event of its merger or consolidation with another company, or (ii) to an Affiliate, provided that such party guarantees the performance of the Affiliate to which the Agreement is assigned. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any accrued obligation which such party then has hereunder. MALLINCKRODT shall not subcontract the manufacture of Product or any other activity under this Agreement without the prior express written consent of AMYLIN, which consent shall not unreasonably be withheld or delayed.

17. Entire Agreement

This Agreement sets forth the entire agreement between AMYLIN and MALLINCKRODT with respect to its subject matter, and fully supersedes any and all prior and contemporaneous agreements or understandings pertaining to the subject matter hereof.

18. Severability

A determination that any portion of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any of the remaining portions hereof or of this Agreement as a whole, unless such unenforceability or invalidity goes to the essence of the agreement between the parties, in which case this Agreement shall be and become null and void as and from the date of such unenforceability or invalidity. In the event that any part of any of the covenants, sections or provisions herein may be determined by a court of law or equity to be overly broad or against applicable precedent or public policy, thereby making such covenants, sections or provisions invalid or unenforceable, and such determination does not go to the essence of this Agreement for either one of the parties hereto, then the parties shall attempt to reach agreement with respect to a valid and enforceable substitute for the deleted provisions, which shall be as close in its intent and effect as possible to the deleted portions.

19. Waiver - Modification of Agreement

No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both parties hereto. No course of dealing or usage of trade shall be applicable unless expressly incorporated in this Agreement. Failure by either party on any occasion to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

20. Publicity

In the absence of specific agreement between the parties, neither party shall originate any publicity, news release or other public announcement, written or oral, whether to the public press, to stockholders or otherwise relating to this Agreement or to performance hereunder.

21. Exhibits

All Exhibits referenced herein are hereby made a part of this Agreement.

22. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without reference to its conflict of laws principles that might apply the law of another jurisdiction.

23. Counterparts

This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

24. Headings

The parties agree that the section and article headings are inserted only for ease of reference, shall not be construed as part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MALLINCKRODT INC.	**AMYLIN PHARMACEUTICALS, INC.**
By: _____	BY: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

STRUCTURE OF EXENATIDE COMPOUND

**[*****]

* Confidential Treatment Request(ed)

EXHIBIT B

PRODUCT SPECIFICATIONS

[***]

[***]

* Confidential Treatment Request(ed)

Exhibit 10.49

***Text Omitted and Filed Separately
Confidential Treatment Requested
Under 17 C.F.R. §§ 200.80(b)(4)
And 240.24b-2

Commercial Supply Agreement for Exenatide

This Agreement, effective as of December 23, 2003, is made by and among Amylin Pharmaceuticals, Inc. ("Amylin") having a principal place of business at 9360 Towne Centre Drive, San Diego, CA 92121, and Bachem, Inc., a California corporation ("Bachem"), having a principal place of business at 3132 Kashiwa Street, Torrance, CA 90505. References to any of Amylin or Bachem includes reference to their respective Affiliates.

Whereas, Bachem previously manufactured for Amylin a compound referred to as Exenatide (as defined below).

Whereas, Amylin wishes to engage Bachem to manufacture clinical trial, regulatory registration and commercial supplies of Exenatide on behalf of Amylin.

Whereas, Bachem desires to manufacture for Amylin clinical trial, regulatory registration and commercial supplies of Exenatide; and

Now, Therefore, in consideration of the premises and the mutual covenants and agreements contained herein, Bachem and Amylin agree as follows:

1. Definitions

As used in this Agreement, the following words and phrases shall have the following meanings:

1.1 "Affiliate" of a party hereto means any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party where "controlling," "controlled" and "under common control" means the direct or indirect beneficial ownership of at least fifty percent (50%) of the stock, or a fifty percent (50%) or greater interest in the income, of such party or entity, as applicable.

1.2 "Applicable Laws" shall mean all applicable statutes, ordinances, regulations, rules, or orders of any kind whatsoever of any governmental authority (including any amendments thereto), applicable to the import, export, manufacture and distribution of Product, including, without limitation, the applicable regulations and guidelines of the FDA and all applicable current good manufacturing practices, including, without limitation, the cGMPs.

1.3 "Bachem Technology" means all technical information, whether tangible or intangible and whether or not patentable, including patents, and any method, procedure, process, assay, composition of matter, trade secret, invention, technology, information or other subject matter, including license application materials and all supporting documents, specifications for materials (including purification techniques), data, information (including information contained in registration dossiers, drug master files and other documents filed with Regulatory Authorities), quality control, validation and equipment necessary or useful for the manufacture, production, scale-up, processing or formulation of Product, which (a) Bachem conceived, reduced to practice, developed or obtained (or which Bachem has the ability to license or sublicense), or (b) is otherwise necessary or useful in the manufacture of the Product.

1.4 "Batch Production Records" means the lot production records for the Batches manufactured by Bachem pursuant to this Agreement.

1.5 "cGMPs" shall mean then-current Good Manufacturing Practices as specified in ICH Guideline Q7A, the United States Code of Federal Regulations, or equivalent laws, rules, or regulations of an applicable Regulatory Authority at the time of manufacture.

1.6 "Collaboration Partner" means Eli Lilly and Company, with whom AMYLIN has entered into a collaboration arrangement regarding Product.

1.7 "Contaminant" means any substance contained in the Product that (A) causes the Product to fail to meet any Product Specifications, (B) causes the Product to be adulterated within the meaning the Act, (C) is present in the Product at a level that exceeds the level allowed under Applicable Laws.

1.8 "DMF" shall mean a drug master file for Product in the United States (as such term is defined in 21 C.F.R. Part 314.420) or Europe.

1.9 "Effective Date" means the later date of execution written on the execution page of this Agreement.

1.10 "Facility" means the facility in Torrance, California where Product is manufactured by Bachem under this Agreement.

1.11 "FDA" means the United States Food and Drug Administration and any successor entity.

1.12 "Hidden Defect" means a defect in any shipment of Product that could not reasonably be expected to have been found by diligent and adequate inspection by Amylin pursuant to Section 4.1, such as the presence of any Contaminant or failure to follow cGMPs.

1.13 "Materials" shall mean, collectively, all raw materials, ingredients and packaging components required to produce Product in accordance with the Product Specifications.

1.14 "NDA" means a New Drug Application to make and/or sell commercially Product, filed with the FDA (as more fully defined in 21 C.F.R. Part 314.5 *et seq.)* or with a Regulatory Authority in any jurisdiction outside of the United States, and all amendments and supplements thereto filed therewith.

1.15 "Product" means the bulk drug substance, Exenatide, manufactured under this Agreement.

1.16 "Product Specifications" means the written specifications for Product set forth in Exhibit 1, as amended from time to time in accordance with the Quality Agreement.

1.17 "Purchase Order" means Amylin firm orders for Product under this Agreement issued on Amylin's form of purchase order.

1.18 "Quality Agreement" means that certain Quality Agreement dated as of the Effective Date between Amylin and Bachem containing, identifying and outlining the specifications, and certain of the technical and compliance terms and conditions, for the manufacture of Product under this Agreement. The Quality Agreement is incorporated into and made a part of this Agreement.

1.19 "Regulatory Approval" means (a) in the United States, approval by the FDA of an NDA for the Product, and satisfaction of any related applicable FDA registration and notification requirements, if any, and (b) in any country other than the United States, approval by Regulatory Authorities having jurisdiction over such country of a single application or set of applications with respect to a Product comparable to an NDA, and satisfaction of any related applicable regulatory and notification requirements, if any, including pricing approvals where applicable, together with any other approval necessary to make, use, import, package, label, market, and sell Product commercially in such country.

1.20 "Regulatory Authority" means the FDA in the United States, or the applicable regulatory agency or entity having the responsibility, jurisdiction, and authority to approve the manufacture, use, importation, packaging, labeling, marketing, and sale of Product in any country other than the United States.

2. **Purchase and Sale of Product**

2.1 Bachem agrees to manufacture Product using the process described in the Batch Production Records, subject to the terms and conditions of this Agreement.

2.2 Bachem agrees to manufacture and supply Exenatide in quantities set forth in Purchase Orders submitted by Amylin in accordance with this Agreement. The following table sets forth the quantities of Product that Amylin estimates, as of the Effective Date, that it will purchase during the period commencing [*******] and ending [*******].

[***]

[***]

Commencing on the Effective Date Amylin will supply to Bachem rolling [***] forecasts containing its estimated requirements of Product, [***]. This may be a fixed amount or a range of quantities. Amylin shall update such forecasts every [***]. Amylin shall submit Purchase Orders specifying the quantity of Product ordered, the required delivery date, and any special instructions. Purchase Orders for delivery of Product in [***], will be issued (A) no later than [***], and (B) at least [***] in advance of the requested delivery date, provided that such [***] lead time may be reduced by [***], if Amylin pre-purchases Materials. The Purchase Orders issued in accordance with this Section 2.2 will be binding on both Seller and Buyer.

2.3 The price for the Product shall be based on [***] as set forth below and includes the costs of Materials and analytical release testing. If Materials' costs or waste disposal costs change by more than [***], the price for the Product may be adjusted, subject to the parties' mutual written agreement, to reflect the change in such costs.

Prices will be the following: [***]

> * Based on current specifications. The parties agree that changes to the Product Specifications that are set forth in Exhibit 1 as of the Effective Date to reflect requirements for commercial supply will not result in any change to the prices set forth above; provided, however that, if such changes to the Product Specifications reflect process capabilities that are outside the process capabilities demonstrated by Bachem in manufacturing validation batches, then the parties will discuss whether such prices would require adjustment as a consequence.

If certain process improvements can be identified post approval, Bachem and Amylin will jointly decide on a course of action, provided that no change to the manufacturing process for Products may be implemented without Amylin's prior written approval. Bachem will quote for the work this implementation of changes involves. Amylin can then elect to pursue this option. Any cost savings that ensue from the implementation of these changes would be [***] between the parties.

2.4 Any federal, state, county of municipal sales or use tax, excise or similar charge, or other tax assessment (other than that assessed against income), license fee or other charge lawfully assessed or charged on the manufacture, sale or transportation of Product sold pursuant to this Agreement shall be paid by Amylin, provided evidence of such charge is provided to Amylin in writing.

3. **Manufacture of Product**

3.1 Changes in the manufacturing site or the materials, equipment, process, or procedures used to manufacture the Products shall be handled by the parties as stated in the Quality Agreement. Bachem shall obtain Amylin's prior written approval before it implements any such change. Amylin shall have the right to raise with Bachem any perceived deficiencies regarding any aspect of Bachem's manufacture of Product. In the event that Amylin raises with Bachem any such deficiency both parties will engage in negotiations regarding remedial action. Upon mutual agreement, (A) Bachem shall, at its sole cost, promptly submit to Amylin a written plan to correct any such deficiency and promptly correct any such deficiency to Amylin's satisfaction, (B) Amylin shall reimburse Bachem for any reasonable incremental one-time costs associated with such changes while any ongoing costs associated with such changes shall be reviewed by the parties and allocated between Amylin and Bachem as mutually agreed upon by the parties at such time. If such corrections are required to bring the Facility into compliance with Applicable Laws, then Bachem shall bear all associated costs.

3.2 Product Specifications may be modified from time to time by written agreement of the parties without the necessity of amending this Agreement. However, no changes in the Product Specifications will be made unless made in accordance with the terms and conditions of the Quality Agreement. If Amylin requests a change in the Product Specifications that would result in a material increase in Bachem's cost of manufacture, the parties shall discuss what impact, if any, such change should have on the price of Product. If either Bachem agrees to implement such change without additional charge, or Amylin agrees in writing to a proposed price increase to implement such change, the price change shall become effective only with respect to those orders of Product that are manufactured in accordance with the modified Product Specifications. If a Regulatory Authority requires a change in the Product Specifications that would result in a material increase in Bachem's cost of manufacture, the parties shall discuss what impact, if any, such change should have on the price of Product and Amylin shall bear the increased cost.

* Confidential Treatment Request(ed)

3.3 Bachem and Amylin shall comply with the terms and conditions of the Quality Agreement. Bachem shall manufacture, package, label, and supply Product in accordance with the Product Specifications, cGMPs, the NDA, DMF or other applicable Regulatory Approvals, and all applicable rules and regulations of Regulatory Authorities with jurisdiction over the manufacture, packaging, labeling, use or sale of Product, as they may be amended from time to time. Bachem's responsibilities and obligations with respect to the manufacture of Products as set forth in this Section 3.3 are hereinafter referred to as the "Manufacturing Requirements." Bachem shall perform such quality control testing prior to shipment of Product to Amylin as is required to ensure that the Products delivered to Amylin under this Agreement comply with the Manufacturing Requirements and warranties described in Section 8, which testing shall include, without limitation, the performance of all required release testing and stability testing using the Amylin Test Methods and other tests designated by Amylin as found in Appendix A of this Agreement. Bachem shall perform such tests itself or, with Amylin's prior written consent, cause to be tested by a third party, each lot of Product before delivery, and shall provide to Amylin (A) a certificate of analysis containing the quality control test results for each such lot, and confirming that each such lot of Product conforms to the Product Specifications (the "Certificate of Analysis"), (B) a Certificate of Conformance confirming that such lot of Product was made in accordance with cGMPs and the process defined in the approved master batch record for such Product, and (C) copies of documents detailing any deviations from any manufacturing processes then in effect (the documents and information described in (A), (B) and (C), the "Bachem Release Documents"). Upon completion of the manufacture and testing of each lot of Product ordered by Amylin under this Agreement, Bachem shall send all the Bachem Release Documents to Amylin. Amylin is entitled to rely on the Bachem Release Documents for all purposes of this Agreement.

3.4 Bachem shall be responsible for obtaining any Materials required for the manufacture of Product, in reasonable quantities consistent with Amylin's orders for Product and in accordance with the requirements of Section 8.1(H). Bachem shall use and rotate all stock of Materials on a first-in, first-out basis as required by cGMPs. Amylin shall assign lot numbers and retest dates to each lot of Product, and Bachem shall imprint such lot numbers and retest dates on each unit of Product shipped as required by cGMPs.

3.5 Bachem shall keep complete, accurate, and authentic accounts, notes, data, and records pertaining to its manufacture, processing, testing, packaging, storage and distribution of Product, including, without limitation, master production and control records and Product complaint files, in accordance with Applicable Laws. In addition, Bachem shall retain samples of Products and isolated intermediates of each lot manufactured pursuant to this Agreement for a period of five (5) years after Amylin's acceptance of such lot. The sample size shall be twice the size necessary to conduct quality control testing. Bachem shall retain such records and samples for a period of five (5) years following the date of manufacture, or longer if required by Applicable Laws, and, upon request, shall make available to Amylin and its Collaboration Partner copies of such records and portions of the samples. After such time period, Bachem shall notify Amylin prior to destroying such records and samples and, at Amylin's request and expense, shall provide such records and samples to Amylin. Bachem shall permit Amylin and its Collaboration Partner and their respective representatives with access during reasonable business hours and after reasonable notice to those areas of Bachem's manufacturing facilities where Product is manufactured, stored and handled and to manufacturing records, and testing and control records (including without limitation release and stability records), of Product manufactured by Bachem, so that Amylin and its Collaboration Partner and their respective representatives may perform a quality assurance audit of such facilities and activities. Use of all information gained in the course of audits is restricted to the purpose of Quality Assurance. Likewise, Bachem shall grant similar access to governmental regulatory agencies upon reasonable notice so that such agencies can perform inspections of its facilities.

3.6 Bachem shall promptly advise Amylin of any notice or request it receives from a Regulatory Authority or other governmental agency regarding inspection of its facilities relating to its manufacture of Product, and shall permit Amylin and its Collaboration Partner and their respective representatives to attend such inspection. Bachem shall provide to Amylin and its Collaboration Partner all correspondence and reports that it receives from a Regulatory Authority or other governmental agency in connection with the manufacture of Product or with respect to the facility(ies) at which Bachem manufactures Product. Bachem shall retain the right to delete information from these reports that would breach a confidentiality provision with any third party.

3.7 Bachem shall, at its own expense, obtain and maintain the necessary permits required for its manufacture and supply of the Products in accordance with this Agreement, including all required facility licenses.

* Confidential Treatment Request(ed)

3.8 Bachem further agrees to use its commercially reasonable efforts to assist Amylin and its Collaboration Partner in obtaining FDA approval of its NDA with respect to Product, as well as approvals from any other government or agency which may be required for the marketing of Product in any country. Bachem specifically agrees to cooperate with any inspection by the FDA or other Regulatory Authority, including but not limited to any inspection prior to approval of Amylin's or its Collaboration Partner's NDA. Bachem shall, on a timely basis, provide Amylin and its Collaboration Partner with information in Bachem's possession relevant to its role as the manufacturer of Products that is reasonably necessary for and relevant to Amylin's and its Collaboration Partner's efforts to obtain and maintain Regulatory Approvals for Product. Without limiting the generality of the foregoing, Bachem agrees to establish and maintain a DMF for the Product in accordance with the requirements of the FDA and any other applicable Regulatory Authorities, and to provide Amylin and its Collaboration Partner with letters of access to, and rights to reference, the DMF and any other comparable files. Bachem shall file and establish the DMF in a timely manner to support Amylin's or its Collaboration Partner's NDA filing, and shall provide to Amylin and its Collaboration Partner such documentation, data and other information relating to Products as Amylin or its Collaboration Partner may require for submission to Regulatory Authorities. Bachem shall also provide, upon request by Amylin, information concerning its production processes and quality control procedures with respect to Products.

3.9 Each party shall promptly advise the others of any safety or toxicity problem of which such party becomes aware regarding the Product.

3.10 Bachem shall promptly notify Amylin of any problems, supply, or other situations that are likely to adversely affect the production of any Product, or its timely delivery to Amylin in accordance with the Purchase Order therefor. Amylin may participate in the resolution of any such problem or production situation unless Amylin agrees with Bachem that such participation is unnecessary.

3.11 The conditions under which Product is manufactured shall be provided to Amylin and its Collaboration Partner for inclusion in Amylin's or its Collaboration Partner's regulatory filings. Bachem further agrees to provide to Amylin and its Collaboration Partner all information regarding any aspect of manufacture of Product that is necessary and related to Amylin's or its Collaboration Partner's regulatory filings. Bachem also agrees to authorize the FDA, or other Regulatory Authorities, to inspect any aspect of Bachem's manufacture of Product.

3.12 The parties agree that Amylin or its Collaboration Partner shall be the sole and exclusive owner of all right, title and interest in and to the NDA filed with the FDA and the other Regulatory Authorities outside of the United States, and that Amylin or its Collaboration Partner shall be the sole and exclusive owner of any Regulatory Approvals related to Product. Bachem shall assist Amylin and its Collaboration Partner in the preparation of all documents necessary to effectuate Amylin's and its Collaboration Partner's rights in each NDA and Amylin's and its Collaboration Partner's rights to such Regulatory Approvals, and agrees to transfer, effect, confirm, perfect, record, preserve, protect and enforce all rights, title and interests transferred hereunder, at the reasonable request and expense of Amylin.

3.13 Amylin shall disclose to Bachem, or provide Bachem with access to, the test methods specified in the Product Specifications ("Amylin Test Methods") for Bachem's use solely to perform its obligations under this Agreement. Bachem understands and agrees that the Amylin Test Methods shall be the sole and exclusive property and Confidential Information (as defined in Section 10) of Amylin. Any and all inventions or discoveries, including without limitation, information, processes, improvements, innovations, suggestions and ideas, whether or not patentable, conceived or reduced to practice by Bachem, alone or with others, that are related to any or all Amylin Test Methods, shall be owned solely and exclusively by Amylin. The terms "conceived" and "reduced to practice" shall be given the meaning of those terms as used and interpreted for 35 U.S.C. § 102 (g). Bachem will promptly notify Amylin of any such invention or discovery.

3.14 During the term of this Agreement, Bachem shall not manufacture any products containing exendin-4 and/or its analogues or derivatives covered by an Amylin patent for any party other than Amylin with the exception of research-grade materials.

4. Acceptance of Product

Not later than [***] after Amylin's receipt of all Bachem Release Documents, Amylin shall examine the Bachem Release Documents for the Product's compliance with the Product Specifications and other warranties in Section 8. Amylin may reject any shipment of Product (or part thereof) that does not conform with the Product Specifications or other warranties in Section 8. If Amylin believes that any such shipment does not comply with the Product Specifications or other warranties, or is otherwise deficient, Amylin shall promptly, but not later than [***] after receipt of all Bachem Release Documents, notify Bachem. Any such notice of rejection shall be in writing and shall indicate the reasons for such rejection. The invoice for any rejected Product shall be cancelled. If no such notice of rejection is received, Amylin shall be deemed to have accepted such shipment upon the expiration of the such [***] period. Notwithstanding the foregoing, if there is subsequently found to be a Hidden Defect in any shipment of Product, Amylin and Bachem shall enter into discussions in good faith as to the handling and disposal of the defective shipment, having due regard to where responsibility for such defect lies, with the understanding that Bachem shall be responsible with respect to matters existing prior to delivery of Product to Amylin.

After any notice of rejection is given, Amylin shall cooperate with Bachem in determining whether rejection is necessary or justified. Bachem will evaluate process issues and other reasons for such non-compliance. Bachem shall notify Amylin as promptly as reasonably possible whether it accepts Amylin's basis for any rejection. If Bachem in good faith disagrees with Amylin's determination that certain Product does not meet the Product Specifications, such Product shall be submitted to a mutually acceptable third party laboratory. Such third party shall determine whether such Product meets the Product Specifications, and the Parties agree that such third party's determination shall be final and determinative. The party against whom the third party tester rules shall bear all costs of the third party testing. Whether or not Bachem accepts Amylin's basis for rejection, promptly on receipt of a notice of rejection of Product, Bachem shall replace such rejected Product, at its cost, within [***]. If the third party tester rules that the lot meets Product Specifications and the other warranties in Section 8, Amylin shall purchase that lot at the agreed-upon price, irrespective of whether Bachem has already replaced it. All replacement product shall be invoiced as well and Amylin is to pay for such product as otherwise provided under the terms of this Agreement. Amylin may not destroy any lot of Product until it receives written notification from Bachem that Bachem does not dispute that the lot fails to meet Product Specifications and that Bachem does not request return of the Product. Upon authorization from Bachem to do so, Amylin shall destroy the Product received in the rejected delivery promptly at Bachem's cost and provide Bachem with certification of such destruction. Amylin shall, upon receipt of Bachem's request for return, promptly return said Product or quality control sample to Bachem, at Bachem's cost.

4.3 In the event Amylin or its Collaboration Partner shall be required or requested by any Regulatory Authority (or shall voluntarily decide in good faith) to recall any Product, Amylin or its Collaboration Partner shall coordinate such recall. If a recall arises due to Bachem's negligence, willful misconduct or breach of this Agreement, and does not result from Amylin's or its Collaboration Partner's negligence, willful misconduct or breach of this Agreement, then Bachem shall reimburse Amylin and its Collaboration Partner for (i) the purchase price paid by Amylin to Bachem for such recalled Product, and (ii) all of Amylin's and its Collaboration Partner's other direct reasonable costs and expenses actually incurred by Amylin or its Collaboration Partner in connection with the recall including, but not limited to, costs of retrieving Product already delivered to customers, costs of replacement Product, costs and expenses Amylin or its Collaboration Partner is required to pay for notification, shipping and handling charges, and all other costs reasonably related to the recall. If a recall is due to any reason other than one that is attributable to Bachem's negligence, willful misconduct or breach of this Agreement, Amylin or its Collaboration Partner, as applicable, shall pay all of the costs and expenses of the recall.

5. Shipment and Delivery

5.1. Bachem agrees to use its commercially reasonable efforts to ensure that Product ordered by Amylin hereunder shall be delivered on the scheduled delivery dates set forth in the relevant purchase orders. Bachem shall prepare Product for shipment and arrange for shipment of Product to a location designated in writing by Amylin. Shipment terms are FCA Bachem's Facility (Incoterms 2000). All shipments must be accompanied by a packing slip which describes the articles, states the purchase order number and shows the shipment's destination. Bachem agrees to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Amylin's instructions. In accordance with Amylin's written instructions and at Amylin's expense, Bachem will arrange for the shipment of Product by the carrier designated by Amylin and for appropriate shipping insurance, and Bachem shall ship Product to Amylin in containers reasonably sufficient for delivery of Product in accordance with the Product Specifications.

* Confidential Treatment Request(ed)

5.2. Each delivery of Product shall be governed by the terms of this Agreement, and none of the conflicting terms or conditions of Amylin's purchase order or Bachem's purchase order form, acknowledgment or invoice form shall be applicable, except those specifying special shipping instructions and invoice information consistent with this Agreement.

6. Invoice

6.1 Bachem shall invoice Amylin with a single invoice concurrently with shipment of all Bachem Release Documents to Amylin. Product accepted by Amylin shall be shipped by Bachem to Amylin's designated ship to address immediately upon Amylin's acceptance of such Product. Amylin shall pay Bachem net sixty (60) days from the date of their receipt of invoice.

7. Term and Termination

7.1 This Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with this Article 7, shall continue in effect for a period of six (6) years thereafter, and shall automatically renew thereafter from year to year unless terminated by either party upon at least two (2) years prior written notice given to the other party at any time after the expiry of four (4) years from the Effective Date.

7.2 This Agreement may be terminated as follows:

a) Any party may terminate this Agreement immediately upon the bankruptcy or insolvency of another party, Any party may terminate this Agreement by giving the other party one- hundred-twenty (120) days' prior written notice upon or after the breach of any material provision of this Agreement by the other party if the breach is not cured within the one-hundred-twenty (120) day period following written notice of termination by the non-breaching party. Failure to supply all quantities of Product ordered on the dates specified in an issued Purchase Order shall be considered a material breach. The parties acknowledge that the Collaboration Partner shall have the right, but not the obligation, to cure a breach of any material provision of this Agreement by Amylin if Amylin does not do so.

b) Amylin may terminate this Agreement (A) by giving Bachem sixty (60) days' prior written notice upon notice by the FDA or other Regulatory Authority that Bachem is not an approved commercial supplier of Product or failure of Bachem to successfully complete its Pre-Approval Inspection (PAI) or the foreign equivalent in applicable jurisdictions outside of the United States where Product may be distributed, marketed or sold, or (B) by giving Bachem thirty (30) days' prior written notice in each of the following situations: (i) the FDA notifies Amylin that it will not approve the NDA directed to the Product, (ii) Amylin withdraws the NDA directed to the Product or (iii) Amylin withdraws the Product from the market. If Amylin terminates this Agreement under any of 7.2 (c)(B)(i), (ii) or (iii), then Amylin agrees to reimburse Bachem for its reasonable and documented out-of-pocket costs for Materials and for the direct costs associated with all work in progress related to open Purchase Orders issued by Amylin on or before the effective termination date.

7.3 Termination, expiration, cancellation or abandonment of this Agreement through any means or for any reason shall not relieve the parties of any obligation accruing prior thereto and shall be without prejudice to the rights and remedies of either party with respect to any antecedent breach of any of the provisions of this agreement. The provisions of Sections 3.5, 3.6, 3.12, 7.3, 7.4 and 7.5 and Articles 1, 8, 9, 10, 12, 13, 14 and 15 shall survive termination or expiration of this Agreement.

7.4 In the event that this Agreement is terminated by Amylin pursuant to Section 7.2(a), 7.2(b) or 7.2(c)(i) following the applicable cure period provided in such sections, or in the event of a Force Majeure occurrence that causes Bachem to be unable to supply Products in such quantities as Amylin shall request and in compliance with the delivery periods set forth in issued Purchase Orders and Amylin provides written notice to Bachem of its intent to terminate this Agreement if this situation is not remedied within the one hundred twenty (120) day period following such written notice by Amylin, then Bachem shall provide reasonable assistance to Amylin, at Bachem's expense, to implement the transfer of manufacturing and testing responsibility for Product to Amylin or its designee. Such reasonable assistance shall include all processes, procedures, know-how and data required to perform all aspects of the site transfer as defined by the FDA under the Changes to an Approved NDA or ANDA guidelines, including assistance of Bachem personnel in compiling and transferring this information, but shall not include the direct efforts of a team of Bachem on-site at the new manufacturing facility. If such on-site personnel commitments are required by Amylin to effectuate the transfer of manufacturing responsibility, then Amylin shall reimburse Bachem for the reasonable and direct expenses of providing such personnel. For purposes of this Section 7.4, Bachem grants to Amylin an irrevocable, exclusive, worldwide fully paid-up royalty-free license to use the Bachem Technology, with the right to grant sublicenses, to make and have made Product, effective upon termination of this Agreement under the circumstances described in the first sentence of this Section 7.4.

7.5 In the event that this Agreement is terminated by Bachem pursuant to Section 7.2(a) or 7.2(b), then Bachem shall provide reasonable assistance to Amylin, at Amylin's expense, to implement the transfer of manufacturing responsibility for the Products to Amylin or its designee as described in the preceding paragraph.

8. Representations and Warranties

8.1 Bachem represents and warrants to Amylin, and agrees that, at the time of delivery to Amylin, all Product delivered hereunder: (A) shall be manufactured in compliance with cGMPs, relevant Regulatory Approvals filed by Amylin; (B) shall conform to the Product Specifications in effect at the time of delivery; (C) will not be adulterated within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law or other Applicable Law in which the definitions of adulteration are substantially the same as those contained in the Federal Food, Drug and Cosmetic Act, as such Act and such laws are constituted and effective at the time of delivery or contain any Contaminant; (D) will not be an article which may not, under the provisions of Sections 404, 505 of 512 of such Act, be introduced into interstate commerce; (E) shall conform to all Bachem Release Documents associated with the shipment of the Product; (F) shall be packaged, labeled and shipped in accordance with the Product Specifications in effect at the time of delivery and the terms of this Agreement; (G) shall be free and clear of any lien or encumbrance. Bachem represents and warrants that it shall comply with all Applicable Laws; and (H) shall be manufactured using amino acid derivative starting materials that are synthetic or of plant origin, as confirmed in certification provided to Amylin by Bachem; provided that Product may be manufactured using amino acid derivative starting materials that are not synthetic or if plant origin if Bachem obtains the written approval of Amylin to use such starting materials prior to their use, and provides Amylin certification regarding use of such starting materials that contains additional information regarding extraction, hydrolysis procedures, organs, type of tissue and country of origin of any animal origin amino acids. In addition, Bachem represents and warrants that (A) Bachem and its employees, affiliates and agents have never been debarred, or convicted of a crime for which a person can be debarred, under subsection (a) or (b) of 21 U.S.C. § 335a, and Bachem agrees that it does not now and will not in the future use in any capacity the services of any person debarred under subsection (a) or (b) of 21 U.S.C. § 335a. If during the term of this Agreement, Bachem or any other person performing services hereunder becomes debarred or disqualified, or receives notice of an action or threat of an action with respect to debarment or disqualification, Bachem shall immediately notify Amylin, and (B) to the best of Bachem knowledge as of the Effective Date, the use of the Bachem Technology as contemplated herein does not infringe any intellectual property rights owned by any third party. Except as set forth in this Agreement, Bachem makes no warranties, expressed or implied, with respect to Product, and all other warranties, expressed or implied, including, without limitation, the implied warranties or merchantability and fitness for a particular purpose, are hereby disclaimed by Bachem.

8.2 Each party hereby represents and warrants to the other party that: (a) such party is duly organized, validly existing and in good standing under the laws of the state or other jurisdiction in which it is organized; (b) such party has the power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder; (c) this Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms; (d) all necessary consents, approvals and authorizations of all governmental authorities and other persons required to be obtained by such party in connection with this Agreement have been obtained, except for those which cannot be obtained prior to the filing and approval of the NDA; and (e) the execution and delivery of this Agreement and the performance of such party's obligations hereunder (i) do not conflict with or violate any law, regulation, order or other requirement of any governmental body, court or administrative or other agency having jurisdiction over such party and (ii) do not conflict with, or constitute a material default or require any consent under, any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound.

8.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY, WHETHER IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This paragraph shall not be construed to limit a party's obligations under Article 9 of this Agreement.

9. Indemnification

9.1 Amylin shall defend, indemnify and hold Bachem and its Affiliates and their respective employees, directors, officers, shareholders and agents (each, an "Amylin Indemnitee") harmless against any liability, judgment, demand, action, suit, loss, damage, cost and other expense (including reasonable attorney's fees) ("Liability") resulting from any third party claims made or proceedings brought against Bachem to the extent such Liability arises from (i) Amylin's negligence or willful act or omission in the possession, use, importation, marketing or sale of Product, (ii) Amylin's material breach of this Agreement, (iii) Amylin's breach of any representation or warranty set forth in Article 8, or (iv) any repackaging or use by or on behalf of Amylin of Product after delivery to Amylin by Bachem hereunder, in each case, except to the extent Bachem is obligated to indemnify any Amylin Indemnitee for such claim or proceeding under Section 9.2 below.

9.2 Bachem shall defend, indemnify and hold Amylin and its Collaboration Partner and their Affiliates and their respective employees, directors, officers, shareholders and agents harmless against any Liability resulting from any third party claims made or proceeding brought against Amylin to the extent that such liability arises from (i) Bachem's negligence or willful act or omission in the manufacture, storage or delivery of Product; (ii) Bachem's material breach of this Agreement; or (iii) Bachem's breach of any representation or warranty set forth in Article 8.

Each indemnified party agrees to give the indemnifying party prompt written notice of any matter upon which such indemnified party intends to base a claim for indemnification (an "Indemnity Claim") under Article 9. The indemnifying party shall have the right to participate jointly with the indemnified party in the indemnified party's defense, settlement or other disposition of any Indemnity Claim. With respect to any Indemnity Claim relating solely to the payment of money damages and which could not result in the indemnified party's becoming subject to injunctive or other equitable relief or otherwise adversely affect the business of the indemnified party in any manner, and as to which the indemnifying party shall have acknowledged in writing the obligation to indemnify the indemnified party hereunder, the indemnifying party shall have the sole right to defend, settle or otherwise dispose of such Indemnity Claim, on such terms as the indemnifying party, in its sole discretion, shall deem appropriate, provided that the indemnifying party shall provide reasonable evidence of its ability to pay any damages claimed and with respect to any such settlement shall have obtained the written release of the indemnified party from the Indemnity Claim. The indemnifying party shall obtain the written consent of the indemnified party, which shall not be unreasonably withheld, prior to ceasing to defend, settling or otherwise disposing of any Indemnity Claim if as a result thereof the indemnified party would become subject to injunctive or other equitable relief or the business of the indemnified party would be adversely affected in any manner.

9.3 Each party shall at all times comply, through insurance, with all statutory workers' compensation and employers' liability requirements covering any and all employees with respect to activities performed under this Agreement. In addition to the foregoing, each party shall obtain and maintain, occurrence-based or claims made Broad Form Comprehensive General Liability ("BFCGL") Insurance with a reputable and financially secure insurance carrier(s) having at least an Excellent rating (A- rating or above by A.M. Best). Upon a party's request, the other party shall provide to such requesting party written evidence reasonably satisfactory to such requesting party of the sufficiency of such other party's insurance program.

10. Confidential Information

Confidential Information will be as defined by and treated in accordance with the Confidential Disclosure Agreement dated February 15, 2002 between Amylin and Bachem, a copy of which is attached hereto as Exhibit 2, which shall remain in full force and effect in accordance with its terms. The parties, however, agree that the following shall apply to confidential information disclosed under this Agreement: (A) each party shall use the other party's confidential information solely for the purposes contemplated under this Agreement, (B) the non-disclosure and confidentiality obligations shall remain in effect during the term of this Agreement and for a period of five (5) years thereafter, and (C) Amylin shall have the right to disclose Bachem's confidential information, without Bachem prior consent, to Regulatory Authorities in accordance with Article 3 and to Collaboration Partner.

11. Force Majeure

If the performance by either party of any obligation under this Agreement, other than the payment of money, is prevented or impaired by Force Majeure for any cause beyond the reasonable control of the defaulting party, such party shall be excused from performance so long as such situation continues to prevent or impair performance, provided the party claiming such excuse shall have promptly notified the other party of the existence, nature, duration and other details of such cause and shall at all times use its reasonable efforts consistent with its normal business practices to resume a complete performance. If either party anticipates that a Force Majeure may occur, that party shall notify the other immediately and explain the nature, details and expected duration thereof.

The affected party will advise the other from time to time as to the progress in remedying the situation and as to the time when the affected party expects to resume its obligations and shall notify the other as to the expiration of any Force Majeure as soon as the affected party knows the date thereof.

"Force Majeure" shall mean an event beyond the reasonable control of a party including, but not limited to, fire, flood, sabotage, shipwreck, embargo, explosion, accident, riot, act of governmental authority (including, without limitation, acts relating to raw material or product allocation), acts of God, acts of war, and acts of terrorism.

In the event of a Force Majeure affecting Bachem, Bachem may prorate and allocate manufacturing capacity among its Affiliates, Amylin and Bachem's other customers, in proportion to purchases of products by such Affiliates, Amylin and other customers during the 12-month period preceding such Force Majeure event Notwithstanding the occurrence of a Force Majeure event, if Bachem shall be unable to supply Products in such quantities as Amylin shall request and in compliance with the delivery periods set forth in this Agreement, Amylin shall be permitted (with no obligation to Bachem) to exercise its rights under Section 7.4 and have another source manufacture Product on Amylin's behalf using the process described in the master batch records for the Product, and Amylin shall thereafter have no obligation to purchase Products from Bachem until any contractual obligations that Amylin has assumed in connection with obtaining a substitute supply of Products shall have terminated. Amylin shall have no obligation to affirmatively terminate any such contractual arrangements.

12. Notices

All notices hereunder shall be in writing and shall be delivered personally, mailed by overnight delivery, registered or certified mail, postage prepaid, or given by facsimile and confirmed by any of the foregoing, as follows:

If to Amylin

Amylin Pharmaceuticals
9360 Towne Centre Drive
San Diego, CA 92121
Telefax No: (858) 552-2212
Attn. John Grove
Senior Director

with a copy to the attention of Lloyd A. Rowland, Vice President and General Counsel, at the same address as stated above, Telefax No: 858-552-1936.

If to Bachem

Bachem California
3132 Kashiwa Street
Torrance, CA 90505
Attn. Phillip Ottiger
Telefax No: 310 530 1571

Bachem Americas
3132 Kashiwa Street
Torrance, CA 90505
Attn. Jose de Chastonay
TelefaxNo: 310 530 1571

13. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective assigns and successors in interest. Collaboration Partner is an intended third party beneficiary of the provisions of this Agreement specifically referring to Collaboration Partner.

14. Applicable Law

This Agreement shall be construed, interpreted and governed by the laws of California, excluding its conflicts of laws principles.

15. Assignment

Neither party shall assign this Agreement or any part thereof without the prior written consent of the other party; provided, however, that either party, without such consent, may assign or sell the same in connection with the transfer or sale of substantially its entire business to which this Agreement pertains, whether by merger, sale of stock, sale of assets, consolidation with another company or otherwise. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any accrued obligation which such party then has hereunder.

16. Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto. No subsequent amendment, modification or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the respective authorized officers of the parties.

17. Severability

This Agreement is subject to the restrictions, limitations, terms and conditions of all applicable governmental regulations, approvals and clearances. If any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same shall have been held to be invalid, illegal or unenforceable, had never been contained herein.

18. Waiver - Modification of Agreement

No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representatives of both parties hereto. Failure by either party to enforce any rights under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

19. Publicity

In the absence of specific agreement between the parties, neither party shall originate any publicity, news release or other public announcement, written or oral, whether to the public press, to stockholders or otherwise, relating to this Agreement or to performance hereunder, save only such announcement as in the opinion of legal counsel to the party making such announcement is required by law to be made.

20. Exhibits

All Exhibits referenced herein are hereby made a part of this Agreement.

21. Counterparts

This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.

In Witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives on the later date written below.

- BACHEM Americas -	**- Bachem, Inc. -**
Jose de Chastonay	Philip Ottiger
Name	Name
Signature	Signature
President	President &CEO, Bachem, Inc.
Title	Title

- Amylin Pharmaceuticals, Inc. -

Name

Signature

Title

[***]

[***]

[***]

* Confidential Treatment Request(ed)

EXHIBIT 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements on Form S-8 (No.'s 33-45092, 33-47604, 33-85512, 333-2894, 333-2896, 333-51577, 333-82965, 333-39124, 333-61660, and 333-108050) and Form S-3 (No.'s 33-83602, 333-2898, 333-87033, 333-33340, 333-61144, 333-75066, 333-101278, 333-108008, and 333-111086) of our report dated February 6, 2004, with respect to the consolidated financial statements of Amylin Pharmaceuticals, Inc. included in the Annual Report (Form 10-K) for the year ended December 31, 2003.

ERNST & YOUNG LLP

San Diego, California
March 10, 2004

Exhibit 31.1

CERTIFICATIONS

I, Mark G. Foletta, certify that:

1. I have reviewed this annual report on Form 10-K of Amylin Pharmaceuticals, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 annual 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 the registrant's board of directors:

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 12, 2004

By: /s/ MARK G. FOLETTA
Vice President, Finance and
Chief Financial Officer

Exhibit 31.2

CERTIFICATIONS

I, Ginger L. Graham, certify that:

1. I have reviewed this annual report on Form 10-K of Amylin Pharmaceuticals, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 annual 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 the registrant's board of directors:

a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 12, 2004

By: /S/ GINGER L. GRAHAM
President and Chief Executive Officer

Exhibit 32.1

CERTIFICATION

Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002 (18 U.S.C. § 1350, as adopted), Ginger L. Graham, the President and Chief Executive Officer of Amylin Pharmaceuticals, Inc. (the "Company"), and Mark G. Foletta, the Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2003, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition of the Company at the end of the period covered by the Periodic Report and results of operations of the Company for the period covered by the Periodic Report.

Dated: March 12, 2004

/s/ GINGER L. GRAHAM
Ginger L. Graham
President and
Chief Executive Officer

/s/ MARK G. FOLETTA
Mark G. Foletta
Vice President and Chief Financial Officer