FORM 10-K

Caladrius Biosciences, Inc. - CLBS

Filed: April 06, 2011 (period: December 31, 2010)

Annual report with a comprehensive overview of the company

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2010

OR

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

For the transition period from _____ to _____

Commission file number: 001-33650

NEOSTEM, INC.

(Exact name of registrant as specified in its charter)

Delaware	**22-2343568**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
420 Lexington Avenue Suite 450 New York, New York	**10170**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **(212) 584-4180**

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange On Which Registered**
Common Stock, par value $0.001 per share	NYSE Amex
Class A Common Stock Purchase Warrants	NYSE Amex

Securities registered pursuant to Section 12(g) of the Act: **None**

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§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 a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☒

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2010 (the last business day of the most recently completed second fiscal quarter) was approximately $51,634,491, computed by reference to the closing sales price of $1.83 for the common stock on the NYSE Amex reported for such date. Shares held by executive officers, directors and persons actually owning directly or indirectly more than 10% of the outstanding common stock have been excluded from the preceding number because such persons may be deemed to be affiliates of the registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

On March 30, 2011, 78,564,199 shares of the registrant's common stock, par value $0.001 per share, were outstanding.

Documents incorporated by reference: Portions of the registrant's definitive Proxy Statement for the 2011 Annual Meeting of Shareholders, to be filed with the Commission not later than 120 days after the close of the registrant's fiscal year, have been incorporated by reference, in whole or in part, into Part III, Items 10, 11, 12, 13 and 14 of this Annual Report on Form 10-K.

All references in this Annual Report on Form 10-K to "we," "us," the "Company" and "NeoStem" mean NeoStem, Inc., including subsidiaries and predecessors, except where it is clear that the term refers only to NeoStem, Inc. This Annual Report on Form 10-K contains forward-looking statements, which involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under "Cautionary Note Regarding Forward-Looking Statements" and under "Risk Factors" and elsewhere in this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995, as well as historical information. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements, or industry results, to be materially different from anticipated results, performance or achievements expressed or implied by such forward-looking statements. When used in this Annual Report on Form 10-K, statements that are not statements of current or historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, the words "plan," "intend," "may," "will," "expect," "believe," "could," "anticipate," "estimate," or "continue" or similar expressions or other variations or comparable terminology are intended to identify such forward-looking statements, although some forward-looking statements are expressed differently. Additionally, statements regarding our ability to successfully develop, integrate and grow the business at home and abroad, including with regard to our research and development efforts in cellular therapy, our adult stem cell and umbilical cord blood collection, processing and storage business, contract manufacturing and process development of cellular based medicines, and the pharmaceutical manufacturing operations conducted in China, the future of regenerative medicine and the role of stem cells in that future, the future use of stem cells as a treatment option and the role of VSEL ^{TM} Technology in that future and the potential revenue growth of such businesses, are forward-looking statements. Our future operating results are dependent upon many factors and our further development is highly dependent on future medical and research developments and market acceptance, which is outside our control.

Forward-looking statements may not be realized due to a variety of factors and we cannot guarantee their accuracy or that our expectations about future events will prove to be correct. Such factors include, without limitation, (i) our ability to manage the business despite operating losses and cash outflows; (ii) our ability to obtain sufficient capital or strategic business arrangements to fund our operations and expansion plans, including meeting our financial obligations under various licensing and other strategic arrangements and the successful commercialization of the relevant technology; (iii) our ability to build the management and human resources and infrastructure necessary to support the growth of the business; (iv) our ability to integrate our acquired businesses successfully and grow such acquired businesses as anticipated; (v) whether a large global market is established for our cellular-based products and services and our ability to capture a share of this market; (vi) competitive factors and developments beyond our control; (vii) scientific and medical developments beyond our control; (viii) our ability to obtain appropriate governmental licenses, accreditations or certifications or comply with healthcare laws and regulations or any other adverse effect or limitations caused by government regulation of the business; (ix) whether any of our current or future patent applications result in issued patents and our ability to obtain and maintain other rights to technology required or desirable for the conduct of our business; (x) whether any potential strategic benefits of various licensing transactions will be realized and whether any potential benefits from the acquisition of these licensed technologies will be realized; (xi) factors regarding our business and initiatives in China and, generally, regarding doing business in China, including through our variable interest entity structure, including (a) costs related to funding these initiatives, (b) the successful application under Chinese law of the variable interest entity structure to the Company's business, which structure the Company is relying on to conduct its business in China, (c) the ability to integrate the Company and the business operations in China successfully and grow such integrated businesses as anticipated, and (d) the need for outside financing to meet capital requirements; and (xii) the other factors discussed in "Risk Factors" and elsewhere in this Annual Report on Form 10-K and in other periodic Company filings with the Securities and Exchange Commission (the "SEC"). The Company's filings with the Securities and Exchange Commission are available for review at *www.sec.gov* under "Search for Company Filings."

All forward-looking statements attributable to us are expressly qualified in their entirety by these and other factors. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. Except as required by law, the Company undertakes no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

PART I

ITEM 1. BUSINESS.

BUSINESS OVERVIEW

NeoStem, Inc. ("we", "NeoStem" or the "Company") continues to develop as a company in the cell therapy arena with the January 2011 completion of the Progenitor Cell Therapy, LLC ("PCT") acquisition. We view this acquisition as a foundation in achieving our strategic mission of capturing the paradigm shift to cell therapy. While NeoStem's origins began in the adult stem cell research, collection and storage service business, the PCT acquisition begins a new dimension in the Company's business model. NeoStem today, with 85 US based employees, brings to bear significant resources to meet the basic research, manufacturing, regulatory, clinical and logistical demands of an integrated cell therapeutics company. NeoStem is now ideally positioned in the year ahead to transition from its origin as a service provider to a therapeutics company leveraging the intellectual capital of the Company's core assets to attract world renowned clients. We perceive the advancement of cell therapeutics in Asia as another key part of our emerging strategy given the more favorable research and regulatory environment in Asia versus Western countries. As such, we intend to continue to build key relationships at clinical sites in China where these therapies are now being commercialized. We see our pharmaceutical business (Suzhou Erye Pharmaceutical Company Ltd.) and stem cell service business as engines of growth to support these initiatives.

We operate our business in three reportable segments: (i) Cell Therapy – United States; (ii) Regenerative Medicine – China; and (iii) Pharmaceutical Manufacturing – China.

Cell Therapy – United States

PCT Merger

The cornerstone of our Cell Therapy business is Progenitor Cell Therapy, LLC. On January 19, 2011 we completed our acquisition of PCT (the "PCT Merger") pursuant to the terms of an Agreement and Plan of Merger, dated September 23, 2010 (the "PCT Merger Agreement"). As a result of the consummation of the PCT Merger, we acquired all of the membership interests of PCT, and PCT is now a wholly-owned subsidiary of our Company.

All of the membership interests of PCT outstanding immediately prior to the effective time of the PCT Merger were converted into the right to receive, in the aggregate, (i) 10,600,000 shares of our Common Stock and (ii) 3 series of seven year warrants to purchase up to 1,000,000 shares of our Common Stock per series (3,000,000 shares in the aggregate), at exercise prices of $3.00, $5.00 and $7.00, respectively, per share (the "Warrants"). The Warrants are redeemable in certain circumstances. Transfer of the shares issuable upon exercise of the Warrants is restricted until the one year anniversary of the closing of the PCT Merger.

In accordance with the PCT Merger Agreement, we have deposited into an escrow account 10,600,000 shares of our Common Stock for eventual distribution to the former members of PCT (subject to downward adjustment to satisfy any indemnification claims of NeoStem, all as described in the PCT Merger Agreement). For so long as any of the 10,600,000 shares are held in escrow, such shares shall be voted by the escrow agent as directed by our Board of Directors.

Founded by Dr. Andrew L. Pecora and Robert A. Preti, Ph.D., PCT became an internationally recognized cell therapy services and development company. They sought to create a business for "as needed" development and manufacturing services for the emerging cell therapy industry and to prepare for eventual commercialization. With its cell therapy manufacturing facilities and team of professionals, PCT offers a platform that can facilitate the preclinical and clinical development and commercialization of cellular therapies for clients throughout the world. PCT offers current Good Manufacturing Practices (cGMP)-compliant cell transportation, manufacturing, storage, and distribution services and supporting clinical trial design, product process development, logistics, regulatory and quality systems development services. In addition, through its network of contacts throughout the cell therapy industry, PCT is able to identify early stage development opportunities in the cell therapy field and opportunistically develop these cell therapies through proof of concept where they can be further developed and ultimately commercialized through NeoStem's developing commercial structure. Dr. Preti now serves as PCT's President and Dr. Pecora as part-time Chief Medical Officer of PCT. Dr. Pecora will also serve on the board of directors of NeoStem.

PCT is engaged in a broad range of services in the cell therapy market for the treatment of human disease, including but not limited to contract manufacturing, product and process development, product and regulatory consulting, and product characterization and comparability. PCT's expertise in the cell therapy space, which includes therapeutic vaccines (oncology), various related cell therapeutics, cell diagnostics, and regenerative medicine, creates a platform upon which we intend to build a therapeutics strategy. Our goal is to develop internally, or through partnerships, allogeneic (cells from a third-party donor) or autologous (cells from oneself) cell therapeutics technologies that, in the aggregate, will comprise the Cell Therapy – United States reportable segment.

In addition, PCT will assume NeoStem's adult stem cell business based on PCT's strategic advantages in meeting cGMP regulatory requirements in an industry that is widely dispersed with a range of quality issues. We believe that PCT, as a quality leader, is ideally positioned to become a leader in cell collection, processing and storage (cell banking) which is synergistic with NeoStem's roots in this business. In addition, PCT's leadership in the transportation and distribution of cell therapy products is complementary to NeoStem's strategic vision of working with the industry leader as the partner of choice. These efforts are being bundled together into a new service with PCT's cord blood banking business into a multigenerational stem cell collection and storage plan that the Company will call the "Family Plan".

Cell Collection, Processing and Storage Business

In the United States, we are a provider of adult stem cell collection, processing and storage services enabling healthy adult individuals to donate and store their stem cells for personal therapeutic use. Similar to the banking of cord blood, pre-donating cells at a younger age helps to ensure a supply of one's own stem cells should they be needed for future medical treatment. We have established a network of adult stem cell collection centers to include ten centers throughout the country. With our acquisition of PCT, we acquired the expertise of cGMP cord blood banking. PCT has been processing and providing storage services for a number of third-party company clients, including Viacord and Cord Blood of America, as well as for DomaniCell, LLC, its own cord blood business. DomaniCell, a wholly owned subsidiary of PCT, assists hospitals by providing umbilical cord blood unit collection and long-term storage services to patients for potential future therapeutic use. DomaniCell has been providing the front-end interface and support services to hospitals and in turn employs PCT's cell therapy manufacturing facilities network for the processing and long-term storage of umbilical cord blood units. With the acquisition of PCT, we are bundling together NeoStem's adult stem cell collection and PCT's cord blood collection offerings as a multi-generational collection and storage service called the "Family Plan.". Dr. Manny Alvarez, an esteemed Obstetrician and Gynecologist and recognized television and online healthcare professional is serving exclusively as the Company's spokesperson and public representative under a three year agreement, with an option to extend, under which he will promote NeoStem's consumer services through endorsements, print and online marketing, and more. This offers NeoStem's stem cell banking products the validation of a highly respected health news personality.

In July 2010, we were named "Best Stem Cell Company, 2010," in the New Economy's Biotech Awards.

Stem Cell Research

NeoStem is conducting research and development activities in its own laboratory facility. Through collaborations, we are pursuing therapeutic and potentially diagnostic applications of adult stem cells, including applications using our own VSEL ^{TM} Technology (very small embryonic-like stem cells). VSEL ^{TM} Technology, licensed from the University of Louisville, which represents NeoStem's proprietary platform. We believe VSEL^{TM} Technology holds significant potential for the Company, affording us entry into the regenerative medicine arena with a unique cell product that may, in turn, open up new areas in regenerative medicine. This research is also conducted though funded academic research collaborations. In April 2009, we entered into a License Agreement with Vincent Falanga, M.D., pursuant to which we acquired a world-wide, exclusive license to certain innovative stem cell technology and applications for wound healing. In conjunction with that license we entered into a multi-year sponsored research agreement with the Roger Williams Medical Center in Providence, Rhode Island and Dr. Falanga's laboratory, funded by the Department of Defense, to study the use of VSELs and mesenchymal cells for the treatment of chronic wounds. We have in-licensed more mature technologies that use stem cells for regenerative applications, including rebuilding cartilage, repairing fractures and rejuvenating aging skin. Some of these products or treatments are commercialized in Asia (described below).

Regenerative Medicine – China

We are also seeking to apply our cellular therapies in the People's Republic of China ("China" or "PRC"). In 2009, we began several China-based, adult stem cell initiatives including: (i) creating a separate China-based stem cell operation, (ii) constructing a stem cell research and development laboratory and processing and manufacturing facility in Beijing, (iii) establishing relationships with hospitals to provide stem cell-based therapies, and (iv) obtaining product licenses covering several adult stem cell therapeutics focused on regenerative medicine. In 2010, we began offering stem cell banking services and certain stem cell therapies to patients in Asia, as well as to foreigners traveling to Asia seeking medical treatments that are either unavailable or cost prohibitive in their home countries.

In June 2010 we launched a collaboration with Shandong Wendeng Orthopaedic Hospital, or Wendeng Hospital, which was the first hospital in the network we are establishing to offer orthopaedic treatments in China. In December 2010, we entered into the second hospital cooperation agreement with Shijiazhuang Third Hospital in the provincial capital of Hebei Province. We expect to enter into a third hospital collaboration agreement in mid-2011. In the third quarter of 2010, Weihai Municipal Price Bureau, the local authority in charge of pricing for public medical services in China, approved the pricing for single side and bilateral arthroscopic orthopedic autologous adult stem cell based treatment licensed by us which is being administered at Wendeng Hospital. Importantly, the Weihai Municipal Labor Bureau Medical Insurance Office approved Wendeng Hospital's application for reimbursement whereby patients are eligible to receive reimbursement for up to 80% of the cost of the orthopedic procedure under the new technology category.

Strategically, we view our efforts in China as pioneering new pathways towards both commercialization of therapies to the largest patient populations in the world, and creating a unique regulatory pathway for advanced proof of concept studies which may prove invaluable to the Company's research efforts We intend to develop a distribution platform for cell therapy that can be used to expedite commercialization of new therapies in China for PCT clients and to commercialize our own proprietary technologies as they emerge.

Pharmaceutical Manufacturing – China

We acquired a 51% ownership interest in Suzhou Erye Pharmaceutical Company Ltd. ("Erye") in October 2009. Erye was founded more than 50 years ago and represents an established, vertically-integrated pharmaceutical business. Historically, Erye has concentrated its efforts on manufacturing and distributing of generic antibiotic products. It has received more than 160 production certificates from the State Food and Drug Administration of China, or SFDA, covering both antibiotic prescription drugs and active pharmaceutical intermediates (APIs). Our current senior executive management team at Erye, Mr. Shi, Chairman, and Madame Zhang, General Manager, joined Erye in 1998, and in conjunction with others bought it from the PRC government in 2003. A majority of the drugs that Eyre manufactures are on China's "essential drug" list, and Erye's new facility under construction will enable greater production.

CELL THERAPY – UNITED STATES

The Company is now engaged in the active development of cell based therapeutics to treat a wide range of human diseases. This process includes laboratory bench science and research which we hope to translate into the clinic in the future. To this extent, PCT now enables the Company to work early with scientists and partners to develop product characterization and process development, product comparability and product scale-up, all to meet the demands for clinical requirements.

The Field of Cell Therapy

All living complex organisms start as a single cell that replicates, differentiates (matures) and perpetuates in an adult through its lifetime. Cell therapy is aimed at tapping into the power of cells to prevent and treat disease, regenerate damaged or aged tissue and provide cosmetic applications. The most common type of cell therapy has been the replacement of mature, functioning cells such as through blood and platelet transfusions. Since the 1970s, bone marrow and then blood and umbilical cord-derived stem cells have been used to restore bone marrow and blood and immune system cells damaged by chemotherapy and radiation used to treat many cancers. These types of cell therapies have been approved for use worldwide and are typically reimbursed by insurance.

Over the past number of years, cell therapies have been in clinical development to attempt to treat an array of human diseases. The use of autologous (self-derived) cells to create vaccines directed against tumor cells in the body has been demonstrated to be effective and safe in clinical trials. The Dendreon Corporation's Provenge therapy for prostate cancer received Food and Drug Administration ("FDA") approval in early 2010. PCT assisted Dendreon as its manufacturing partner in developing its cellular therapy and supported its various FDA submissions. Companies are evaluating the effectiveness of cell therapy as a form of replacement or regeneration of cells to treat diseases of the brain and spinal cord, while others are developing cell therapies for cardiovascular disease, including for the treatment of acute myocardial infarction (heart attack) and chronic ischemia (reduction in blood supply). Cell therapies are also being evaluated for safety and effectiveness to treat autoimmune diseases such as diabetes, inflammatory bowel disease and bone diseases. Finally, the development of cell therapies to supplement or replace damaged or aged tissue and organs is also under development by certain companies. While no assurances can be given regarding future medical developments, management believes that the field of cell therapy is a subset of biotechnology that holds promise to better the human experience and minimize or ameliorate the pain and suffering from many common diseases and from the process of aging.

PCT is an Enabling Transaction for NeoStem

PCT serves the developing cell therapy industry that includes biotechnology, pharmaceutical and medical products companies, health care providers, and academic investigators from licensed cell therapy manufacturing facilities in Allendale, New Jersey and Mountain View, California. PCT supports the research of leading academic investigators designed to expedite the broad clinical application of cell therapy.

PCT's core strategy is to provide a development platform for cell based therapeutics. From its inception PCT has represented the critical expertise required to translate laboratory science from the bench to the clinic. A major element of this transition unique to cell therapeutics is the scale-up (i.e., produce at quantities) and product characterization (i.e., keep features of a cell product that define its identity and function) requirements as well as the regulatory issues around product development in a clinical setting. In addition to this core expertise, PCT brings a developing global presence for cell therapy manufacturing and storage facilities and an integrated and regulatory compliant distribution capacity for the evolving cell therapy industry to meet commercial demands.

PCT's Client Services

PCT provides services to clients who are pursuing the development and commercialization of cell therapies for a broad array of human diseases, disorders and injuries, including:

- Pre-clinical and clinical process and product development including outsourcing of cell therapy manufacturing for clinical trials by therapeutic companies;

- Processing or manufacture of cell-based products for cell therapy or tissue engineering companies or academic programs;
- Development and manufacture of stem cell lines for diagnostic purposes for pharmaceutical companies;
- Development and validation studies on behalf of tool and device companies;
- Processing and transporting hematopoietic stem cells, immune system cells and umbilical cord blood cells used for blood and marrow stem cell transplantation by academic clinical stem cell transplantation programs; and
- Consulting in the areas of FDA guideline compliance, technology evaluations, clinical trials design, process optimization and product development, product characterization, assay development, and facility or system design for therapeutics, device, or investment companies or academic programs.

As a cell therapy manufacturing and product development company, it is critical that PCT has experience in the processing of many different types of cells, as clients evaluate their manufacturing partners in part on whether they have experience with their cell manufacturing platform. In this regard, PCT staff has experience with working most cell types, and as such is well positioned to assist a wide-range of clients with their cell therapy manufacturing needs.

cGMP Cell Therapy Manufacturing Experience

Cell Type	Activity
HSC	Animal cell processing
HPC	CD 34 selected cells
MISC	Keratinocytes
Gene Tx	Fibroblasts
DC	DLI
APC	Cytokine cell induction
T Cell (Activated)	Ex-vivo expansion
B Cell	Cellular cultures
NK	CD 34 selection
Macrophages	Adherent neural stem cells
NSC	Porcine islets
Cell Matrix implants	Activated T-cells
Artificial Skin Membranes	

PCT has accumulated experience in the service and business of cell therapy manufacturing for clinical use. PCT has served over 100 clients and is experienced with more than 20 different cell based therapeutics, including neuronal and skin based cells for brain and spinal cord repair, myoblast, mesenchymal cells and bone marrow derived cells for heart disease, Tumor, T, B, NK and dendritic cells and monocytes for cancer treatment, cord blood, peripheral blood, bone marrow CD34+ selected cells for transplantation and islet cells for diabetes. PCT has performed over 30,000 cell therapy procedures in its cell therapy manufacturing facilities, processed and stored over 18,000 cell therapy products (including approximately 7,000 umbilical cord blood, 10,000 blood and marrow derived stem cells and 1,000 dendritic cells) and arranged the logistics and transportation for over 14,000 cell therapy products for clinical use by over 5,000 patients nationwide.

Through these endeavors, PCT has experience with different cell types intended for treatment of a variety of disease states. The table below describes examples of the clinical goals, the type of diseases to address to meet those clinical goals, and the cell types/tissues used to treat them.

PCT's Contract Manufacturing Experience		
Clinical Endpoint	**Disease Category**	**Cell/tissue Type**
Hematopoietic replacement	Cancer, genetic diseases	HSC, HPC, MSC, Gene Tx
Immune modulation	Cancer, autoimmunity, infectious diseases	DC, APC, T cell, B cell, NK, HSC, MSC, Macrophages, Gene Tx
Tissue repair and regeneration	Cardiovascular, spinal, neuronal, corneal, orthopedic	HSC, MSC, NSC, Cell matrix implants
Wound healing	Ulcers, burns	Artificial skin, membranes, MSC

The management team of PCT are recognized experts in cell therapy product development and characterization, manufacturing, delivery, and clinical development and use. PCT's personnel have experience with the design, validation, and operation of cGMP cell therapy manufacturing facilities, participated in regulatory filings in the United States and Europe, and have contributed over 100 peer reviewed cell therapy publications. The team has extensive experience in biologics development, sales, marketing, medical practice, hospital administration, insurance contracting, and regulatory compliance. Collectively, the management team has experience in all aspects of cell therapy product and clinical development and use (other than with the use of embryonic stem cells), covering cancer, autoimmunity, infectious diseases, cardiovascular diseases, and spinal, brain, corneal, orthopedic, hormonal and skin regenerative therapies.

PCT's Client Base

PCT's historic client portfolio focuses on meeting the existing needs of the cell therapy/regenerative medicine market. Clients include:

- *Academic and Other Hospitals and Clinics* — These clients may be conducting cell therapy research and/or treating patients with cell and tissue therapies. This includes the processing for stem cell transplant programs. For over 20 years, blood and marrow stem cell transplants have been used following radiation and/or chemotherapy for certain cancers — particularly leukemia, lymphoma and myeloma. While the number of patients diagnosed with one of these cancers in the United States has not grown significantly from year to year, growth in bone marrow transplants has grown at a faster rate, due in part to the establishment of the National Marrow Donor Program. This program facilitates cell type matching, which was previously a significant limiting factor in the use of blood and bone marrow transplants.
- *Private Sector Customer Base* — There are currently about 350 cell and tissue/regenerative medicine therapeutic product companies globally and over 500 companies in the sector when including technology, device, and service companies. We believe that a significant percentage of the therapeutic companies outside the United States are viable customer prospects for PCT. Historically, these companies retained PCT for their expansion into the United States market. Additionally, there is a steady stream of new entrants into the cell therapy and regenerative medicine market.
- *Strategic Relationships* — These are relationships into which PCT historically has entered with product and service providers complimentary to PCT's service offerings and intended to bolster both PCT's revenue as well as its market position. The relationships currently take the form of subsidiary or affiliated companies as well as independent companies with which PCT has a co-marketing and/or co-development relationship.
- *Investors* — Investors have used PCT to evaluate technologies and have used their development capabilities for other portfolio clients.

Management believes that PCT's long-term client base will look very similar to its current client base with the expected addition of pharmaceutical companies that require manufacture of stem cell lines for use in drug discovery. It is also important to note that, not only will PCT's business evolve as its client base's clinical trials mature, but that business should grow by orders of magnitude as later phase clinical trials typically involve many more sites and patients, and hence require substantially more cell manufacturing. More specifically, the PCT business model is constructed to attract early revenues through work with clients at an early development stage, and to work with them as their products advance through clinical development. In

this fashion, PCT has been working with a number of PCT's current clients as they have progressed from the early stages of development through to later stages. As an illustration, two PCT clients for/with whom PCT developed a manufacturing process, transitioned to Phase I clinical testing, advanced to Phase Ib clinical testing, and are now planning both Phase II and Phase III testing. Other clients at different stages of development have engaged PCT (all phases of trial, commercial and preclinical testing) filling out a relatively well distributed pipeline of therapeutics in development. Approximately half of PCT's current customer base is preparing for, or is in, Phase I trials; almost another quarter of its clients are in or preparing to commence each of Phases II and III clinical testing; a minority 5% – 6% are preparing for commercial production. This distribution of clients represents a realization of the business model, and demonstrates a maturation of the pipeline customers over previous years.

For each type of client, the cell therapy sector presents unique challenges that provide PCT with opportunities to position its expertise and services as potential solutions. For example, in pharmaceutical drug development, after FDA approval, typically, a large quantity (batch) of drug is manufactured, a sample is tested for potency and identity, and then the batch is released by the manufacturer for packaging in multiple doses, distribution and sales. Typically, a dose of a drug can be stored for prolonged periods before it is dispensed to the patient. In contrast, the cells used for cell therapy usually originate from the patient for whom the cell treatment is intended. The biologic shelf life is measured in hours to days, as opposed to months to years for pharmaceutical drugs. We believe PCT has more relevant experience manufacturing and delivering cell-based therapies than most traditional pharmaceutical drug developers. Our facilities and personnel decrease development time, optimize the manufacturing process and save capital otherwise needed to build and staff cGMP facilities for current and future clinical trials, thereby creating value for corporate clients that are developing cell-based therapies.

Potential to Develop Cell Therapy Products

We believe that through our PCT acquisition, we are now qualified to reduce the risks involved in the development of cell therapy products because:

- PCT has the expertise to cost efficiently and rapidly analyze the potential for product development through commercialization.
- PCT has the structure in place to develop new cell therapy products and to enable the commencement of Phase I clinical trials for such products.
- PCT has the personnel and facilities in place to offer cost effective development and manufacturing services.
- PCT has the technical, scientific, clinical, and business expertise to make timely go/no go development decisions for potential cell therapy products.
- PCT has the fiscal discipline and low incremental capital investment to cut project development early if chances for success are low thus preserving resources for future product development.

We will continue to seek to capitalize on the key elements of PCT's business strategy to:

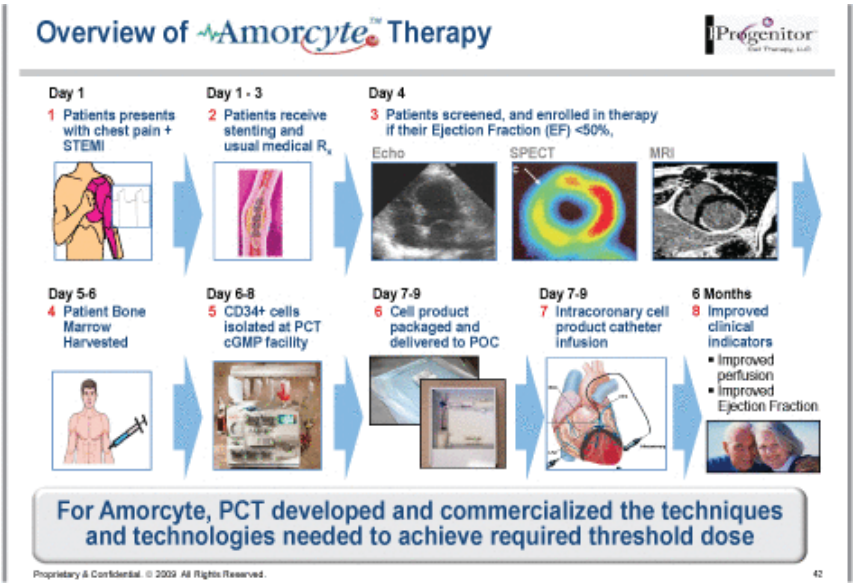
- Establish a nationwide and then international infrastructure, capacity and expertise to meet clients needs;
- Maximize penetration of startup companies in the sector;
- Optimize use of PCT's physical plants;
- Evaluate international opportunities and enter markets as necessary;
- Develop information systems, logistics and create proprietary intellectual property (e.g., process patents);
- Collaborate closely with the FDA (and other regulatory authorities as appropriate); and
- Invest in research to diversify PCT's portfolio of services.

We will continue to focus on all stages of regenerative medicine, cell and tissue therapeutic product companies, academic stem cell and other cell therapy clinical trials, device companies serving the regenerative medicine sector, investors and pharmaceutical companies with an interest in a cell or tissue therapeutic or research product, and any other client with needs in the manufacturing and development of a cell or tissue-based product. Our goal is to:

- Be the global leader in services for the development, regulatory approval and commercialization of cell and tissue therapies around the world;
- Be the leader in the development and manufacture of cells and tissues as therapeutic agents in cGTP/cGMP (current Good Manufacturing Practices and current Good Tissue Practices) compliant facilities;
- Continue to expand PCT's facilities, capacity, expertise, and experience to meet the demand for quality and value-driven services for companies in the regenerative medicine sector; and
- Leverage PCT's domain experience to create product-based companies which would exclusively use PCT's services for manufacturing, delivery and commercialization.

Amorcyte, Inc.

PCT's strategy historically has included the periodic formation of companies intended to develop specific therapeutic products, which companies could subsequently be spun-out while remaining revenue-generating clients of PCT. The creation and spin-out of Amorcyte, Inc. ("Amorcyte") is an example of that strategy. Amorcyte was initially formed as a wholly owned subsidiary of PCT and was spun off to its members during 2005. It is a therapeutics company pursuing cell-based therapies for cardiovascular diseases. Amorcyte's primary product is an autologous bone marrow-derived, CD34+ cell line selected to treat damaged heart muscle following acute myocardial infarction (AMI). Amorcyte successfully completed a Phase I trial for the treatment of damaged heart muscle following AMI. Amorcyte believes this is the first stem cell trial to show dose-related "significant" improvements in limiting perfusion following AMI.



PCT entered into a Cell Processing Agreement with Amorcyte in 2005, pursuant to which PCT is the exclusive evergreen provider of cell processing services to Amorcyte and anticipates processing the cells for the 150 patients expected to be enrolled in Amorcyte's Phase 2a trial expected in 2011. For calendar years 2009 and 2010, PCT recognized revenue under that Agreement in the amounts of $428,000 and $84,600, respectively. While former members of PCT have remained stockholders of Amorcyte post the spin-off, and

while PCT provides Amorcyte with management services through a management agreement, Amorcyte is an independent company and its value and revenue is not included in those of the Company. Amorcyte also plans to develop bone marrow derived stem cell therapies to treat a variety of other cardiovascular diseases using certain technology licensed from Baxter Healthcare Corporation. Through its acquisition of PCT, NeoStem has an ownership interest in Amorcyte of less than 1%.

Athelos, Inc.

Athelos is a Delaware corporation 80% owned by NeoStem through its wholly owned subsidiary, PCT. To further expand and diversify NeoStem's efforts in cell therapy, the mission of Athelos is to develop regulatory T cells (T-reg) as a therapeutic to treat disorders of the immune system. Many immune-mediated diseases are a result of an imbalance in the immune system. T-reg therapy represents a novel approach to restoring immune balance by enhancing T-reg cell number and function. Through exclusive world-wide licenses, Athelos has secured the rights to a broad patent estate within the T-reg field. To complement those important intellectual property rights, Athelos has established a consulting relationship with David Horowitz, MD, Chief of the Division of Rheumatology and Immunology at the University of Southern California Keck School of Medicine and thought leader in the field of T-reg therapy for immune disorders. Some of the earlier projects on the Athelos development agenda include investigating the clinical feasibility of T-reg-based therapeutics to prevent and treat Graft vs. Host Disease, solid organ rejection as well as a broad class of other autoimmune diseases. Results from ongoing Phase I trials of T-reg cell therapy for autoimmune disorders will determine the next phase of trials.

Adult Stem Cell Business in the U.S.

We are developing our business in cell therapeutics and capitalizing on the increasing importance and promise that adult stem cells have in regenerative medicine. We have had an initial focus on delivering therapies in retinal disease, cardiology, orthopedics, liver, skin rejuvenation and wound indications with a view towards oncology and immunology, as well.

Stem cells are very primitive and undifferentiated cells that have the unique ability to transform into many different cells, such as white blood cells, nerve cells or heart muscle cells. We work exclusively with adult (and not embryonic) stem cells. Adult stem cells are found in the bone marrow, in peripheral blood umbilical cord blood and other body organs. For over 40 years, physicians have been using adult stem cells to treat various blood cancers, but only recently has the promise of using adult stem cells to treat a myriad of other diseases begun to be realized.

Within the adult stem cell classification, the use of cells is either autologous (meaning donor and recipient/patient are the same) or allogeneic (donor and recipient are different people). The use of allogeneic stem cells requires the identification of a matching donor, which search can result in added costs, critical time delays or the possibility of never finding a match. Even if a matching donor is identified, the use of allogeneic stem cells introduces the risk of "graft vs. host disease" that may require immunosuppresive drugs for extended periods following transplantation. Accordingly, our current stem cell programs are based exclusively on adult stem cells for autologous use as we believe that adult stem cells hold the greatest promise for therapeutic innovation.

VSEL™ Technology

We are engaged in research and development of new therapies based on very small embryonic-like stem cells, or the VSEL ™ Technology, with the University of Louisville Research Foundation, or ULRF, and have a worldwide exclusive license to the VSEL ™ Technology. Research by a group headed by Dr. Mariusz Ratajczak, M.D., Ph.D., who is the head of the Stem Cell Biology Program at the James Graham Brown Cancer Center at the University of Louisville and co-inventor of the VSEL ™ Technology, and others, provides compelling evidence that bone marrow contains a heterogeneous population of stem cells that have properties similar to those of an embryonic stem cell. These cells are referred to as very small embryonic-like stem cells. This finding opens the possibility of capturing some of the key advantages associated with embryonic stem cells without the ethical or moral dilemmas and without some of the potential negative biological effects associated with stem cells of embryonic derivation. The possibility of autologous VSEL treatments is yet another huge potential benefit to this unique population of adult stem cells.

We have a sponsored research agreement, or an SRA, with ULRF, pursuant to which we agree to support further research in the laboratory of Dr. Ratajczak. In return for supporting such, we will receive the exclusive first option to negotiate a license covering the fruits of the research.

Recent studies conducted by us in collaboration with the University of Louisville have confirmed that significant quantities of very small embryonic-like stem cells can be obtained from the peripheral blood of humans following stimulation with granulocyte-colony stimulating factor, commonly known as Neupogen®. Dr. Ratajczak's group at the University of Louisville has published preliminary work indicating that these stem cells have a role in cardiac regeneration and may prove useful in identifying those at risk for cardiovascular disease. In addition, very small embryonic-like stem cells have been shown to increase in numbers in the peripheral circulation following acute myocardial infarction, stroke and other stress inducing events in experimental animals and in humans. Thus, very small embryonic-like stem cells may have significant potential to repair degenerated, damaged or diseased tissue, or the three "Ds" of aging. With our existing cell banking network, we have the ability to collect and store very small embryonic-like stem cells, along with other stem cell populations, from individual donors, setting the stage for their future use in personalized regenerative medicine.

Therapeutic Indications for VSELs and/or Mesenchymal Cells

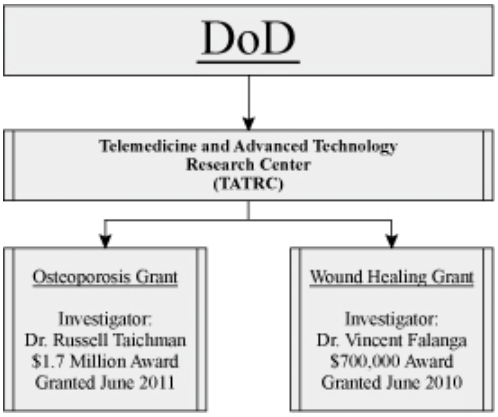
In addition, we have been engaged in developing therapeutic treatments using in-licensed technologies for indications such as wound healing, orthopedics, cosmetic and dermatology and opthalmics.

- We are funding research in the laboratory of Dr. Russell Taichman at the University of Michigan that explores the utility of VSELs in bone regeneration through the proceeds of a $108,746 Grand Opportunities grant from the National Institutes of Health.
- We are funding research at the Schepens Eye Research Institute, a charitable corporation of Massachusetts and an affiliate of Harvard Medical School relating to VSEL treatment for age-related macular degeneration and Glaucoma - the two leading causes of blindness in the Western world. . The principal investigators in those studies on the study are Dr. Michael Young, Ph.D., Director of the Institutes Minda de Gunzburg Center for Ocular Regeneration and Kameran Lashkari, M.D.
- In 2009, we entered into a License Agreement with Vincent Giampapa, M.D., pursuant to which we acquired a world-wide, exclusive license to certain patented stem cell technology and applications using mesenchymal cells for skin rejuvenation. Mesenchymal stem cells, or MSCs, are a multipotent stem cell that can differentiate into a variety of cell types.
- In April 2009, we entered into a License Agreement with Vincent Falanga, M.D., pursuant to which we acquired a world-wide, exclusive license to certain innovative stem cell technology and applications for wound healing. In conjunction with that license we entered into a multi-year sponsored research agreement with Roger Williams Medical Center and Dr. Falanga's laboratory, funded by the Department of Defense, to study the use of VSELs and mesenchymal cells for the treatment of chronic wounds.
- In 2010, NeoStem entered into a sponsored research agreement with the University of California at Davis to conduct hepatocellular (liver) regeneration studies using VSELs.
- We recently entered into a collaboration with Rutgers, the State University of New Jersey, to conduct early stage research on the activity of VSELs in a cell culture of motor neurons.

Government Initiatives

To further drive our stem cell initiatives, we will continue targeting key governmental agencies, congressional committees and not-for-profit organizations to contribute funds for our research and development programs. We have been awarded a $700,000 contract from the U.S. Army Medical Research and Material Command, Telemedicine and Advanced Technology Research Center (USAMRMC-TATRC). This contract is for the purpose of evaluating the use of topically applied bone marrow-derived adult mesenchymal stem cells for rapid wound healing. In September 2009, we were notified of an award of a Grand Opportunities grant in the amount of $108,746 from the National Institutes of Health, which money will be applied to research in the field of bone defect repair. In January of 2011, we received notification that

NeoStem was recommended for funding by the Department of Defense Peer Reviewed Medical Research Program (PRMRP) of the Office of the Congressionally Directed Medical Research Programs (CDMRP). That $1,700,000 award, which we will receive upon completion of the award process, will be applied towards funding research on the use of VSELs to treat osteoporosis and improve bone health.



In addition to those grants, NeoStem is actively pursuing additional research grants through the Small Business Innovation Research ("SBIR") program in the coming months, which funds would not only further research efforts already underway in the areas of wound healing, bone regeneration, nerve regeneration and retinal disease, but potentially would launch new inquiries and further diversify our base of research partners in areas such as reconstructive surgery, sepsis and radiation sickness.

Vatican Initiatives

In May 2010, the Vatican's Pontifical Council for Culture and NeoStem announced what has been characterized as the Vatican's first-ever contract of collaboration with an outside commercial venture to advance stem cell research. The initiative will partner NeoStem and the public charity it helped form, *The Stem for Life Foundation* with the Pontifical Council and its charitable organization, *STOQ International*, to expand research and raise awareness of adult stem cell therapies. The partnership will entail work on a variety of collaborative activities with the goal of advancing scientific research on adult stem cells and exploring their clinical application in the field of regenerative medicine, as well as the cultural impact of such research. The Pontifical Council has pledged $1 million in connection with these activities.

In addition to research initiatives, NeoStem and the Pontifical Council will spearhead an education campaign geared towards generating awareness of the cultural relevance of such a fundamental shift in medical treatment options, particularly with regard to the impact on theological and ethical issues. Specifically, NeoStem and the Pontifical Council intend to pursue the development of educational programs, publications and academic courses with an interdisciplinary approach for theological and philosophical faculties, including those of bioethics, around the world.

One of the initial highlights of this partnership will be a three day International Conference at the Vatican on adult stem cell research, including VSEL^{TM} Technology, that will focus on medical research presentations and theological and philosophical considerations and implications of scientific achievements. The Conference, entitled "Adult Stem Cells: Science and the Future of Man and Culture" will be held at the Vatican, Rome, Italy, November 9 – 11, 2011. All initiatives will aim at providing information, teaching and research regarding important issues of human health and of the present and future of medical progress in relation to adult stem cell research and with respect to the great value of human life. NeoStem and the Pontifical Council for Culture through their collaboration aspire to reach religious leaders and academicians working in the Pontifical and Catholic Institutions but also to extend their work and results to different institutions beyond the Catholic environment.

Competition – Cell Therapy – United States

- *Medical and Research Centers* — Medical and research centers with interest or expertise in

regenerative medicine and the handling and manipulating of cell products offer competitive services. This group includes the major blood and bone marrow transplant centers around the country, the American Red Cross and major medical research institutions. Such research institutions include the Johns Hopkins Medical Center in Baltimore, Maryland, Baylor College of Medicine in Houston, Texas, the National Institutes of Heath-funded, multi-center Production Assistance for Cellular Therapies Network, and the Fred Hutchinson Cancer Research Center in Seattle, Washington.

- *Other For-Profit Corporations* — Other for profit corporations who are our direct competitors include: the Lonza Group Ltd, with the acquisition of the bioservices division of Cambrex Corporation with cell therapy manufacturing facilities in the United States and continental Europe; Cognate Bioservices, owned by Toucan Capital and which services its own internal sister-portfolio companies, as well as offering its services to external customers, with facilities in Maryland and California; Euffets, part of the Fresenius Medical Care group, with a facility in Germany and which has an existing network of apheresis centers; Angel Biotechnology in the United Kingdom, currently restructuring to focus exclusively in cell therapies; Cell Therapies Pty Ltd in Melbourne, Australia. In addition, there are other providers of support services with a peripheral offering or interest in cell or tissue therapy development or manufacturing.
- *Divisions of Biotechnology Companies* — The development and manufacturing divisions of selected major biotechnology companies (e.g., Genzyme and Cell Genesys) which provide services using their existing spare infrastructure to offset costs also present competition to our Cell Therapy – United States reportable segment. Moreover, they may be able to offer such unused capacity as a loss leader and at lower rates than those offered by our Cell Therapy – United States reportable segment.
- *Early Stage Companies* — Some early stage companies, which constitute a portion of our target market, have their own development and manufacturing facilities. These companies are competitive not only in that they may leverage their capacity by making it available to others but also in that, their decision to "build" precludes them — at least for the interim — from deciding to "buy" from our Cell Therapy – United States reportable segment.

Market Review and Analysis of the Therapeutics Industry

We believe that an increasing portion of healthcare spending in the United States will be directed to cell and tissue based therapies in the coming years, driven by aging baby boomers. An excerpt from "2020: A New Vision - A Future for Regenerative Medicine" from the U.S. Department of Health and Human Services, dated January 2005, highlights the potential of cell therapy, given present demand:

- 250,000 patients receive heart valves, at a cost of $27 billion annually; and
- 950,000 people die of heart disease or stroke, at a cost of $351 billion annually.

According to the same report, "Regenerative medicine is the vanguard of 21st century healthcare. We are on the cusp of a worldwide explosion of activity in this rapidly growing field of biomedicine that will revolutionize health care treatment. Regenerative medicine (cell therapies) will lead to the creation of fully biological or bio-hybrid tissues and organs that can replace or regenerate tissues and organs damaged by disease, injury, or congenital anomaly." Regenerative medicine offers the promise to address many of these conditions by replacing or repairing malfunctioning tissues. The same report also indicated that a large fraction of the costs cited above are attributable to tissue loss or organ failure, with approximately eight million surgical procedures being performed annually in the United States to treat these disorders. If approved and effective, cell therapies may have the effect of cutting health care cost as they may facilitate functional restoration of damaged tissues and not just abatement or moderation of symptoms.

Aside from early tissue-based therapies approved in the 1990s, e.g., therapies developed by Genzyme and Organogenesis, the regenerative medicine industry is yet to mature to the point of having a number of approved therapies available on the market. However, there are a number of companies in late-stage clinical trials and one company, PCT's former client Dendreon, has received approval from the FDA for the use of a cellular product as a prostate cancer therapy.

The scope of the evolving field of regenerative medicine entails:

- *Cell Therapy*, which is the use of cells (adult or embryonic, donor or patient, stem or differentiated) for the treatment of many debilitating injuries and diseases. Near term, therapeutic applications may include cancer vaccines, cell based immune-therapy, heart disease, diabetes, Parkinson's and Alzheimer's diseases, vision impairments, orthopedic diseases and spinal cord injuries. This sector also includes the development of growth factors and serums and natural reagents that promote and guide cell development.
- *Tissue Engineering*, which is the combination of cells with biomaterials (also called "scaffolds") to generate partially or fully functional tissues and organs. Some natural materials, like collagen, can be used as biomaterial, but advances in materials science have resulted in a variety of synthetic polymers with attributes that would make them uniquely attractive for certain applications. Near term, therapeutic applications include heart patch, bone re-growth, wound repair, replacement bladders, inter-vertebral disc and spinal cord repair.
- *Tools & Devices*, i.e., creating cell lines that embody genetic defects or disease characteristics that are used for the discovery and development of new drugs. This sector also includes companies developing devices that are designed and optimized for regenerative medicine techniques, such as specialized catheters for the delivery of cells, tools for the extraction of stem cells, cell-based diagnostic tools, etc.
- *Aesthetic Medicine*, which includes developing cell therapies, tissues and biomaterials for cosmetic applications. This sector comprises hair follicle cells for hair regeneration, and collagen-secreting human dermal fibroblasts for facial wrinkles and other skin disorders.

We believe, based on clients PCT has served, that our manufacturing service and developmental offerings are strategically aligned to participate in all aspects of the evolving cell therapy (regenerative medicine) industry as defined above. Our goal is to position the Company as a recognized leader of cell therapy manufacturing and development services for this emerging industry.

Collection, Processing and Storage Services

Our Company is also engaged in the collection, processing, storage, distribution and transport of cell therapy products. This current range of Cell Collection, Processing and Storage business services was greatly enhanced by our acquisition of PCT in January 2011 as it assures that we have access to state of the art cGMP compliant facilities giving us a competitive advantage in the industry and positioning us to be the partner of choice.

We are a provider of adult stem cell collection, processing and storage services in the U.S., enabling healthy individuals to donate and store their stem cells for personal therapeutic use. Similar to the banking of cord blood, pre-donating cells at a younger age helps to ensure a supply of autologous stem cells should they be needed for future medical treatment. We have established a network of ten adult stem cell collection centers throughout the country. PCT provides commercial stem cell processing and storage services utilizing current good manufacturing practices, or cGMP standards.

Our process for collecting adult stem cells for autologous use involves the administration of a mobilizing agent prior to collection, allowing the migration of stem cells from bone marrow to peripheral blood. Once the stem cells have reached the bloodstream, an individual goes through a safe and minimally-invasive procedure called "apheresis," similar to donating platelets, at one of the collection centers in our network. Then, the stem cells are processed and stored under cGMP standards. Our process does not change or alter the underlying cells and does not require expansion technology.

We believe that individuals will view the ability to pre-donate and store autologous adult stem cells for future personal therapeutic use as a valuable part of a "bio-insurance" program. The benefits of pre-donation include: having a known supply of autologous stem cells rather than an uncertain supply of compatible allogeneic stem cells; autologous stem cells may be compromised once a patient becomes sick; and the quantity and quality of stem cells generally diminish with age. This perceived value of pre-donation should increase as additional indications for stem cell-based therapies are developed. For example, first line therapy

for exposure to radiation continues to be stem cell transplant. With the threat of nuclear disaster and terrorism, we believe this is a critical program to protect human health.

Our processing at PCT's facilities typically occurs in class 10,000, Controlled Environment Rooms (CER) in a class 100 Biologic Safety Cabinet (BSC). Environmental monitoring, done weekly, includes air sampling, contact plates for surface monitoring, and Met One particle counts. PCT's cleaning and sanitizing program involves daily, weekly, monthly, and quarterly cleaning protocols for the equipment and the rooms with bactericidal and sporicidal agents to control introduction of microorganisms and insect and pest control procedures. PCT has ongoing equipment validation, calibration and preventive maintenance programs to ensure reproducibility and consistency of results.

PCT employs an inspection and testing program for incoming materials, and for in-process and final products, as required. PCT employs scientifically sound procedures approved by a quality assurance function, and performs product sterility testing and release assays reviewed by the quality assurance department. PCT has labeling controls to prevent product mix-ups, employs a materials management program to ensure that only approved materials are used in manufacturing and to provide forward and backward traceability; a supplier approval program to ensure that the raw materials used are made under acceptable conditions and to provide a high degree of confidence in their efficacy. A separate quality unit is charged with the responsibility for review and approval of anything that affects the identity, strength, quality, and purity of the cell therapy product. With PCT's experience in immune reconstitution we will be working with them to optimize collection yields for clients.

As part of our acquisition of PCT, we acquired DomaniCell, a wholly owned subsidiary of PCT, which assists hospitals with providing umbilical cord blood unit collection, and long-term storage services to patients for potential future therapeutic use. DomaniCell provides the front-end interface and support services to hospitals and in turn employs PCT's cell therapy manufacturing facilities for the processing and long-term storage of umbilical cord blood units.

With the acquisition of PCT in January, the Company is bundling together as a multi-generational stem cell collection and storage service that the Company will call the "Family Plan," consisting of NeoStem's adult stem cell and PCT's cord blood collection and storage offerings. Dr. Manny Alvarez, an esteemed Obstetrician and Gynecologist and recognized television and online healthcare professional, is serving exclusively as the Company's spokesperson and public representative under a three year agreement, with an option to extend, under which he will promote NeoStem's consumer services through endorsements, print and online marketing, and more. This provides NeoStem's stem cell banking products with the validation of a highly respected health news personality. Our marketing efforts will be restructured to focus on obstetricians and gynecologists and to educate them on the benefits to their patients of storage both their child's cord blood and their stem cells in a cGMP compliant process as offered by the Company.

We believe that just as people plan for their own financial future, they can plan towards their health future by storing their own stem cells for their own use. The banking of cord blood is marketed and sold to expecting parents as "biological insurance." PCT's own research showed that while this practice is gaining in acceptance, the market is still in its infancy with cord blood banking occurring for only 3.5% of total births in the United States. However, we hope to expand this business by offering to these parents banking their infants cord blood the opportunity to also bank their adult stem cells. Patients regardless of age can choose stem cell and immune system cell collection and storage as personal insurance that their stem cells will be available for their own use if needed in the future. Based on current science, the preferable time for collection is when one is healthy and unlikely to have stem cells already programmed for disease or before the immune system is damaged by disease or toxins (drugs including chemotherapy or radiation).

The Company recognizes that there remains skepticism in the marketplace with recently published articles pointing out how certain doctors believe it is a waste of money to store the cord blood privately, since it gives a false sense of security to the parent at a substantial cost at times. An important advantage of the national, public cord blood collection system is that it costs nothing for patients to donate their cord blood. Additionally, major medical organizations, including the American Academy of Pediatrics (AAP), the American Medical Association (AMA), the American College of Obstetricians and Gynecologists (ACOG), and the American Society of Blood and Marrow Transplantation (ASBMT) do not recommend private storage,

except in very limited instances. Further, PCT believes that the medical community is currently supportive of public cord blood donation and of the national cord blood registry that is administered by the National Marrow Donor Program.

Management believes however that central to increasing market share for private umbilical cord blood collection and storage is compliance with cGMP and documented experience in the clinical distribution and usage of cells as therapies. These are both advantages that we can offer through PCT. We intend to leverage PCT's position in the market place for cell therapy manufacturing, storage, and distribution for clinical use to expand the umbilical cord blood collection and storage business of DomaniCell and our historic adult stem cell business in a combined Family Plan.

We also intend to focus marketing and educational programs on current uses for stem cells over potential future uses and leverage the combined collection business with the umbilical cord business as it has historically been a more prevalent revenue opportunity. We also plan to leverage and market key endorsements, including the Company's government research grants, the Company's relationship with the Vatican's Pontifical Council, as well as celebrity and corporate endorsements.

Transportation Network

We believe that today's commercially available transportation systems are not set up for shipment of biological or other perishable goods and will not be able to meet the demands of the emerging cell therapy market. To succeed, the large-scale commercialization of cell therapy products will need to overcome the present weaknesses of the major air carriers, including the lack of a true point-to-point chain of control, non-controlled X-ray and inspection, no guarantee of package orientation, handling or storage conditions and in many cases no standard, documented and tracked operating procedures.

A successful transportation network for cell therapy will require a completely secure point-to-point chain of control and custody; cGMP standard operating procedures in all phases of transit; a highly specialized and trained air and ground courier network; quality assurance at each transfer point; and real-time package tracking.

We strive to maintain high standards in transportation and handling of client cell products. Shipments of products are tracked as PCT and its clients develop confidence in the abilities of PCT's transportation partners. PCT is laying the groundwork for such a network as part of its business development process.

While reliable ground carriers with experience in the transport of blood products already exist in major metropolitan areas of the country, air carriers meeting such needs are limited. PCT evaluated the major domestic express carriers, including Federal Express and UPS, and concluded that even their highest-level services are inadequate to meet the sector's needs. However, PCT identified and validated AirNet Systems, Inc., a specialty air carrier with a fleet of over 100 aircraft serving over 100 cities nationwide, as a transportation partner. AirNet has built its business on check delivery and other services to banks, and it now specializes in shipping medical products, including whole blood and blood products, tissue for transplantation, and diagnostic specimens. AirNet also handles cryopreserved specimens and biologics. PCT currently use the services of AirNet for its transportation needs and has a co-marketing agreement with AirNet centered on combining their logistical expertise and transportation infrastructure with PCT's point-to-point logistics and handling protocols to provide a non-integrated but complimentary and comprehensive transportation network for the shipment of cell therapy products.

Competition – Cell Collection, Processing and Storage

Historically in the U.S., we have faced competition from other established operators of stem cell preservation businesses and providers of stem cell storage services. Today, there is an established and growing market for cord blood stem cell banking. We are also aware of another company with established stem cell banking services that processes and stores stem cells collected from adipose, or fat, tissue. This type of stem cell banking requires harvesting fat by a liposuction procedure. Embryonic stem cells represent yet another alternative to pre-donated and stored adult stem cells. As techniques for expanding stem cells improve, thereby allowing therapeutic doses, the use of embryonic stem cells and other collection techniques of adult stem cells could increase and compete with our services. Finally, we are aware that other technologies are being

developed to turn skin cells into cells that behave like embryonic stem cells or to harvest stem cells from the pulp of baby teeth. While these and other approaches remain in early stages of development, they may one day be competitive.

In addition, cord blood banks such as ViaCord or LifebankUSA easily could enter the field of adult stem cell collection because of their processing labs, storage facilities and customer lists. We estimate that there are approximately 53 cord blood banks in the U.S., approximately 33 of which are autologous, meaning that the donor and recipient are the same, and approximately 20 of which are allogeneic, meaning that the donor and recipient are not the same. Hospitals that have transplant centers to serve cancer patients may elect to provide some or all of the services that we provide. We estimate that there are approximately 168 hospitals in the U.S. with stem cell transplant centers. These competitors may have better experience and access to greater financial resources than we do. In addition, other established companies may enter our markets and compete with us.

We believe we have a strategic advantage over our competitors based on our ability to meet cGMP regulatory requirements in an industry that is widely dispersed with a range of quality issues.

GOVERNMENT REGULATION: CELL THERAPY – UNITED STATES

U.S. Government Regulation

The health care industry is one of the most highly regulated industries in the United States. The federal government, individual state and local governments, as well as private accreditation organizations, oversee and monitor the activities of individuals and businesses engaged in the development, manufacture and delivery of health care products and services. Federal laws and regulations seek to protect the health, safety, and welfare of the citizens of the United States, as well as to prevent fraud and abuse associated with the purchase of health care products and services with federal monies. The relevant state and local laws and regulations similarly seek to protect the health, safety, and welfare of the states' citizens and prevent fraud and abuse. Accreditation organizations help to establish and support industry standards and monitor new developments. The following is a general description of the current material laws and regulations.

FDA Regulation of Cell Therapy Facilities

Manufacturing facilities that produce cellular therapies are subject to extensive regulation by the FDA.

HCT/P Regulations

In particular, FDA regulations set forth requirements pertaining to establishments that manufacture human cells, tissues, and cellular and tissue-based products ("HCT/Ps"). Title 21, Code of Federal Regulations, Part 1271 (21 CFR Part 1271) provides for a unified registration and listing system, donor-eligibility, current good tissue practices, and other requirements that are intended to prevent the introduction, transmission, and spread of communicable diseases by HCT/Ps. More specifically, key elements of Part 1271 include:

- Registration and listing requirements for establishments that manufacture HCT/Ps;
- Requirements for determining donor eligibility, including donor screening and testing;
- Current good tissue practice requirements, which include requirements pertaining to the manufacturer's quality program, personnel, procedures, manufacturing facilities, environmental controls, equipment, supplies and reagents, recovery, processing and process controls, labeling, storage, record-keeping, tracking, complaint files, receipt, pre-distribution shipment, distribution, and donor eligibility determinations, donor screening, and donor testing;
- Adverse reaction reporting;
- Labeling of HCT/Ps; and
- FDA inspection, retention, recall, destruction, and cessation of manufacturing operations.

PCT currently collects, processes, stores and manufactures HCT/Ps, as well as manufactures cellular therapy products that are regulated as biological products. DomaniCell also collects, processes, and stores HCT/Ps. Therefore, both PCT and DomaniCell must comply with Part 1271 and with the cGMP guidelines that apply to biological products. PCT's management believes that other requirements pertaining to biological products, such as requirements pertaining to premarket approval, do not currently apply to PCT because PCT is not currently marketing and selling cellular therapy products. However, these additional requirements may apply to companies that PCT incubates and spins off, such as Amorcyte, if these companies pursue marketing of cellular therapy products. Additionally, if either PCT or DomaniCell changes its business operations in the future, the FDA requirements that apply to PCT or DomaniCell may also change.

Current Good Manufacturing Practices (cGMP) Standards

Additional FDA laws and regulations apply to cellular therapies comprised of HCT/Ps that are regulated as a drug, biological product, or medical device. (*See* 21 CFR 1271.10(a)). These laws and regulations include requirements for current Good Manufacturing Practices ("cGMP"). In summary, FDA's cGMP requirements embody a set of principles that govern a facility's laboratory and manufacturing operations. These requirements are designed to ensure that a facility's processes — and products resulting from those processes — meet defined safety requirements and have the identity, strength, quality and purity characteristics that they are represented to have.

FDA current Good Manufacturing Practices (cGMP) requirements, set forth in Title 21, Parts 210 and 211, of the Code of Federal Regulations (21 CFR Parts 210 and 211) are federal regulations that govern the manufacture, processing, packaging and holding of drug and cell therapy products. The objective of compliance with cGMP standards is to protect the public health and safety by ensuring that:

- Products have the identity, strength, quality and purity that they purport or are represented to possess;
- Products meet their specifications; and
- Products are free of objectionable microorganisms and contamination.

A central focus of the cGMP requirements is to design and build quality into the manufacturing processes and the facilities in which products are produced. This is done by implementing quality systems and processes, such as:

- Identifying critical points that need to be controlled, monitored and tested.
- Preparing a set of written instructions or procedures, including product specifications, to ensure consistency and reproducibility of results and product characteristics.
- Designing systems and procedures to prevent contamination and ensure product integrity.
- Documentation of product testing results and procedures.
- Validating the process and test methods to ensure reliability of results and consistency in processing.
- Protecting the product from introduction of contamination or objectionable microorganisms by manufacturing in a clean room environment, which includes control of particulates and microorganisms while ensuring adequate space and proper facility controls.

Compliance with FDA requirements can be time consuming, costly and can result in delays in product approval or product sales. Further, failure to comply with applicable FDA requirements can result in regulatory inspections and associated observations, warning letters, other requirements of remedial action, and, in the case of failures that are more serious, suspension of manufacturing operations, seizure, injunctions, product recalls, fines, and other penalties. Management believes that PCT's facilities are in material compliance with applicable existing FDA requirements, and intends to continue to comply with new requirements that may apply in the future.

Additionally, FDA, other regulatory agencies, or the United States Congress may be considering, and may enact laws or regulations regarding the use and marketing of stem cells, cell therapy products, or products derived from human cells or tissue. These laws and regulations can affect us directly or the business of some of PCT's clients and therefore the amount of business PCT receives from these clients.

State Regulation of Cell Therapy

Certain state and local governments regulate cell-processing facilities by requiring them to obtain other specific licenses. As required under applicable state law, PCT's New Jersey and California facilities are licensed, respectively, as a blood bank in New Jersey and as a drug manufacturing facility in California. PCT also maintains licenses with respect to states that require licensure of out-of-state facilities that process cell, tissue and/or blood samples of residents of such states (e.g., New York and Maryland). PCT has the relevant state licenses needed for processing and is AABB (American Association of Blood Banks) accredited for this purpose. PCT's management believes that it is in material compliance with currently applicable federal, state, and local laboratory licensure requirements, and intends to continue to comply with new licensing requirements that may become applicable in the future.

Certain states may also have enacted laws and regulations, or may be considering laws and regulations, regarding the use and marketing of stem cells or cell therapy products, such as those derived from human embryos. While these laws and regulations should not directly affect PCT's business, they could affect the business of some of PCT's clients and therefore the amount of business PCT receives from these clients.

Federal Regulation of Clinical Laboratories

The Clinical Laboratory Improvement Act Amendments of 1988 ("CLIA") extends federal oversight to clinical laboratories that examine or conduct testing on materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of disease or for the assessment of the health of human beings. CLIA requirements therefore include those laboratories that handle biological matter. CLIA requires that these laboratories be certified by the government, satisfy governmental quality and personnel standards, undergo proficiency testing, be subject to biennial inspections, and remit fees. The sanctions for failure to comply with CLIA include suspension, revocation, or limitation of a laboratory's CLIA certificate necessary to conduct business, fines, or criminal penalties. Additionally, CLIA certification may sometimes be needed when an entity, such as PCT or DomaniCell, desire to obtain accreditation, certification, or license from non-government entities for cord blood collection, storage, and processing. PCT has obtained CLIA certification for its facilities in New Jersey. PCT has been advised that, currently, CLIA certification is not required for its PCT facilities in California. However, to the extent that any of the activities of PCT or DomaniCell (for example, with regard to processing or testing blood and blood products) require CLIA certification, PCT intends to obtain and maintain such certification and/or licensure.

Health Insurance Portability and Accountability Act — Protection of Patient Health Information

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") require health care plans, health care providers and health care clearinghouses, collectively defined under HIPAA as "Covered Entities," to comply with standards for the use and disclosure of health information within such organizations and with third parties. These include standards for:

- Common health care transactions, such as claims information, plan eligibility, payment information and the use of electronic signatures;
- Unique identifiers for providers, employers, health plans and individuals; and
- Security and privacy of health information.

Although the obligations of HIPAA only apply directly to Covered Entities, any Covered Entity that uses third parties (referred to in HIPAA as "Business Associates") to perform functions on its behalf involving the creation or use of certain patient health information is required to have a contract with the Business Associate that limits the use and disclosure of such information by the Business Associate.

While management believes that the current business operations of PCT or DomaniCell would not cause either of them to be considered a Covered Entity, there is a risk that due to conflicting interpretations of the regulations, DomaniCell may be a Covered Entity. If DomaniCell is a Covered Entity, there is a risk of liability that DomaniCell may not be complying fully with all HIPAA requirements. PCT has signed Business Associate Agreements where requested by PCT's customers who are Covered Entities, which would require compliance with certain privacy and security requirements relating to individually identifiable health information created or used in connection with such relationships. PCT is in substantial compliance with such Business Associate Agreements. However, given its complexity and the possibility that the regulations may change and may be subject to changing and even conflicting interpretation, PCT's ability to comply fully with all of the HIPAA requirements and requirements of its Business Associate Agreements is uncertain. Further, as a result of amendments to HIPAA under the American Recovery and Reinvestment Act of 2009, PCT's and DomaniCell's compliance burden has increased and they will be subject to audit and enforcement by the federal government and, in some cases, by state authorities. Further, they are obligated to publicly disclose wrongful disclosures or losses of personal health information.

Stem Cell Therapeutic and Research Act of 2005

The Stem Cell Therapeutic and Research Act of 2005 established a national donor bank of cord blood and created a national network for matching cord blood to patients. The National Marrow Donor Program (NMDP) carries out this legislation, which entails acting as the nation's Cord Blood Coordinating Center and actively recruiting parents for cord blood donations. The NMDP also administers the National Cord Blood Inventory (NCBI), which has a goal of collecting 150,000 cord blood units that could be used to treat patients all over the United States. Importantly, the legislation also authorized federal funding to support the legislation's goals for collecting cord blood units.

The existence and proliferation of this public cord blood bank may adversely affect PCT and/or the business of DomaniCell, because parents may opt to donate their newborn's cord blood to the public registry and to use the public registry if stem cells from cord blood are needed for treatment purposes. In this regard, an important advantage of the national, public cord blood collection system is that it costs nothing for patients to donate their cord blood. Additionally, major medical organizations, including the American Academy of Pediatrics (AAP), the American Medical Association (AMA), the American College of Obstetricians and Gynecologists (ACOG), and the American Society of Blood and Marrow Transplantation (ASBMT) do not recommend private storage, except in very limited instances. Further, this national, public cord blood registry is widely accepted by the medical community, and therefore physicians and others in the health care community may be less willing to use or recommend a private cord blood facility.

Other Applicable Laws

In addition to those described above, other federal and state laws and regulations that could directly or indirectly affect our ability to operate the business and/or financial performance include:

- State and local licensure, registration and regulation of laboratories, the processing and storage of human cells and tissue, and the development and manufacture of pharmaceuticals and biologics;
- Other laws and regulations administered by the United States Food and Drug Administration, including the Federal Food Drug and Cosmetic Act and related laws and regulations and the Public Health Service Act and related laws and regulations;
- Laws and regulations administered by the United States Department of Health and Human Services, including the Office for Human Research Protections;
- State laws and regulations governing human subject research;
- Federal and state coverage and reimbursement laws and regulations, including laws and regulations administered by the Centers for Medicare & Medicaid Services and state Medicaid agencies;
- The federal Medicare and Medicaid Anti-Kickback Law and similar state laws and regulations;
- The federal physician self-referral prohibition commonly known as the Stark Law, and state equivalents of the Stark Law;
- Occupational Safety and Health ("OSHA") requirements;
- State and local laws and regulations dealing with the handling and disposal of medical waste; and
- The Intermediate Sanctions rules of the IRS providing for potential financial sanctions with respect to "Excess Benefit Transactions" with HUMC or other tax-exempt organizations.

Enactment of Comprehensive Health Care Reform

In late March 2010, the Federal government enacted a comprehensive health care reform package which consists of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("Health Reform"). Among other provisions, the Health Reform imposes individual and employer health insurance requirements, provides certain insurance subsidies (e.g., premiums and cost sharing), mandates extensive insurance market reforms, creates new health insurance access points (e.g., State-based health insurance exchanges), expands the Medicaid program, promotes research on comparative clinical effectiveness of different technologies and procedures, and makes a number of changes to how products and services will be reimbursed by the Medicare program. Amendments to the Federal False Claims Act under Health Reform have made it easier for private parties to bring "qui tam" (whistleblower) lawsuits against companies, under which the whistleblower may be entitled to receive a percentage of any money paid to the government.

There are a number of provisions in the Health Reform that may directly impact our customers and, therefore, indirectly affect us. For example, the Health Reform expands the number of individuals that will be covered by either private or public health insurance, which may, in turn, increase the pool of potential purchasers for our customers' products to the extent they are reimbursable by private or public health insurance. The Health Reform also requires health insurance issuers in the individual and small group markets

to cover certain "essential health benefits," which include prescription drugs and which may increase coverage for our customers' products. In addition, the Health Reform reduces income and raises costs for our customers through, for instance, the imposition of drug price discounts for Medicare Part D enrollees in the "donut hole" and the imposition of an annual fee on prescription drug and biologic manufacturers. Such provisions may cause our customers to seek to restrain costs in other areas, including the services which we provide.

The Health Reform also authorizes the FDA to approve biosimilar products (sometimes referred to as "generic" biologic products). The new law established a period of 12 years of data exclusivity for the original, reference products in order to preserve incentives for future innovation. The statute also sets forth approval standards for biosimilars, which require a demonstration of biosimilarity via analytical and clinical studies, as well as similarities in the products' conditions for use, route of administration, and other factors. With the introduction of a pathway for the approval of biosimilars in the United States, demand for our services may increase.

The effective dates of the various provisions within the Health Reform are staggered over the next several years, with some changes occurring immediately. Much of the interpretation of the Health Reform will be subject to administrative rulemaking, the development of agency guidance, and court interpretation. Therefore, the consequences of the Health Reform on PCT's services are unknown and speculative at this point.

Regenerative Medicine – China

We believe that in China, we can accelerate research, the development of stem cell-based therapies, and the creation of intellectual property positions in the stem cell field because of China's regulatory and scientific environment and its culture, which are more readily accepting of stem cell-based therapies. Additionally, China has a large population with a rapidly growing middle and upper class who are interested in regenerative medicine and can afford such services. Accordingly, in 2009, we expanded our operations and markets to include China through the creation of a separate stem cell business unit.

Our China stem cell-based initiatives will be led by U.S. researchers and physicians in collaboration with experts in China for each clinical application to be pursued. We believe that this collaborative approach, and our expansion into China, will create commercial, financial and scientific opportunities that, ultimately, will generate increased revenues for us.

Our current stem cell-based initiatives in China include:

- developing a pipeline of regenerative medicine therapies, initially focused on orthopedic conditions;
- developing wellness, cosmetic and anti-aging applications; and
- participating in the medical tourism market for regenerative medical treatments; and
- engaging in research and development designed to improve and expand our service and product offerings both in the U.S. and in China by leveraging China's more favorable regulatory environment

Because certain PRC regulations currently restrict foreign entities from holding certain licenses and controlling certain businesses in China, we have created a wholly foreign-owned entity, or WFOE, NeoStem (China), Inc., or NeoStem (China), to implement our expansion initiatives in China. Additionally, to comply with China's foreign investment regulations with respect to stem cell-related activities, these business initiatives in China are conducted via two Chinese domestic entities, Qingdao Neo Bio-Technology Ltd.,or Neo Bio-Technology, and Beijing Ruijieao Bio-Technology Ltd., or Beijing Ruijieao, that are controlled by the WFOE through various contractual arrangements. See "PRC Corporate Legal Structure and Government Regulation" below.

Orthopedic Therapies

We advanced our regenerative medicine business in China, in March 2009, by acquiring an exclusive license for Asia to use an innovative process that expands a patient's own adult stem cells and treats a variety

of musculoskeletal diseases, including osteoarthritis, meniscus tears of the knee, avascular necrosis and bulging lumbar discs. This technology was developed by a Colorado-based company. Our license agreement includes the provision of consulting services to us in the area of stem cell-based orthopedic therapies for the Asia market. We believe that the integration of our peripheral blood collection process into this licensed procedure may enhance its marketability. The figure below demonstrates the regenerative effect of stem cells in these indications.

To provide orthopedic-related stem cell-based services, we are establishing a network of hospitals to offer these orthopedic treatments in China. In June 2010, we launched a collaboration with Wendeng Hospital, which will be the first of such hospitals. Neo Bio-Technology entered into a five-year cooperation agreement with Wendeng Hospital to treat patients and conduct clinical research regarding the application of autologous stem cells for the treatment of a variety of orthopedic conditions. Wendeng Hospital is considered to be one of the leading specialty orthopedic hospitals in China, with close to 90% of its in-patient capacity dedicated to orthopedic cases. In December 2010, we entered into an additional hospital cooperation agreement with Shijiazhuang Third Hospital, located in Shijiazhuang, Hebei Province, approximately 170 miles south of Beijing. Shijiazhuang Third Hospital has 800 beds, 350 of which are dedicated to orthopedics. Shijiazhuang Third Hospital specializes in orthopedics with extensive experience in spinal, joint, and hand and foot surgeries. It also boasts a highly regarded orthopedic trauma emergency room.

We expect to enter into yet another hospital collaboration agreement in mid 2011 as we continue to expand our China network.

In the third quarter of 2010, Weihai Municipal Price Bureau, the local authority in charge of pricing for public medical services in China, approved the pricing for our single-side and bilateral arthroscopic orthopedic autologous adult stem cell based treatment as administered at Wendeng Orthopedic Hospital and approved Wendeng Hospital's application for reimbursement for up to 80% of the cost of the orthopedic procedure under the new technology category.

Wellness, Cosmetic & Anti-Aging

NeoStem is reassessing how it will approach its Wellness, Cosmetic & Anti-Aging program in China.Wein-licensed technology from Vincent Giampapa, M.D., in February 2009, and have been working with him to develop a program that utilizes some of the products and therapies, including stem cell-based therapies and health supplements, that he offers to his patients in the U.S. for wellness, cosmetic and anti-aging applications. One of the key initial anticipated therapies is an autologous adult stem cell-based skin rejuvenation therapy as is currently offered in Taiwan as part of an arrangement with Enhance Biomedical Holding. The license agreement with Dr. Giampapa is intended to advance our regenerative medicine business in China by our acquisition of a world-wide, exclusive license to certain innovative stem cell technology and applications for cosmetic facial and body procedures and skin rejuvenation. This supplements a three-year agreement that Dr. Giampapa entered into with us in January 2009 where he agreed to provide us with consulting services in the anti-aging area. In collaboration with Dr. Giampapa, we intend to assist our partners to develop and launch a range of cosmetic and anti-aging applications in China.

Consulting and Royalty Agreement

In June 2009, we signed an agreement, or the Network Agreement, with Enhance BioMedical Holdings Limited, or Enhance BioMedical, a Shanghai corporation and subsidiary of Enhance Holding Corporation, a multinational conglomerate with businesses in various market sectors including healthcare. Pursuant to the Network Agreement, Enhance Biomedical will help us develop an adult stem cell collection and treatment network using our proprietary stem cell technologies in Shanghai and Taiwan as well as the Chinese provinces

of Jiangsu, Zhejiang, Fujian, Anhui and Jiangxi, or the Network Territory. Enhance BioMedical has healthcare provider relationships with numerous hospitals and doctors in the Network Territory. It also operates the Anti-Aging and Prevention Medical Center in Taipei, Taiwan, with facilities focused on stem cell research and development and anti-aging therapies. As of March 15, 2011, Enhance BioMedical was the beneficial owner of approximately 9.7% of our common stock.

The Network Agreement is a ten-year, exclusive, royalty bearing agreement pursuant to which we will provide Enhance BioMedical with the training, technical, and other assistance required for it to offer stem cell-based therapies. Subject to certain terms and conditions, the Network Agreement is renewable for a subsequent ten-year term at the option of Enhance BioMedical. This agreement also gives us the option, until June 2014, to acquire up to a 20% fully diluted equity interest in Enhance BioMedical. We will receive certain milestone payments as well as be entitled to a stated royalty on Enhance BioMedical's revenues derived from these stem cell-based therapies. Under the Network Agreement, Enhance BioMedical has the exclusive right to utilize our proprietary adult stem cell technologies identified by us to provide adult stem cell services and therapies in the Network Territory.

In June 2010 Enhance Biomedical launched adult stem cell collection and storage activities and cosmetic and anti-aging therapies in Taiwan under our Network Agreement. We are discussing ways to work more closely together to expand the anti-aging and cosmetic business throughout the PRC.

Medical Tourism

"Medical tourism" is defined as the process of travelling from home for treatment abroad or elsewhere domestically. A large segment of the individuals participating in medical tourism seek access to medical therapies not currently available or affordable in their home countries. The World Bank estimates that medical tourism will be a $10 billion industry by 2011. In 2007, approximately 750,000 Americans traveled outside the U.S. to obtain medical treatment, a number which is expected by many to grow significantly over time.

Since our inception, we have been building relationships with physicians in the U.S. and abroad who have developed advanced therapies using autologous stem cells. China, specifically, is fast emerging as a desirable destination for individuals seeking medical care in a wide range of medical specialities, including cardiology, neurology, orthopedics and others. As a result, a number of leading private and government hospitals in major Chinese cities have established medical tourism departments to provide treatment to international patients using advanced Western medical technology and techniques, including stem cell-based therapies. In addition to capitalizing on this trend as a potential driver for our collection and storage business, we plan to work with specialty hospitals and physicians in China and elsewhere to make cell-based therapies available for these medical tourism patients.

Research and Development

In May 2009, Neo Bio-Technology leased space from Beijing Zhongguancum Life Science Park Development Corp., Ltd. to be used for a world-class storage facility in Beijing, China or the Beijing Facility, that will be equipped to provide comprehensive adult stem cell collection, processing and storage capabilities, and a laboratory to support a number of our therapeutic programs. This lease was assigned to NeoStem (China) in February 2010.

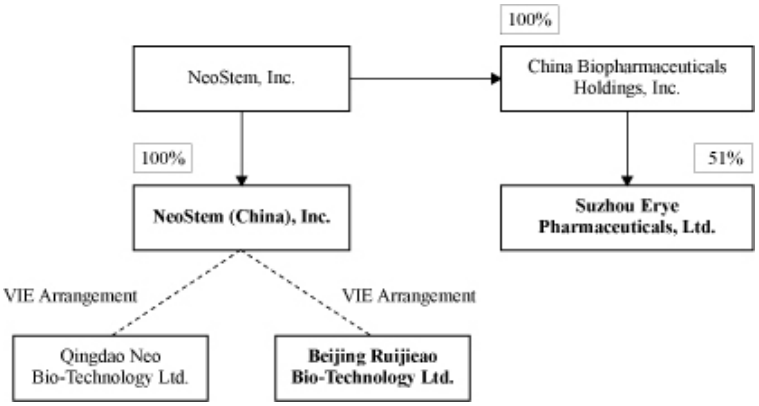
In order to implement the establishment of the Beijing Facility, as of December 31, 2009, our Company, our WFOE subsidiary NeoStem (China), and PCT, entered into an agreement, whereby NeoStem and NeoStem (China) engaged PCT to perform the services necessary (1) to construct the Beijing Facility, consisting of a clean room for adult stem cell clinical trial processing and other stem cell collections which will have the processing capacity on an annual basis sufficient for at least 10,000 samples, research and development laboratory space, collection and stem cell storage area and offices, together with the furnishings and equipment, and (2) to effect the installation of quality control systems consisting of materials management, equipment maintenance and calibration, environmental monitoring and compliance and adult stem cell processing and preservation which comply with cGMP standards and regulatory standards that would be applicable in the United States under GTP standards, as well as all regulatory requirements applicable to the program under the laws of the PRC.

The Beijing Facility is located at the Life Science Innovation Center, Life Science Park, Zhongguancum, Beijing. The aggregate projected cost of the program, including the Phase 1 equipment purchases, is expected to be approximately $3,000,000. The project commenced on April 1, 2010 and construction was completed on schedule by year-end. With the PCT business, the program will change slightly to assist their clients to expand into China.

PRC Corporate Legal Structure and Government Regulation

We conduct our operations in the PRC through two distinct corporate structures: (i) our China adult stem cell operations (which constitute part of our Therapeutics Division, as described above) are conducted through contractual arrangements that our wholly foreign-owned entity, or WFOE, NeoStem (China) has with two variable interest entities, or VIEs, Qingdao Neo Bio-Technology Ltd. and Beijing Ruijieao Biotechnology Ltd., and (ii) our China pharmaceutical business unit (which constitutes our Pharmaceutical Manufacturing Division, as further described below) is conducted though our 51% ownership interest in Erye.

The following diagram summarizes the corporate structure of our operations in the PRC:



Because certain PRC regulations currently restrict or prohibit foreign-invested entities from holding certain licenses and controlling businesses in certain industries in China, we created the WFOE, NeoStem (China), to implement our expansion objectives in China. NeoStem (China) may engage in the research and development, transfer and technological consultation service of bio-technology, regenerative medical technology and anti-aging technology, excluding the development or application of human stem cell, gene diagnosis and treatment technologies; consultation of economic information; import, export and wholesaling of machinery and equipment (the import and export do not involve the goods specifically stipulated in/by state-operated trade, import and export quota license, export quota bidding, export permit, etc.). To comply with China's foreign investment prohibition on stem cell research and development, clinical trials and related activities, this business is conducted via two VIEs: Neo Bio-Technology and Beijing Ruijieao, each a Chinese domestic company controlled by NeoStem (China) through the VIE documents. Under the VIE documents, the shareholders of the VIEs are required to transfer their ownership interests in these entities to NeoStem (China) in China in the event Chinese laws and regulations allow foreign investors to hold ownership interests in the VIEs, or to our designees at any time for the amount of, to the extent permitted by Chinese laws, the outstanding loans to the VIE shareholders. The shareholders of the VIEs have entrusted us to appoint the directors and senior management personnel of the VIEs on their behalf. Through NeoStem (China), we have entered into exclusive technical and management service agreements and other service agreements with the VIEs, under which NeoStem (China) is providing technical and management services to the VIEs in exchange for substantially all net income of the VIEs. In addition, shareholders of the VIEs have pledged their equity interests in the VIEs to NeoStem (China) as collateral for non-payment of loans or for fees on technical and management services due to us.

PHARMACEUTICAL MANUFACTURING – CHINA

We believe that China currently affords a unique opportunity to grow our revenues on an accelerated basis. In order to enter this market, we completed the merger with China Biopharmaceuticals Holdings, Inc. ("CBH"), on October 30, 2009 (the "Erye Merger"), the net effect of which was the acquisition by us of a 51% ownership interest in Erye. Our current senior executive management team at Erye, Mr. Shi, Chairman, and Madame Zhang, General Manager, joined Erye in 1998, who in conjunction with others bought it from the PRC government in 2003 and, in the years that followed, transformed it into a profitable private enterprise. Erye had approximately 835 employees as of December 31, 2010, of which approximately 526 were full-time.

The Erye Merger was consummated pursuant to the terms of an Agreement and Plan of Merger, dated November 2, 2008, as amended (the "Erye Merger Agreement"). Pursuant to the Erye Merger Agreement, on October 30, 2009, CBH merged with and into our wholly owned subsidiary. Following the Erye Merger, Erye Economy and Trading Co. Ltd. ("EET"), an entity controlled by management of Erye, continued to own the remaining 49% ownership interest in Erye.

An amended joint venture agreement and articles of association of Erye was approved by the requisite PRC governmental authorities on or about December 28, 2009 (the "Joint Venture Agreement"). Under the Joint Venture Agreement, for 2010 and approximately the next two years (i) 49% of net profit, after tax, will be distributed to EET (which owns the remaining 49% of Erye), and loaned back to Erye for use in connection with its construction of the new Erye facility; (ii) 45% of the net profit after tax will be provided to Erye as part of the new facility construction fund, which will be characterized as paid-in capital for our 51% interest in Erye; and (iii) only 6% of the net profit will be distributed to us directly for our operating expenses.

Erye was founded more than 50 years ago and represents an established, vertically-integrated pharmaceutical business, focused primarily on the manufacturing and sale of antibiotics. Historically, Erye has concentrated its efforts on the manufacturing and distribution of generic antibiotic products and has received more than 160 production certificates from the SFDA covering both antibiotic prescription drugs and active pharmaceutical intermediates, or APIs. Erye's revenue for 2009 and 2010 was approximately $61.4 million and $72.6 million, respectively.

Our Pharmaceutical Manufacturing – China reportable segment consists of our interest in the Erye business.

Industry

China has a large population with a rapidly growing demand for pharmaceutical drugs and has committed to providing increased governmental insurance to provide a larger segment of the population greater access to pharmaceuticals. The antibiotics market in China was approximately $8.8 billion in 2007, with an annual average growth rate of approximately 24 percent for the previous three years. The overall pharmaceuticals market in China is forecasted to reach $78 billion by 2013, becoming the third largest drug market in the world behind the U.S. and Japan.

In early 2009, the PRC government announced that improving healthcare for its citizens would be a major priority and China's State Council approved the spending of $124 billion on its healthcare system between 2009 and 2011. This spending initiative, coupled with a population approaching 1.4 billion, makes China a large market opportunity for pharmaceutical drugs. As part of this initiative, China has created the New Rural and Urban Cooperative Medical Insurance System. More than 70% of the drugs produced by Erye are covered under this new medical insurance system.

Products

Erye offers a broad portfolio of anti-infective drugs, with no single product accounting for more than 10% of total revenues for 2010. In 2010, approximately seven of the top 20 antibiotics used in Chinese hospitals were products offered by Erye. Erye's top ten products, by revenue, for 2010, are set forth in the following table:

Product Name	Product Type	% of Sales
Acetylspiramycin	API	5%
Cefamandole Natate for injection (0.5g)	Injectible Finished Product	4%
Oxacillin Sodium	API	4%
Amoxicillin/Sulbactum Sodium for injection	Injectible Finished Product	4%
Cefamandole Natate for injection (1.0g)	Injectible Finished Product	4%
Mezlocillin sodium for injection	Injectible Finished Product	4%
Amoxicillin & Clavulanate Potassium sodium	Injectible Finished Product	3%
Azlocillin sodium	API	3%
Ceftizoxime sodium for injection (0.5g)	Injectible Finished Product	3%
Ceftizoxime sodium for injection (1.0g)	Injectible Finished Product	3%

Erye is currently focused on bringing more differentiated and higher-margin product offerings to its portfolio.

Distribution/Customers

In China, consumers generally receive prescription drugs through hospitals. Antibiotics are distributed almost exclusively through hospitals. Since pharmaceutical manufacturers in China are not permitted to sell directly to hospitals, it is essential to have an effective and extensive distributor network. Erye's distributor network covers all of mainland China's provinces and municipalities and generates sales principally through three channels:

- exclusive distributors of prescription drugs, referred to as "co-sales teams": this distribution channel handles the clinical promotion and distribution of differentiated, higher-margin product lines, within exclusive province-based and municipality-based territories;
- non-exclusive distributors of prescription drugs: this distribution channel is devoted to selling established product lines that require little, if any, clinical promotion; and
- exclusive distributors of APIs: this distribution channel is devoted to selling APIs to large pharmaceutical manufacturers nationwide.

Erye has an internal sales and marketing team of more than 40 individuals that supervise the distributor network, assist with clinical promotions and manage hospital relationships. Many of Erye's sales executives have long-term experience in pharmaceutical sales and previously held sales positions with state-owned pharmaceutical companies, where they established long-standing relationships with large distribution centers in several key regions nationwide and, in particular, within the Yangzi River Triangle.

Production Facilities

Erye currently operates a production facility in the City of Suzhou, containing approximately 33,490 square meters of offices, dormitories, a food court, warehouse and production facilities, including eight (cGMP) production lines certified by the SFDA, workshops and laboratory areas.

In 2005, the PRC government issued a mandate requiring the relocation of many of Erye's existing manufacturing facilities. The government mandate did not require Erye to relocate by any specific date. In order to comply with this mandate and to meet the growing demands of its business, Erye acquired land use rights to approximately 27 acres in the Xiangcheng District of Suzhou and, in 2007, commenced the construction of a new, state-of-the-art production facility. This new campus-style facility includes 16 buildings containing a total of approximately 53,186 square meters of space, for which the external building

construction has been completed. Most elements of the project have been completed and put into service in 2010 and the relocation is expected to be completed in 2011. The land use rights end in 2057.

Erye began transferring its operations in January 2010. The relocation is continuing as the new production lines are completed and receive cGMP certification through 2011. In January 2010, Erye received notification that the SFDA has approved Erye's application for cGMP certification to manufacture solvent crystallization sterile penicillin and freeze dried raw sterile penicillin at the new facility, which provides 50% and 100% greater manufacturing capacity, respectively, than its existing facility. In 2010, these two lines have accounted for approximately more than 90% of Erye's sales. In June 2010, Erye passed the government inspection by the SFDA to manufacture penicillin and cephalosporin powder at the new facility. The facility is fully operational with respect to these lines. Coupled with the approval of the lines in January 2010, Erye has relocated lines representing 90% of its 2010 sales to the new facility.

Once Erye has completed the transfer of operations to the new facilities, and its new production lines are fully operational, it will have substantially increased capacity from the current plant, with the goal of becoming among the largest antibiotics producers in Eastern China. Such dominant market position should allow us to take advantage of the expected growth and spending in this segment of the market. We recognize that there will be continuous price pressure on Erye as over 70% of the manufactured drugs are on the essential drug list. There has recently been evidence of such price pressure – i.e., on March 2, 2011 the National Development and Reform Commission issued price cuts for medical insurance drugs which substantially impacts two of Erye'drugs. We anticipate that Piperacillin Sodium Sulbactam Sodium will experience as much as a 50% price decline while the price of Ligustrazine Phosphate may be reduced by approximately 75%. In 2010 Piperacillin Sodium Sulbactum Sodium accounted for approximately 3% of sales and Ligustrazine Phosphate accounted for approximately 2.5% of sales.

Our U.S. based management team intends to work closely with the management of Erye to identify new pharmaceutical product candidates to further accelerate revenue growth. We believe that our ownership in Erye, and the expansion of our stem cell business into China, will create commercial, financial and scientific opportunities to significantly grow our business.

The total cost of the new facility is estimated to be approximately $38 million, of which approximately $34 million has been paid for through December 31, 2010. The remaining $4 million is expected to be funded from Erye's operating cash flow. To this end, the owners of Erye have agreed to reinvest a substantial portion of their respective shares of the earnings of Erye to pay the costs associated with the completion of, and Erye's relocation to, the new production facility.

Research and Development — Product Pipeline

Erye provides a well-established and capable platform and network for the introduction of pharmaceuticals, and other health-related products, to the vast domestic patient and consumer markets in China.

Currently, Erye has seven new drug candidates in its pipeline, at varying stages of the development and commercialization process. Applications for production certificates for four of these drug candidates have been submitted to the SFDA, and two – Omeprazole capsules and Cloxacillin Sodium sterile API – have been approved in 2010. (Omeprazole was launched in February 2010 and Cloxacillin is expected to launch in 2011.) The remaining two (Adefovir capsules and ADI and Clindamycin Phosphate injection) are pending approval by the SFDA. Erye also has three candidates in clinical trials that could be considered "new drugs" in China, including Faropenem sodium API, Faropenem tablets, a broad spectrum antibiotic, and Tiopronin enteric-coated capsules, used to prevent kidney stones.

Erye's recent track record for obtaining SFDA production certificates includes seven certificates in 2007, four certificates in 2008, four certificates in 2009 (including Omeprazole capsules) and one certificate in 2010.

In addition to research and development regarding new prescription drugs, we plan to expand Erye's product pipeline with health supplements and nutraceutical products. We believe that the expansive markets in China present opportunities for these products and that Erye already has extensive capabilities to accelerate product distribution.

Governmental Regulation – Pharmaceutical Manufacturing – China

As we expand into China, we expect to rely upon the experience of Erye as well as certain of our other PRC advisors and consultants with the Drug Administration Law of China, which governs the licensing, manufacturing, marketing and distribution of pharmaceutical products in China. Additionally, our operations are subject to various PRC regulations and permit systems.

The application and approval procedure in China for a newly-developed drug product is nearly as detailed and lengthy as that for U.S. new drug applicants, requiring the documentation of pharmacological studies, toxicity studies and pharmacokinetics and drug metabolism (PKDM) studies and new drug samples. Documentation and samples are then submitted to a provincial food and drug administration, or the provincial FDA. The provincial FDA sends its officials to the applicant to check the applicant's research and development facilities and to arrange a new drug examination committee meeting for approval deliberations. This process usually takes three months. After the documentation and samples are approved by the provincial FDA, the provincial FDA will submit the approved documentation and samples to the SFDA. The SFDA examines the documentation and tests the samples and arranges a new drug examination committee meeting for approval deliberations. If the application is approved by the SFDA, the SFDA will issue a clinical trial license to the applicant allowing the applicant to conduct human clinical trials. The clinical trial license approval typically takes one year. The applicant completes the clinical trial process and prepares documentation and files submitted to the SFDA for new drug approval. The clinical trial process usually takes one or two years depending on the category and class of the new drug. The SFDA examines the documentation and gives final approval for the new drug and issues the new drug license to the applicant. This process usually takes 8 months. As a result, the entire process for new drug approval, from start to finish, usually takes three to four years.

The PRC government is in the process of reviewing its industry policies relating to the pharmaceutical industry and, as a part of this review, has been reviewing drug permits and licenses that have been issued. As of now, Erye maintains good standing of its drug permits and licenses. Although the PRC government has published regulations regarding stem cell clinical applications, there is currently not implemented guidance. Without guidance, it is difficult to definitively know how the regulations are to be implemented.

Competition – Pharmaceutical Business In China

Pharmaceutical operations in China are still at an early stage of development due to heavy state involvement in the past. However, competition from China-based drug manufacturing companies is growing rapidly. Our direct competitors are domestic pharmaceutical companies and new drug research and development institutes such as Harbin Pharmaceutical Group Holding Co., Ltd., Shanghai Asia Pioneer Pharmaceutical Co., Ltd, Shandong Lukang Pharmaceutical Co., Ltd., Shandong Luoxin Pharmacy Stock Co. Ltd., China Pharma Holdings, China Biologic Products, China Sky One Medical, Sinovac Biotech and Tianyin Pharma. We also face competition from foreign companies who have strong proprietary pipelines and strong financial resources.

INTELLECTUAL PROPERTY

We aggressively are seeking international patent protection for our own technologies, as well as those technologies to which we have an exclusive license. The following is a brief overview of the patent estate, issued and pending, to which NeoStem claims ownership or prosecutorial rights through exclusive license:

We acquired and are prosecuting one pending U.S. patent application which had been filed by our predecessor, NS California. This patent application is intended to cover the process by which stem cells from the bone marrow are mobilized, isolated from adult peripheral blood and stored. In addition, we have filed a patent application covering low-dose, short course, cytokine induction of stem cell mobilization. NeoStem has filed two additional Patent Corporation Treaty patent applications, which have also been filed in Taiwan, claiming methods of isolating adult stem cells using various proprietary techniques.

Pursuant to our license agreement covering the VSEL ^{TM} Technology, we acquired the exclusive, world-wide license to technology and know-how relating to very small embryonic-like stem cells. Patent applications regarding this technology are pending in the U.S., China and Europe. These patent applications relate to certain methods of isolating, collecting and using very small embryonic-like stem cells.

Pursuant to our license agreement with Vincent Giampapa, M.D., we have an exclusive, world-wide license to technology and know-how relating to methods and compositions for the restoration of age-related tissue loss. There is presently one issued U.S. patent, one pending U.S. patent application, one pending PCT application and one pending patent application in Taiwan, relating to age related tissue loss to which NeoStem has entitlement.

Pursuant to our license agreement with Vincent Falanga, M.D., we have an exclusive, world-wide license to technology and know-how relating to the use of autologous mesenchymal stem cells to treat wounds. NeoStem has the rights to several pending patent applications in the U.S., Europe and China relating to wound healing with stem cells.

Pursuant to our license agreement with Regenerative Sciences, LLC, we have an exclusive license in Asia to technology and know-how, all relating to the isolation and use of mesenchymal stem cells in orthopedic indications. NeoStem has several pending patent applications in Asia (China, Japan, Korea and Hong Kong) for methods and compositions relating to bone and cartilage repair using stem cells.

Through our ownership of PCT, we own an 80% interest in Athelos, a company that has secured exclusive world-wide rights to a broad patent estate comprised of approximately 30 issued patents and approximately 50 pending patent applications owned by major U.S. academic institutions. Those patent rights relate to regulatory T cell compositions, the in vitro culture of regulatory T cells and methods of treating or preventing certain conditions and/or diseases by use of regulatory T cells, as well as certain materials known as artificial antigen presenting cells. Most patent families within the estate have been filed in the U.S. and under the Patent Cooperation Treaty pursuant to which they have been/are being nationalized in other countries, generally including Australia, Japan, Europe, China, Canada, or some combination thereof.

The government approval procedure in China for the filing, consideration and approval of new patent applications is as follows: The applicant prepares documentation and sends the application to the State Intellectual Property Office of China, or SIPO, usually through patent application agencies. The application is then examined by SIPO. If the application is approved, SIPO issues and release a patent illustration book for challenges by competing claimants. Once the illustration book is issued, the patent is protected. Within a three-year period, depending on different categories of the patent, if there are no challenges against the patent, the SIPO will issue a patent license to the applicant.

There can be no assurance that any of our patent applications will ultimately issue as patents, or that, should patents issue, they will be found valid if contested in litigation. The patent positions of biotechnology companies are highly uncertain and involve complex legal, scientific and factual questions, the answers to which cannot be predicted with certainty.

EMPLOYEES

As of February 28, 2011, NeoStem had approximately 611 full-time and approximately 313 part-time employees, of which approximately 89 are employees of NeoStem or its wholly-owned subsidiaries, and the rest work at Erye. None of our employees are covered by a collective bargaining agreement. All of Erye's employees are located in Jiangsu Province, China. Although a significant number of Erye's employees have employment contracts, none of the employees are covered by a collective bargaining agreement. It is anticipated with the relocation of the Erye plant, there will be some attrition of employees though it will not have a significant impact on Erye. In addition, Neo Bio-Technology and Beijing Ruijieao, our two VIEs in China, had a total of 23 full-time employees.

CORPORATE INFORMATION

Our principal executive offices are located at 420 Lexington Avenue, Suite 450, New York, New York 10170, and our telephone number is (212) 584-4180. We maintain a corporate website at *www.neostem.com*. The contents of our website are not part of this report and should not be relied upon in connection herewith.

NeoStem, Inc. ("we," "NeoStem" or "the Company") was incorporated under the laws of the State of Delaware in September 1980 under the name Fidelity Medical Services, Inc. and commenced operations in the adult stem cell collection, processing and storage services business in January 2006.

ITEM 1A. RISK FACTORS

THE RISKS DESCRIBED BELOW ARE NOT THE ONLY RISKS FACING THE COMPANY. ADDITIONAL RISKS THAT WE DO NOT YET KNOW OF OR THAT WE CURRENTLY THINK ARE IMMATERIAL MAY ALSO IMPAIR OUR BUSINESS OPERATIONS. THE FOLLOWING RISK FACTORS SHOULD BE CONSIDERED CAREFULLY, IN ADDITION TO THE OTHER INFORMATION CONTAINED IN THIS ANNUAL REPORT ON FORM 10-K AND THE DOCUMENTS INCORPORATED HEREIN BY REFERENCE. THE STATEMENTS CONTAINED IN OR INCORPORATED BY REFERENCE INTO THIS ANNUAL REPORT ON FORM 10-K THAT ARE NOT HISTORIC FACTS ARE FORWARD-LOOKING STATEMENTS THAT ARE SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE SET FORTH IN OR IMPLIED BY FORWARD-LOOKING STATEMENTS. IF ANY OF THE RISKS OCCUR, OUR BUSINESS STRATEGY, FINANCIAL CONDITION OR OPERATING RESULTS COULD BE ADVERSELY AFFECTED.

RISK FACTORS

Our business, financial condition, operating results and cash flows can be affected by a number of factors, including, but not limited to, those set forth below, any one of which could cause our actual results to vary materially from recent results or from our anticipated future results. The risks described below are not the only ones we face, but those we currently consider to be material. There may be other risks which we now consider immaterial, or which are unknown or unpredictable, with respect to our business, our competition, the regulatory environment or otherwise that could have a material adverse effect on our business.

Risks Related to Our Financial Condition

We are a company with a limited operating history and have incurred substantial losses and negative cash flow from operations in the past, and expect to continue to incur losses and negative cash flow for the near term.

We are a company with a limited operating history, limited capital, and limited sources of revenue. Since our inception in 1980, we have incurred net losses of approximately $95.3 million through December 31, 2010. We incurred net losses attributable to common shareholders of approximately $23.5 million for the year ended December 31, 2010, approximately $31.8 million for the year ended December 31, 2009 and approximately $9.2 million for the year ended December 31, 2008, and we expect to incur additional operating losses and negative cash flow in the future. The revenues from our Therapeutics Division are not sufficient to cover costs attributable to that business. We expect to incur losses and negative cash flow for the foreseeable future as a result of our activities under license and sponsored research agreements relating to our VSEL™ Technology and other research and development efforts to advance stem cell and other therapeutics, both in the U.S. and China. We also expect to continue to incur significant expenses related to sales, marketing, general and administrative and product research and development in connection with the development of our business.

Although Erye, a Chinese pharmaceutical company in which we acquired a 51% interest, had revenues of approximately $69.6 million for the year ended December 31, 2010 and $11.4 million in revenues for the year ended December 31, 2009 (this reflects Erye's operations for the two months ended December 31, 2009 since the acquisition was effective October 30, 2009), it has only a limited history of earnings. Moreover, Erye is expected to incur significant expenses in the near term due to: (1) costs related to stabilizing and streamlining its operations; (2) costs related to the relocation of its production operations to a new facility; (3) research and development costs related to new drug projects; and (4) costs related to expanding its existing sales network for new drug distribution. Pursuant to the current joint venture agreement that governs the ownership and management of Erye, or the Joint Venture Agreement, for 2010 and approximately the next two years (i) 49% of undistributed profits, after tax, will be distributed to Suzhou Erye Economy and Trading Co. Ltd., or EET, which owns the remaining 49% of Erye, and loaned back to Erye for use in connection with its construction of the new Erye facility; (ii) 45% of the net profit after tax due to the Company will be provided to Erye as part of the new facility construction fund, which will be characterized as paid-in capital for our 51% interest in Erye; and (iii) only 6% of the net profit will be distributed to us directly for our operating expenses. As a result, we will not be able to supplement our cash flow fully from the income expected to be generated by Erye.

PCT became a wholly-owned subsidiary of NeoStem on January 19, 2011, upon the closing of the PCT Merger. PCT has not generated any significant amount of revenue nor been profitable in any quarter since inception.

We cannot provide any assurance that we will generate a profit from our operations in the near future to fund our growth.

If we are unable to manage the growth of our business, our prospects may be limited and the results of our operations and ability to continue as a going concern may be materially and adversely affected.

We intend to expand our sales and marketing programs, manufacturing capacity, and portfolios of innovative stem cell-based therapies and pharmaceutical products to meet future demand in the U.S. and China. Any significant expansion may strain our managerial, financial and other resources. If we are unable to manage our growth, our business, operating results and financial condition could be materially adversely affected. We will need to continually improve our operations, financial and other internal systems to manage our growth effectively, and any failure to do so may result in slower growth, diminished operating results and a failure to achieve profitability, which would materially and adversely affect our ability to continue as a going concern.

We will need additional funding, and there is no certainty that we will be able to obtain such financing. If our capital requirements are not met, our business may be adversely affected.

We will need additional financing to fund ongoing operations. Additional financing may not be available when needed or may not be available on acceptable terms. If adequate funds are not available, our business, results of operations and financial condition could be adversely affected.

The first mortgage on the Allendale facility of our PCT subsidiary contains various covenants that limit PCT's ability to take certain actions and PCT's failure to comply with any of the covenants could have a material adverse effect on our business and financial condition.

The first of the two mortgages on PCT's Allendale facility contains debt coverage and total debt to tangible net worth financial covenants which limit PCT's ability to incur additional debt and make capital expenditures. Historically, PCT has not been able to meet the debt to tangible net worth covenant and PCT did not meet it at December 31, 2010. While the bank has been willing to waive compliance in the past, no assurance can be given that the bank will continue to waive such compliance in the future.

Acquisitions intended to grow our business may expose us to additional risks.

We will continue to review acquisition prospects and other reorganizing activities that could complement or streamline our current business, increase the size and geographic scope of our operations or otherwise offer revenue generating or other growth opportunities. Any increase in debt in connection with an acquisition could result in increased interest expense. Additionally, acquisitions may dilute the interests of our stockholders, place additional constraints on our available cash and entail other risks, including: difficulties in assimilating acquired operations, technologies or products; the loss of key employees from acquired businesses; diversion of management's attention from our core business; risks of successor liability for unknown claims; and risks of entering markets, including international markets, in which we have limited or no prior experience.

A significant portion of our PCT sudsidiary's current revenues are derived from a small number of customers.

PCT's billings for the years ended December 31, 2010 and 2009 are concentrated with three customers. These three customers make up 18%, 15% and 12% of billings (a total of 45% for all three) for the year ended December 31, 2010 and 18%, 15% and 12% of billings (a total of 45% for all three) for the year ended December 31, 2009. One of these is a related party. The loss of one or more of these customers or material changes to the contracts with or payment terms of these customers may result in significant business downturn through reduced revenues, reduced cash flows, and delays in revenues or cash flows, and such delays or reductions could have a material impact on our future revenue growth and profitability.

Risks Related to Cell Therapy — United States

Cell therapy is still a developing field and a significant global market for our services has yet to emerge.

Cell therapy is still a developing area of research, with few cell therapy products approved for clinical use. At the PCT level, the current market and current contracts principally consist of providing manufacturing of cell and tissue-based therapeutic products in clinical trial and processing of stem cell products for transplantation programs. We also provide services related to the collection and storage of umbilical cord blood units and adult stem cells. There currently is no significant global market for stem cell processing or their collection and storage, nor is there any guarantee that such markets will develop in the near future. Major medical institutions currently do not recommend private storage generally, and we believe that the medical community is supportive of the public cord blood collective system. Patients can donate their cord blood to the system without charge. The market for cell and tissue-based therapies is early-stage, substantially research oriented, and financially speculative. Very few companies have been successful in their efforts to develop and commercialize a stem cell product. Stem cell products in general may be susceptible to various risks, including undesirable and unintended side effects, unintended immune system responses, inadequate therapeutic efficacy, or other characteristics that may prevent or limit their approval or commercial use. The demand for stem cell processing and the number of people who may use cell or tissue-based therapies is difficult to forecast. As there are no real experts who can forecast this market with accuracy, there is limited data from which the future use of our services may be forecasted. Our success is dependent on the establishment of a large global market for our products and services and our ability to capture a share of this market.

The University of Louisville has the ability to exercise significant influence over the future development of our VSEL ^{TM} Technology.

The terms of our exclusive license of the VSEL ^{TM} Technology from the University of Louisville provide for a collaborative approach on development decisions. For example, should we seek to collaborate with a third party on the VSEL ^{TM} Technology programs, prior approval of the University of Louisville would be required for any sublicensing agreement. There can be no assurance they would grant approval for decisions requiring their consent. In addition, we entered into a sponsored research agreement with the University of Louisville, pursuant to which they perform certain research activities for us. Accordingly, although we engage in our own independent research and development activities with respect to the VSEL ^{TM} Technology and have entered into additional sponsored research agreements, we are highly dependent on the University's cooperation and performance in developing the VSEL ^{TM} Technology. Further, the VSEL^{TM} Technology license agreement requires the payment of certain license fees, royalties and milestone payments, payments for patent filings and applications and the use of due diligence in developing and commercializing the VSEL ^{TM} Technology. The sponsored research agreement requires other periodic payments. Our failure to meet our financial or other obligations under the license or sponsored research agreement in a timely manner could result in the loss of some or all of our rights to proprietary technology, such as the loss of exclusive rights or even termination of the agreements, and/or we could lose our right to have the University of Louisville conduct research and development efforts on our behalf.

We have a very limited history of conducting our own research and development activities.

To support our own research and development activities for our VSEL ^{TM} Technology and other stem cell technologies, in September 2009 we signed a lease for approximately 8,000 square feet of office and laboratory space in Cambridge, Massachusetts that has served as our research and development headquarters. The Company is assessing its need for the Cambridge facility going forward given the acquisition of PCT with its Allendale, NJ and Mountain View, CA facilities. No assurance can be given that we will find a subtenant. To pursue our business strategy, we must have in place appropriate research capabilities, either on our own or through relationships with third parties. There can be no assurance that we will be successful in these efforts. Our additional research and development capacity also will require adequate sources of funding. There can be no assurance that any of these development efforts will produce a successful product or technology. Our failure to develop new products would have a material adverse effect on our business, operating results and financial condition.

Even if we are successful in developing a therapeutic application using our VSEL ™ Technology or other potential stem cell technologies, we still may be unsuccessful in creating a commercially viable and profitable business.

The commercial viability of our VSEL ™ Technology and other stem cell technologies may depend upon our ability to successfully expand the number of stem cells collected through adult stem cell collection processes in order to achieve a therapeutically-viable dose. Today, the number of very small embryonic-like stem cells that can be isolated from the peripheral blood of an adult donor is relatively small and this volume of cells may not be sufficient for therapeutic applications. A critical component of our adult stem cell collection, processing and storage services relating to the VSEL ™ Technology and other potential stem cell technologies could therefore be the utilization of stem cell expansion processes. There are many biotechnology laboratories attempting to develop stem cell expansion technology, but to date stem cell expansion techniques remain very inefficient. There can be no assurance that such technology will be effective or available at all. The failure of cost effective and reliable expansion technologies to become available could severely limit the commercial opportunities of our VSEL™ Technology programs and other potential stem cell technologies and limit our business prospects, which could have a material adverse effect on our business, operating results and financial condition.

Moreover, stem cell collection techniques are rapidly developing and could undergo significant change in the future. Such rapid technological development could result in our technologies becoming obsolete. Successful biotechnology development in general is highly uncertain and is dependent on numerous factors, many of which are beyond our control. While our VSEL ™ Technology and other stem cell technologies appear promising, such technologies may fail to be successfully commercialized for numerous reasons, including, but not limited to, competing technologies for the same indication. There can be no assurance that we will be able to develop a commercially successful therapeutic application for this technology or other potential stem cell technologies.

Our research and development activities using adult stem cells in therapeutic indications present additional risks.

Our research and development activities relating to our VSEL ™ Technology and other populations of adult stem cells are subject to many of the same risks as our stem cell collection, processing and storage business, and additional risks related to requirements for preclinical and clinical testing by regulatory authorities including the United States Food and Drug Administration, or FDA, to demonstrate the safety and efficacy of the underlying therapy. The development of new drugs and therapies is often a long, expensive and difficult process and most attempts fail. Our VSEL ™ Technology is in the very early stages of development and will require many steps, tests and processes before we will be able to commence clinical testing in humans. There can be no assurance that a biologics license application, or BLA, with the FDA will not be required for our VSEL™ Technology or our other stem cell technologies. The approval process for a BLA can take years, require human clinical trials and cost several million dollars. There also can be no assurance that we independently, or through collaborations, will successfully develop, commercialize or market our VSEL ™ Technology or other stem cells for any therapeutic indication. Should we fail to develop our VSEL ™ Technology or other adult stem cell technologies pursued by us, our business prospects, operating results and financial condition will be materially and adversely affected.

Technological and medical developments or improvements in conventional therapies could render the use of stem cells and our services and planned products obsolete.

Advances in other treatment methods or in disease prevention techniques could significantly reduce or entirely eliminate the need for our stem cell services, planned products and therapeutic efforts. Additionally, technological or medical developments may materially alter the commercial viability of our technology or services, and require us to incur significant costs to replace or modify equipment in which we have a substantial investment. In either event, we may experience a material adverse effect on our business, operating results and financial condition.

If safety problems are encountered by us or others developing new stem cell-based therapies, our stem cell initiatives could be materially and adversely affected.

The use of stem cells for therapeutic indications is still in the very early stages of development. If an adverse event occurs during clinical trials related to one of our product candidates or those of others, the FDA and other regulatory authorities may halt our clinical trials or require additional studies. The occurrence of any of these events would delay, and increase the cost of, our product development and may render the commercialization of our product candidates impractical or impossible.

Future therapies using adult stem cells may not develop, and demand for adult stem cell collection, processing and storage may never develop.

The value of our stem cell collection, processing and storage business and our development programs could be significantly impaired, and our ability to become profitable and continue our business could be materially and adversely affected, if cell therapies under development by us or by others to treat disease are not proven effective, demonstrate unacceptable risks or side effects or, where required, fail to receive regulatory approval. The therapeutic application of stem cells to treat serious diseases is currently being explored using adult stem cells like those that are the focus of our business, as well as embryonic stem cells. Cells collected and used for the same individual are referred to as autologous cells and those collected from an individual who is not the user of the cells are referred to as allogeneic cells. To our knowledge, the only allowed therapeutic uses of stem cells in the U.S., other than in connection with clinical trials, involves hematopoietic stem cell transplants to treat certain types of blood-based cancers (hematopoietic stem cells are the stem cells from which all blood cells are made) and adult autologous cultured cartilage cells for implantation for the repair of symptomatic cartilage defects of the femoral condyle (the distal end of the femur). No other stem cell therapeutic products have received regulatory approval for sale in the U.S. While stem cell-based therapy has been reported to be susceptible to various risks, including some undesirable side effects and immune system responses, these problems have been primarily associated with allogeneic use. Inadequate therapeutic efficacy also is a risk that may prevent or limit approval or commercial use of adult stem cells, whether for autologous use or allogeneic use. In addition, the time and cost necessary to complete the clinical development and to obtain regulatory approval of new therapies using stems cells are expected to be significant.

The demand for our services depends in part on our customers' research and development and marketing efforts. Our business, financial condition and results of operations may be harmed if our customers spend less on, or are less successful in, these activities.

Many of our customers are engaged in research, development, production and marketing. The amount of customer spending on research, development, production and marketing has a large impact on our revenues and profitability, particularly the amount customers choose to spend on outsourcing. Customers determine the amounts that they will spend based upon, among other things, available resources and their need to develop new products, which, in turn, is dependent upon a number of factors, including their competitors' research, development and production initiatives, and the anticipated reimbursement scenarios for specific products and therapeutic areas. In addition, consolidation in the industries in which our customers operate may have an impact on such spending as customers integrate acquired operations, including research and development departments and their budgets. Our customers finance their research and development spending from private and public sources. A reduction in spending by our customers could have a material adverse effect on our business, financial condition and results of operations. If our customers are not successful in attaining or retaining product sales due to market conditions, reimbursement issues or other factors, our results of operations may be materially impacted.

The nature and duration of our contracts can yield varying revenues and profits.

Our contracts with customers may be subject to repeated renegotiation and amendments which change the objectives of our work and the milestones which determine when revenues are received by us. Due to the fact that our customers are engaged in businesses that are in many instances experimental, the objectives of such customer relationships with us are subject to change as customer research and development and business models develop. Additionally, most of these customers are subject to regulatory controls and approval processes over their businesses and products. If such customers fail to comply with such processes or do not

receive necessary approvals, we may be required to alter or halt the activities for which such customers have contracted with us. Each of these factors may have an adverse affect on our revenues.

Side effects or limitations of our stem cell collection process or a failure in the performance of the cryopreservation storage facility or systems of our service providers could harm our reputation and business.

Customers may experience adverse outcomes from our adult stem cell collection and storage process. These include: (i) the possibility of an infection acquired from the aphereis process, which is the process of extracting stem cells from a patient's whole blood and it is an integral part of our collection process; (ii) collection of insufficient quantities of stem cells for therapeutic applications; (iii) failure of the equipment supporting our cryopreservation storage service to function properly and thus maintain a supply of usable adult stem cells; and (iv) specimen damage, including contamination or loss in transit to us. Should any of these events occur, our reputation could be harmed, our operations could be adversely affected and litigation could be filed against us. Our systems and operations are vulnerable to damage or interruption from fire, flood, equipment failure, break-ins, tornadoes and similar events for which we do not have redundant systems or a formal disaster recovery plan. Any claim of adverse side effects or limitations or material disruption in our ability to maintain continued uninterrupted storage systems could have a material adverse effect on our business, operating results and financial condition.

Our adult stem cell collection, processing and storage business was not contemplated by many existing laws and regulations, and our ongoing compliance, therefore, is subject to interpretation and risk.

Our adult stem cell collection, processing and storage service is not a medical treatment, although it involves medical procedures. Our stem cell-related business is relatively new and is not addressed by many of the regulations applicable to our field. As a result, there is often considerable uncertainty as to the applicability of regulatory requirements. Although we have devoted significant resources to ensuring compliance with those laws that we believe to be applicable, it is possible that regulators may disagree with our interpretations, prompting additional compliance requirements or even enforcement actions.

We believe that the adult stem cells collected, processed and stored through our collection services are properly classified under the FDA's human cells, tissues and cellular- and tissue-based products, or HCT/P, regulatory paradigm and should not be classified as a medical device, biologic or drug. There can be no assurance that the FDA will not reclassify the adult stem cells collected, processed and stored through our collection services. Any such reclassification could have adverse consequences for us and make it more difficult or expensive for us to conduct our business by requiring regulatory clearance, approval and/or compliance with additional regulatory requirements.

The costs of compliance with such additional requirements or such enforcement may have a material adverse effect on our operations or may require restructuring of our operations or impair our ability to operate profitably.

We operate in a highly regulated environment and may be unable to comply with applicable federal and state regulations, registrations and approvals or the standards of private accrediting entities. Failure to comply with applicable licensure, registration, certification, and accreditation standards may result in loss of licensure, certification or accreditation or other government enforcement actions.

Since January of 2004, registration with the FDA is required by facilities engaged in the recovery, processing, storage, labeling, packaging or distribution of any HCT/Ps, or the screening or testing of a donor. Any third party retained by us to process our samples must be similarly registered with the FDA and comply with HCT/P regulations. If we, or any third-party processors, fail to register or update registration information in a timely way, we will be out of compliance with FDA regulations which could adversely affect our business. The FDA also adopted rules in May 2005 that regulate current Good Tissues Practices, or cGTP. Adverse events in the field of stem cell therapy that may occur could result in greater governmental regulation of our business, creating increased expenses and potential delays relating to the approval or licensing of any or all of the processes and facilities involved in our stem cell collection and storage services.

Though not implicated for our adult stem cell collection services, our manufacture of certain cellular therapy products for ourselves or on behalf of our customers may trigger additional FDA requirements

applicable to HCT/Ps, or products comprised of HCT/Ps, which are regulated as a drug, biological product, or medical device. FDA current Good Manufacturing Practices, or cGMP, requirements, set forth in Title 21, Parts 210 and 211, of the Code of Federal Regulations (21 C.F.R. Pts. 210 and 211) are federal regulations that govern the manufacture, processing, packaging and holding of drug and cell therapy products. We must comply with cGMP requirements demanded by customers and enforced by the FDA through its facilities inspection program. These requirements include quality control, quality assurance and the maintenance of records and documentation. We may be unable to comply with these cGMP requirements and with other FDA, state and foreign regulatory requirements. These requirements may change over time and we or third-party manufacturers may be unable to comply with the revised requirements.

We also are subject to state and federal laws regulating the proper disposal of biohazardous materials. Although we believe we are currently in compliance with all such applicable laws, a violation of such laws, or the future enactment of more stringent laws or regulations, could subject us to liability for noncompliance and may require us to incur significant costs.

Some states impose additional regulation and oversight of clinical laboratories and stem cell laboratories operating within their borders and impose regulatory compliance obligations on out-of-state laboratories providing services to their residents. Many of the states in which we, our strategic partners or members of our collection network, engage in collection, processing or storage activities have licensing requirements with which we must comply. Additionally, there may be state regulations affecting the use of HCT/Ps that would affect our business. Certain licensing requirements require employment of medical directors and others with certain training and technical backgrounds and there can be no assurance that such individuals can be retained or will remain retained or that the cost of retaining such individuals will not materially and adversely affect our ability to market or perform our services or our ability to do so profitably. There can be no assurance that we, our strategic partners or members of our collection center network, will be able to obtain or maintain any necessary licenses required to conduct business in any states or that the cost of compliance will not materially and adversely affect our ability to market or perform our services or our ability to do so profitably.

Currently, PCT is licensed as a blood bank with respect to its activities in New Jersey, as a tissue bank with respect to its activities in New York and as a drug manufacturer with respect to its facility in California. We believe that PCT and DomaniCell are in material compliance with current federal, state, and local stem cell laboratory licensure requirements. However, the licensing requirements in the states where we are currently licensed may change, and PCT and/or DomaniCell may become subject to the additional licensing, registration and/or compliance requirements of other states, local governments and/or the federal government as PCT and/or DomaniCell expands its network and as new regulations are implemented. If we fail to comply with the various licensure requirements, certification and accreditation standards to which we are subject, we may be subject to a loss of licensure, certification, or accreditation that could adversely affect them.

Additionally, certain private entities have promulgated standards for certification, accreditation and licensing of cord blood businesses that may apply to our operations. These organizations include, but may not be limited to, AABB, formerly the American Association of Blood Banks, the Foundation for the Accreditation of Cellular Therapy (FACT), and the American Association of Tissue Banks (AATB). While our compliance with the standards of these organizations currently are voluntary, in some cases compliance with such standards may be necessary for a cord blood business to be accepted and competitive in the marketplace. Compliance with these standards and obtaining the applicable accreditation, certification, or license from such private organizations can be costly and time-consuming. These accreditation, certification, or license requirements may also change and new standards may be developed. If we fail to comply with applicable standards, or fail to obtain or maintain applicable accreditations, certifications, or licenses, our business may be adversely affected.

There can be no assurance that we will be able, or will have the resources, to continue to comply with regulations that govern our operations currently, or that we will be able to comply with new regulations that govern our operations, or that the cost of compliance will not materially and adversely affect our ability to market or perform our services or our ability to do so profitably. A failure to comply with these requirements may result in fines and civil or criminal penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any materials supplied

by third parties is compromised due to their failure to adhere to applicable laws or for other reasons, we may not be able to obtain regulatory approval for, or successfully commercialize, product candidates that we may develop.

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, requires that our business comply with state and federal privacy laws which increase the cost and administrative burden of providing stem cell banking services.

We are subject to state and federal privacy laws related to the protection of our customers' personal health information and state and federal laws related to the security of such personal health information and other personal data to which we would have access through the provision of our services. Currently, we are obligated to comply with privacy and security standards adopted under HIPAA. Certain of these regulatory obligations will be changing over the next year as a result of amendments to HIPAA under the American Recovery and Reinvestment Act of 2009. Consequently, our compliance burden will increase, and we will be subject to audit and enforcement by the federal government and, in some cases, enforcement by state authorities. We will also be obligated to publicly disclose wrongful disclosures or losses of personal health information. We may be required to spend substantial amounts of time and money to comply with these requirements, any regulations and licensing requirements, as well as any future legislative and regulatory initiatives. Failure by us or our business partners to comply with these or other applicable regulatory requirements or any delay in compliance may result in, among other things, injunctions, operating restrictions, and civil fines and criminal prosecution and have a material adverse effect on the marketing and sales of our services and our ability to operate profitably or at all.

We have limited manufacturing capabilities.

We believe that we can provide services and produce materials for clinical trials and for human use at our existing facilities, which we believe are compliant with FDA requirements for cGMP and cGTP. We also believe that we have sufficient capacity to meet expected near term demand. However, we may need to, depending on demand, expand our manufacturing capabilities for cell therapy services and products in the future. In 2007, PCT acquired an additional facility in Allendale, New Jersey, which became a cGMP compliant facility in 2010. The demand for our services and products could, at times, exceed existing manufacturing capacity. If we do not meet rising demand for products and services on a timely basis or are not able to maintain cGMP compliance standards, then our clients and potential clients may elect to obtain the products and services from competitors, which could materially and adversely affect our revenues.

If our processing and storage facilities are damaged or destroyed, our business, programs, and prospects could be negatively affected and could adversely affect our value.

We process and store adult autologous stem cells from our network of U.S. adult stem cell collection centers and the umbilical cord blood of customers of DomaniCell at PCT's facility in Allendale, New Jersey, and may do so at PCT's Mountain View, California, facility in the future. We also process and store cellular therapy products for clinical trials at PCT's facility in Allendale, New Jersey, and may do so at PCT's Mountain View, California, facility. If these facilities or the equipment in these facilities was to be significantly damaged or destroyed, we could suffer a loss of some or all of the stored adult autologous stem cells, cord blood units, and cellular therapy products . Depending on the extent of loss, such an event could reduce the ability of us, DomaniCell, and PCT to provide stem cells when requested, could expose us, DomaniCell, and PCT to significant liability from our customers, and could affect the ability to continue to provide adult autologous stem cells and umbilical cord blood preservation services and manufacturing of cellular therapy services and products. While we believe that we have insured against losses from damage to or destruction of our facilities consistent with typical industry practices, if we have underestimated our insurance needs, we may not have sufficient insurance to cover losses beyond the limits on its policies. Such events could have a material adverse effect on our value.

We and our customers conduct business in a heavily regulated industry. If we or one or more of our customers fail to comply with applicable current and future laws and government regulations, our business and financial results could be adversely affected.

The healthcare industry is one of the most highly regulated industries in the United States. The federal government, individual state and local governments and private accreditation organizations all oversee and monitor the activities of individuals and businesses engaged in the delivery of health care products and services. Current laws, rules and regulations that could directly or indirectly affect our ability and the ability of our strategic partners and customers to operate each of their businesses could include, without limitation, the following:

- State and local licensure, registration and regulation of laboratories, the collection, processing and storage of human cells and tissue and cord blood, and the development and manufacture of pharmaceuticals and biologics;
- The federal Clinical Laboratory Improvement Act and amendments of 1988;
- Laws and regulations administered by the FDA, including the Federal Food Drug and Cosmetic Act and related laws and regulations;
- The Public Health Service Act and related laws and regulations;
- Laws and regulations administered by the United States Department of Health and Human Services, including the Office for Human Research Protections;
- State laws and regulations governing human subject research;
- Occupational Safety and Health requirements;
- State and local laws and regulations dealing with the handling and disposal of medical waste;
- The federal Medicare and Medicaid Anti-Kickback Law and similar state laws and regulations;
- Federal and state coverage and reimbursement laws and regulations, including laws and regulations administered by the Centers for Medicare & Medicaid Services;
- The federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the amendments included in the American Recovery and Reinvestment Act of 2009, commonly known as the HITECH Act, and regulations promulgated thereunder;
- The federal physician self-referral prohibition, commonly known as the Stark Law, and state equivalents of the Stark Law;
- State funding decisions on stem cell research and the development of cellular therapies; and
- The Intermediate Sanctions rules of the IRS providing for potential financial sanctions with respect to “Excess Benefit Transactions” with HUMC or other tax-exempt organizations.

In addition, as we expand into other parts of the world (in addition to China), we will need to comply with the applicable laws and regulations in such foreign jurisdictions. We have not yet thoroughly explored the requirements or feasibility of such compliance. It is possible that we may not be permitted to expand our business into one or more foreign jurisdictions.

Although we intend to conduct our business in compliance with applicable laws and regulations and believe that we are in material compliance with applicable governmental healthcare laws and regulations, the laws and regulations affecting our business and relationships are complex, and many aspects of such relationships have not been the subject of judicial or regulatory interpretation. Furthermore, the cell therapy industry is the topic of significant government interest, and thus the laws and regulations applicable to us and our strategic partners and customers and to their business are subject to frequent change and/or reinterpretation and there can be no assurance that the laws and regulations applicable to us and our strategic partners and customers will not be amended or interpreted in a manner that adversely affects our business, financial condition, or operating results. For example, the federal government could issue tighter restrictions on private

cord blood banking that prevents DomaniCell from collecting cord blood for private banking. While we are not aware of any such developments or that any court or federal or state government is reviewing our operations, it is possible that such a review could result in a determination that would have a material adverse effect on our business, financial condition and operating results. Thus, there can be no assurance that we and our strategic partners and customers will be able to maintain compliance with all such healthcare laws and regulations. Failure to comply with such healthcare laws and regulations, as well as the costs associated with such compliance or with enforcement of such healthcare laws and regulations, may have a material adverse effect on our operations or may require restructuring of our operations or impair our ability to operate profitably.

It is uncertain to what extent the government, private health insurers and third-party payors will approve coverage or provide reimbursement for the therapies and products to which our services relate. Availability for such reimbursement may be further limited by an increasing uninsured population and reductions in Medicare and Medicaid funding in the United States.

To the extent that the health care provider customers cannot obtain coverage or reimbursement for our therapies and products, they may elect not to provide such therapies and products to their patients and, thus, may not need our services. Further, as cost containment pressures are increasing in the health care industry, government and private payors adopt strategies designed to limit the amount of reimbursement paid to health care providers. Such cost containment measures may include:

- Reducing reimbursement rates;
- Challenging the prices charged for medical products and services;
- Limiting services covered;
- Decreasing utilization of services;
- Negotiating prospective or discounted contract pricing;
- Adopting capitation strategies; and
- Seeking competitive bids.

Similarly, the trend toward managed health care and bundled pricing for health care services in the United States, which may accelerate under the health reform legislation approved by Congress on March 23, 2010 and thereafter signed into law ("Health Reform"), could significantly influence the purchase of healthcare services and products, resulting in lower prices and reduced demand for cancer therapies.

We currently receive a small portion of our revenues from services rendered to patients enrolled in federal health care programs, such as Medicare, and we may also directly or indirectly receive revenues from federal health care programs. Federal health care programs are subject to changes in coverage and reimbursement rules and procedures, including retroactive rate adjustments. These contingencies could materially decrease the range of services covered by such programs or the reimbursement rates paid directly or indirectly for our products and services. To the extent that any health care reform favors the reimbursement of other cancer therapies over stem cell therapies, such reform could affect our ability to sell our services, which may have a material adverse effect on our revenues.

The limitation on reimbursement available from private and government payors may reduce the demand for, or the price of, our services, which would have a material adverse effect on our revenues. Additional legislation or regulation relating to the health care industry or third-party coverage and reimbursement may be enacted in the future which could adversely affect the revenues generated from the sale of our products and services.

Furthermore, there has been a trend in recent years towards reductions in overall funding for Medicare and Medicaid. There has also been an increase in the number of people who do not have any form of health care coverage in recent years and who are not eligible for or enrolled in Medicare, Medicaid or other governmental programs. The extent to which the reforms brought about under Health Reform may be successful in reducing the number of such uninsured is unclear, and the reduced funding of governmental programs and increase in uninsured populations could have a negative impact on the demand for our services to the extent they relate to products and services which are reimbursed by government and private payors.

Health care companies have been the subjects of federal and state investigations, and we could become subject to investigations in the future.

Both federal and state government agencies have heightened civil and criminal enforcement efforts. There are numerous ongoing investigations of health care companies, as well as their executives and managers. In addition, amendments to the Federal False Claims Act, including under Health Reform, have made it easier for private parties to bring " *qui tam*" (whistleblower) lawsuits against companies under which the whistleblower may be entitled to receive a percentage of any money paid to the government. The Federal False Claims Act provides, in part, that an action can be brought against any person or entity that has knowingly presented, or caused to be presented, a false or fraudulent request for payment from the federal government, or who has made a false statement or used a false record to get a claim approved. The government has taken the position that claims presented in violation of the federal anti-kickback law, Stark Law or other healthcare-related laws, including laws enforced by the FDA, may be considered a violation of the Federal False Claims Act. Penalties include substantial fines for each false claim, plus three times the amount of damages that the federal government sustained because of the act of that person or entity and/or exclusion from the Medicare program. In addition, a majority of states have adopted similar state whistleblower and false claims provisions.

We are not aware of any government investigations involving any of our facilities or management. While management believes that we are in material compliance with applicable governmental healthcare laws and regulations, any future investigations of our business or executives could cause us to incur substantial costs, and result in significant liabilities or penalties, as well as damage to our reputation.

Unintended consequences of recently adopted health reform legislation in the U.S. may adversely affect our business.

The healthcare industry is undergoing fundamental changes resulting from political, economic and regulatory influences. In the U.S., comprehensive programs are under consideration that seek to, among other things, increase access to healthcare for the uninsured and control the escalation of healthcare expenditures within the economy. On March 23, 2010, health reform legislation was approved by Congress and has been signed into law. While we do not believe this legislation will have a direct impact on our business, the legislation has only recently been enacted and requires the adoption of implementing regulations, which may have unintended consequences or indirectly impact our business. For instance, the scope and implications of the recent amendments pursuant to the Fraud Enforcement and Recovery Act of 2009 ("FERA"), have yet to be fully determined or adjudicated and as a result it is difficult to predict how future enforcement initiatives may impact our business. Also, in some instances our clients may be health insurers that will be subject to limitations on their administrative expenses and new federal review of "unreasonable" rate increases which could impact the prices they pay for our services. If the legislation causes such unintended consequences or indirect impact, it could have a material adverse effect on our business, financial condition and results of operations.

Recent legislation regarding the establishment and funding of public cord blood collection and storage may adversely affect the business of DomaniCell.

The Stem Cell Therapeutic and Research Act of 2005 established requirements for a national donor bank of cord blood and for a national network for matching cord blood to patients. The federal government has entered into contracts with the National Marrow Donor Program (NMDP) to carry out the provisions of this legislation. Under these contracts, the NMDP acts as the nation's Cord Blood Coordinating Center and actively recruits parents for cord blood donations. The NMDP also administers the National Cord Blood Inventory (NCBI), which has a goal of collecting 150,000 cord blood units that may be used for patients throughout the United States. The legislation also authorized federal funding to support its goals and requirements. Parents may opt to donate their newborn's cord blood to the public registry and to use the public registry if stem cells from cord blood are needed for treatment purposes. In this regard, an important advantage of the national, public cord blood collection system is that it costs nothing for patients to donate their cord blood. This national, public cord blood registry has also been widely accepted and supported by the medical community, so physicians and others in the health care community may be less willing to use or recommend a private cord blood facility when public collection is available. Additionally, major medical

organizations, including the American Academy of Pediatrics (AAP), the American Medical Association (AMA), the American College of Obstetricians and Gynecologists (ACOG), and the American Society of Blood and Marrow Transplantation (ASBMT) do not recommend private storage, except in very limited instances. Further, we believe that the medical community is currently supportive of public cord blood donation and the national cord blood registry that is administered by the National Marrow Donor Program. For these reasons, a significant number of patients may choose to use to donate their cord blood to the national, public cord registry instead of privately banking cord blood. The medical community could also issue stronger recommendations and opinions that favor the use of the national registry. Therefore, the existence and proliferation of the national registry may adversely affect our business.

The market for services related to the preservation and expansion of stem cells has become increasingly competitive. Our competitors may have greater resources or capabilities or better technologies than do we, or may succeed in developing better service than do we and we may not be successful in competing with them.

The biotechnology and life science industries are highly competitive. They include multinational biotechnology and life science, pharmaceutical and chemical companies, academic and scientific institutions, governmental agencies, and public and private research organizations. Many of these companies or entities have significantly greater financial and technical resources and production and marketing capabilities than do we. The biotechnology and life science industries are characterized by extensive research and development, and rapid technological progress. Competitors may successfully develop services or products superior or less expensive than cell therapy services or products, rendering our services less valuable or marketable.

Historically, we have faced competition from other established operators of stem cell preservation businesses and providers of stem cell storage services. Today, there is an established and growing market for cord blood stem cell banking. We are also aware of another company with established stem cell banking services that processes and stores stem cells collected from adipose, or fat, tissue. This type of stem cell banking requires harvesting fat by a liposuction procedure. Embryonic stem cells represent yet another alternative to adult stem cells. As techniques for expanding stem cells improve, thereby allowing therapeutic doses, the use of embryonic stem cells and other collection techniques of adult stem cells could increase and compete with our services. Finally, we are aware that other technologies are being developed to turn skin cells into cells that behave like embryonic stem cells or to harvest stem cells from the pulp of baby teeth. While these and other approaches remain in early stages of development, they may one day be competitive.

In addition, competitor cord blood banks, such as ViaCord or LifebankUSA, easily could enter the field of adult stem cell collection because of their pre-existing processing labs, storage facilities and customer lists. We estimate that there are approximately 53 cord blood banks in the U.S., approximately 33 of which are autologous, meaning that the donor and recipient are the same, and approximately 20 of which are allogeneic, meaning that the donor and recipient are not the same. Hospitals that have transplant centers to serve patients may elect to provide some or all of the services that we provide. We estimate that there are approximately 168 hospitals in the U.S. with stem cell transplant centers. These competitors may have better experience and greater financial, marketing, technical and research resources, name recognition, and market presence than we do. In addition, other established companies may enter our markets and compete with us. There can be no assurance that we will be able to compete successfully.

The private umbilical cord banking business is a relatively new, highly competitive, and evolving field. DomaniCell competes with companies such as ViaCell, Inc., a subsidiary of the Perkin-Elmer Corporation, CBR Systems, Cryo-Cell International, Inc., CorCell, Inc., a subsidiary of Cord Blood America Inc., and LifeBank USA, a division of Celgene Cellular Therapeutics, a wholly owned subsidiary of Celgene Corporation. Any of these companies may choose to invest more in sales, marketing, and research and product development than DomaniCell.

DomaniCell will also have to compete with the national, public cord blood banking program, which has the support of the medical community and which receives federal funding. In this regard, DomaniCell also competes with public cord blood banks such as the New York Blood Center (National Cord Blood Program), University of Colorado Cord Blood Bank, Milan Cord Blood Bank, Dusseldorf Cord Blood Bank, and other public cord blood banks around the world. Public cord blood banks provide families with the option of

donating their cord blood for public use at no cost. The Stem Cell Therapeutic Act provides financing for a national system of public cord blood banks in the United States to encourage cord blood donations from an ethnically diverse population. In addition, many states are evaluating the feasibility of establishing cord blood repositories for transplantation purposes. An increase in the number and diversity of publicly available cord blood units from public banks would increase the probability of finding suitably matched cells for a family member, which may result in a decrease in the demand for private cord blood banking. If the science of human leukocyte antigens, or HLA, typing advances, then unrelated cord blood transplantation may become safer and more efficacious, similarly reducing the clinical advantage of related cord blood transplantation. Such events could negatively affect our business and revenues.

Ethical and other concerns surrounding the use of stem cell therapy may negatively impact the public perception of our stem cell services, thereby suppressing demand for our services.

Although our stem cell business pertains to adult stem cells only, and does not involve the more controversial use of embryonic stem cells, the use of adult human stem cells for therapy could give rise to similar ethical, legal and social issues as those associated with embryonic stem cells, which could adversely affect its acceptance by consumers and medical practitioners. Additionally, it is possible that our business could be negatively impacted by any stigma associated with the use of embryonic stem cells if the public fails to appreciate the distinction between adult and embryonic stem cells. Delays in achieving public acceptance may materially and adversely affect the results of our operations and profitability.

Building market acceptance of our U.S. autologous adult stem cell collection, processing and storage services, may be more costly and take longer than we expect.

The success of our U.S. autologous adult stem cell business depends on continuing and growing market acceptance of our collection, processing and storage services as well as stem cell therapy generally. Increasing the awareness and demand for our services requires expenditures for marketing and education of consumers and medical practitioners who, under present law, must order stem cell collection and treatment on behalf of a potential customer. The time and expense required to educate and to build awareness of our services and their potential benefits, and about stem cell therapy in general, could significantly delay market acceptance and our ultimate profitability. The successful commercialization of our services will also require that we satisfactorily address the concerns of medical practitioners in order to avoid resistance to recommendations for our services and ultimately reach our potential consumers. No assurances can be given that our business plan and marketing efforts will be successful, that we will be able to commercialize our services, or that there will be market or clinical acceptance of our services by potential customers or physicians, respectively, sufficient to generate any material revenues for us. To date, only a minimal number of collections have been performed at the collection centers in our network.

Technologies for the treatment of cancer and other diseases and processes used by us are subject to rapid change, and the development of treatment strategies that are more effective than our products and services could render our services obsolete. Given our focus on the field of cell therapy, such obsolescence could jeopardize our success or future results.

Our activities involve treatment modalities and protocols influenced by advancements in technology. Various methods for treating cancer and other diseases, of which cell therapy is but only one, currently are, and in the future may be expected to be, the subject of extensive research and development. There is no assurance that cell therapies will achieve the degree of success envisioned by us in the treatment of cancer and other diseases. Nor is there any assurance that new technological improvements and techniques will not render processes currently used by us obsolete. In addition, the successful development and acceptance of any one or more alternative forms of treatment could render the need for our services obsolete. We are focused on cell therapy, and if this field is substantially unsuccessful, this could jeopardize our success or future results.

There is a scarcity of experienced professionals in the field of cell therapy and we may not be able to retain key officers or employees or hire new key officers or employees needed to implement our business strategy and develop our products and businesses. If we are unable to retain or hire key officers or employees, we may be unable to continue to grow this business or to implement our business strategy, and our business may be materially and adversely affected.

Given the specialized nature of cell therapy and the fact that it is a young field, there is an inherent scarcity of experienced personnel in the field. The Company is substantially dependent on the skills and efforts of current senior management for their management and operations, as well as for the implementation of their business strategy. As a result of the difficulty in locating qualified new management, the loss or incapacity of existing members of management or unavailability of qualified management or as replacements for management who resign or are terminated could adversely affect the Company's operations. The future success of the Company also depends upon our ability to attract and retain additional qualified personnel (including medical, scientific, technical, commercial, business and administrative personnel) necessary to support our anticipated growth, develop our business, perform contractual obligations under our University of Louisville and other license agreements and maintain appropriate licensure, on acceptable terms. There can be no assurance that we will be successful in attracting or retaining personnel required by us to continue and grow our operations. The loss of a key employee, the failure of a key employee to perform in his or her current position or our inability to attract and retain skilled employees, as needed, could result in our inability of to continue to grow our business or to implement our business strategy, or may have a material adverse effect on our business, financial condition and operating results.

Current cell therapy products have a limited biologic shelf life as a result of which there are constraints on transit times between the time stem cells are extracted from a patient and the time that a processed product leaves our facility and arrives for re-infusion in the patient. Thus, our current business model has to assume that, in order to effectively provide many of our services in a market, we need to have a suitable facility that can provide timely service in such market. This could add significantly to our capital requirements and be a limiting factor on our future growth and profitability.

Current cell therapy products have a limited shelf life, in certain instances limited to less than 12 hours. Thus, there are constraints on transit times between the time the cell product is extracted from a patient and the product arrives at one of our facilities for processing, as well as constraints on the time that a processed product leaves our facility and arrives for re-infusion in the patient. Therefore, cell therapy facilities need to be located in major population centers in which patients of the cell therapy products are likely to be located and within close proximity of major airports from which they can be timely delivered. Building new facilities requires significant commitments of time and capital, which we may not have available in a timely manner. Even if such new facilities are established, there may be challenges to ensuring that they are compliant with cGMP, other FDA requirements, and/or applicable state or local regulatory requirements. We cannot be certain that we would be able to recoup the costs of establishing a facility and attaining regulatory compliances in a given market. Thus, the limited biologic shelf life of cell therapy products is a hindrance on the rate at which we can expand our cell processing and manufacturing services into new geographic markets and requires significant capital risk by us, which we may or may not be able to recover.

Commercially available transportation systems are not set up for shipment of biological or other perishable goods and will not be able to meet the demands of the emerging cell therapy market. To succeed, the large-scale commercialization of cell therapy products will need to overcome the present weaknesses of the major air carriers.

Weaknesses in our existing transportation carriers include the lack of a true point-to-point chain of control, non-controlled X-ray and inspection, no guarantee of package orientation, handling or storage conditions and in many cases no standard, documented and tracked operating procedures. While reliable ground carriers with experience in the transport of blood products already exist in major metropolitan areas of the country, air carriers meeting such needs are limited. We evaluated the major domestic express carriers, and concluded that even their highest-level services are inadequate to meet the sector's needs. However, we identified and validated only one specialty air carrier as a transportation partner, which specializes in shipping medical products, including whole blood and blood products, tissue for transplantation, and diagnostic specimens. There

are presently few alternative sources for the safe transportation of cell therapy products. If this carrier should cease its medical shipping operations or otherwise be unable to properly meet our transportation needs, the lack of access to safe and effective transportation options could adversely affect our business.

Failure of the PCT Merger to achieve potential benefits could harm the business and operating results of the Company.

We expect that the combination of the respective businesses of PCT and NeoStem will result in potential benefits for our Company. Achieving these potential benefits will depend on a number of factors, some of which include:

- retention of key management, marketing and technical personnel;
- the ability of the Company to increase its customer base and to increase the sales of products and services; and
- competitive conditions in the industry surrounding the collection, processing, and storage of stem cells.

The failure to achieve anticipated benefits could harm the business, financial condition and operating results of the Company.

We may experience difficulties in integrating PCT's business and could fail to realize the potential benefits of the PCT Merger.

Achieving the anticipated benefits of the PCT Merger will depend in part upon whether we are able to integrate PCT's business in an efficient and effective manner. We may not be able to accomplish this integration process smoothly or successfully. The difficulties of combining the two companies' businesses could include, among other things:

- the fact that the two companies are geographically separate organizations, with possible differences in corporate cultures and management philosophies;
- the significant demands that will be placed on management resources, which may distract management's attention from day-to-day business operations;
- differences in the disclosure systems, accounting systems, and accounting controls and procedures of the two companies, which may interfere with our ability to make timely and accurate public disclosure; and
- the demand of managing new locations and new lines of business acquired in the PCT Merger.

Any inability to realize the potential benefits of the PCT Merger, as well as any delay in successfully integrating the two companies, could have an adverse effect upon the Company's revenues, level of expenses and operating results, which could adversely affect the value of our common stock.

If the market for the Company's products and/or technology does not experience significant growth or if the Company's products and/or technology do not achieve broad acceptance, the Company's operations will suffer.

We cannot accurately predict the future growth rate or the size of the market for the Company's products and technology. The expansion of this market depends on a number of factors, such as:

- the cost, performance and reliability of the Company's products/technologies, and the products/technologies offered by competitors;
- customers' perceptions regarding the benefits of the Company's products and technologies;
- public perceptions regarding the use of the Company's products and technologies;
- customers' satisfaction with the products and technologies; and
- marketing efforts and publicity regarding the products and technologies.

Our success in developing future therapeutics will depend in part on establishing and maintaining effective strategic partnerships and collaborations, which may impose restrictions on our business and subject us to additional regulation.

A key aspect of our business strategy is to establish strategic relationships in order to gain access to critical supplies, to expand or complement our research and development or commercialization capabilities, and to reduce the cost of research and development. There can be no assurance that we will enter into such relationships, that the arrangements will be on favorable terms or that such relationships will be successful. If any of our research partners terminate their relationship with us or fail to perform their obligations in a timely manner, our research and development activities or commercialization of our services may be substantially impaired or delayed.

Relationships with licensed professionals such as physicians may be subject to state and federal laws restricting the referral of business, prohibiting certain payments to physicians, or otherwise limiting such collaborations. If our services become approved for reimbursement by government or private insurers, we could be subject to additional regulation and perhaps additional limitations on our ability to structure relationships with physicians. Additionally, state regulators may impose restrictions on the business activities and relationships of licensed physicians or other licensed professionals. For example, many states restrict or prohibit the employment of licensed physicians by for-profit corporations, or the "corporate practice of medicine." If we fail to structure our relationships with physicians in accordance with applicable laws or other regulatory requirements, it could have a material adverse effect on our business. Even if we do enter into these arrangements, we may not be able to maintain these relationships or establish new ones in the future on acceptable terms.

We are dependent on relationships with third parties to conduct our business.

Apheresis is the process through which stem cells are extracted from a patient's whole blood and it is an integral part of our collection process. Our adult stem cell collection process involves the injection of a "mobilizing agent" which causes the stem cells to migrate from the bone marrow into the blood stream. The injection of this mobilizing agent is an integral part of the collection process. There is currently only one supplier of this mobilizing agent, called Neupogen®. Although we continue to explore alternative mobilizing agents and methods of stem cell collection, there can be no assurance that any alternative mobilizing agents will be available or alternative methods will prove to be successful. In the event that our supplier is unable or unwilling to continue to supply the mobilizing agent to us on commercially reasonable terms, and we are unable to identify alternative methods or find substitute suppliers on commercially reasonable terms, we may not be able to successfully commercialize our business. In addition, we are currently using only two outside apheresis providers. Although other third parties, including the centers themselves, subject to appropriate licensure as well as our Cambridge facility, are capable of providing apheresis services, any disruption in the provision of this service would cause a delay in the delivery of our services. Our failure to maintain relationships with these third parties or the failure of such parties to provide quality contracted services would have a material adverse impact on our business.

We have a limited marketing staff and budget.

The degree of market acceptance of our products and services depends upon a number of factors, including the strength of our sales and marketing support. If our marketing is not effective, our ability to generate revenues could be significantly impaired. Due to capital constraints, our marketing and sales activities have been somewhat limited and thus we may not be able to make our services known to a sufficient number of potential customers and partners. Limitations in our marketing and sales activities, and the failure to attract enough customers, will affect our ability to operate profitably.

There is significant uncertainty about the validity and permissible scope of patents in the biotechnological industry and we may not be able to obtain patent protection.

We own or hold exclusive rights to one U.S. patent, and thirteen U.S. patent applications, and own or hold exclusive rights in certain countries to twenty-three foreign patent applications related to our products and technologies. Given the nature of our therapeutic programs, our patent applications cover certain methods

of isolating, storing and using stem cells, including very small embryonic stem cells. There can be no assurance that the patent applications to which we hold rights will result in the issuance of patents, or that any patents issued or licensed to us will not be challenged and held to be invalid or of a scope of coverage that is different from what we believe the patent's scope to be. Our success will depend, in part, on whether we can: obtain patents to protect our own products and technologies; obtain licenses to use the technologies of third parties if necessary, which may be protected by patents; and protect our trade secrets and know-how. Our inability to obtain and rely upon patents essential to our business may have a material adverse effect on our business, operating results and financial condition.

We may be unable to protect our intellectual property from infringement by third parties.

Despite our efforts to protect our intellectual property, third parties may infringe or misappropriate our intellectual property. Our competitors may also independently develop similar technology, duplicate our processes or services or design around our intellectual property rights. We may have to litigate to enforce and protect our intellectual property rights to determine their scope, validity or enforceability. Intellectual property litigation is costly, time-consuming, diverts the attention of management and technical personnel and could result in substantial uncertainty regarding our future viability. The loss of intellectual property protection or the inability to secure or enforce intellectual property protection would limit our ability to develop or market our services in the future. This would also likely have an adverse effect on the revenues generated by any sale or license of such intellectual property. Furthermore, any public announcements related to such litigation or regulatory proceedings could adversely affect the price of our common stock.

Third parties may claim that we infringe on their intellectual property.

We may be subject to costly litigation in the event our technology is claimed to infringe upon the proprietary rights of others. Third parties may have, or may eventually be issued, patents that would be infringed by our technology. Any of these third parties could make a claim of infringement against us with respect to our technology. We may also be subject to claims by third parties for breach of copyright, trademark or license usage rights. Litigation and patent interference proceedings could result in substantial expense to us and significant diversion of efforts by our technical and management personnel. An adverse determination in any such proceeding or in patent litigation could subject us to significant liabilities to third parties or require us to seek licenses from third parties. Such licenses may not be available on acceptable terms or at all. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from commercializing our products, which would have a material adverse affect on our business, operating results and financial condition.

We may be unable to maintain our licenses, patents or other intellectual property and could lose important protections that are material to continuing our operations and growth and our ability to achieve profitability.

Our license agreement with the University of Louisville and other license agreements require us to pay license fees, royalties and milestone payments and fees for patent filings and applications. Obtaining and maintaining patent protection and licensing rights also depends, in part, on our ability to pay the applicable filing and maintenance fees. Our failure to meet financial obligations under our license agreements in a timely manner or our non-payment or delay in payment of our patent fees, could result in the loss of some or all of our rights to proprietary technology or the inability to secure or enforce intellectual property protection. Additionally, our license agreements require us to meet certain diligence obligations in the development of the licensed products. Our failure to meet these diligence obligations under our license agreements could result in the loss of some or all of our rights under the license agreements. The loss of any or all of our intellectual property rights could materially limit our ability to develop and/or market our services, which would materially and adversely affect our business, operating results and financial condition.

Our inability to obtain reimbursement for our therapies from private or governmental insurers, could negatively impact demand for our services.

Successful sales of health care services and products generally depends, in part, upon the availability and amounts of reimbursement from third party healthcare payor organizations, including government agencies, private healthcare insurers and other healthcare payors, such as health maintenance organizations and

self-insured employee plans. Uncertainty exists as to the availability of reimbursement for new therapies such as stem cell-based therapies. There can be no assurance that such reimbursement will be available in the future at all or without substantial delay or, if such reimbursement is provided, that the approved reimbursement amounts will be sufficient to support demand for our services at a level that will be profitable.

We may be subject to significant product liability claims and litigation.

Our business exposes us to potential product liability risks inherent in the testing, processing and marketing of cell therapy products. Such liability claims may be expensive to defend and result in large judgments against us. We presently have product liability insurance limited to $10 million per incident and $10 million in annual aggregate. We also maintain errors and omissions, directors and officers, workers' compensation and other insurance appropriate to our business activities. If we were to be subject to a claim in excess of this coverage or to a claim not covered by our insurance and the claim succeeded, we would be required to pay the claim from our own limited resources, which could have a material adverse effect on our financial condition, results of operations and business. Additionally, liability or alleged liability could harm our business by diverting the attention and resources of our management and damaging our reputation and that of our subsidiaries.

Risks Related to Doing Business in China

Our operations are subject to risks associated with emerging markets.

The Chinese economy is not well established and is only recently emerging and growing as a significant market for consumer goods and services. Accordingly, there is no assurance that the market will continue to grow. Perceived risks associated with investing in China, or a general disruption in the development of China's markets could materially and adversely affect the business, operating results and financial condition of Erye and us.

A significant portion of our assets is located in the PRC, and investors may not be able to enforce federal securities laws or their other legal rights.

A substantial portion of our assets is located in the PRC. As a result, it may be difficult for investors in the U.S. to enforce their legal rights, to effect service of process upon certain of our directors or officers or to enforce judgments of U.S. courts predicated upon civil liabilities and criminal penalties against our directors and officers located outside of the U.S.

The PRC government has the ability to exercise significant influence and control over our operations in China.

In recent years, the PRC government has implemented measures for economic reform, the reduction of state ownership of productive assets and the establishment of corporate governance practices in business enterprises. However, many productive assets in China are still owned by the PRC government. In addition, the government continues to play a significant role in regulating industrial development by imposing business regulations. It also exercises significant control over the country's economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies.

There can be no assurance that China's economic, political or legal systems will not develop in a way that becomes detrimental to our business, results of operations and financial condition. Our activities may be materially and adversely affected by changes in China's economic and social conditions and by changes in the policies of the government, such as measures to control inflation, changes in the rates or method of taxation and the imposition of additional restrictions on currency conversion.

Additional factors that we may experience in connection with having operations in China that may adversely affect our business and results of operations include:

- our inability to enforce or obtain a remedy under any material agreements;
- PRC restrictions on foreign investment that could impair our ability to conduct our business or acquire or contract with other entities in the future;

- restrictions on currency exchange that may limit our ability to use cash flow most effectively or to repatriate our investment;
- fluctuations in currency values;
- cultural, language and managerial differences that may reduce our overall performance; and
- political instability in China.

Cultural, language and managerial differences may adversely affect our overall performance.

While Chinese merger and acquisition activity is increasing in frequency, assimilating cultural, language and managerial differences remains problematic. Personnel issues may develop as we endeavor to consolidate management teams from different cultural backgrounds. In addition, errors arising through language translations may cause miscommunications relating to material information. These factors may make the management of our operations in China more difficult. Should we be unable to coordinate the efforts of our U.S.-based management team with our China-based management team, our business, operating results and financial condition could be materially and adversely affected.

We may not be able to enforce our rights in China.

China's legal and judicial system may negatively impact foreign investors. The legal system in China is evolving rapidly, and enforcement of laws is inconsistent. It may be impossible to obtain swift and equitable enforcement of laws or enforcement of the judgment of one court by a court of another jurisdiction. China's legal system is based on civil law or written statutes and a decision by one judge does not set a legal precedent that must be followed by judges in other cases. In addition, the interpretation of Chinese laws may vary to reflect domestic political changes.

There are substantial uncertainties regarding the interpretation and application to our business of PRC laws and regulations, since many of the rules and regulations that companies face in China are not made public. The effectiveness of newly enacted laws, regulations or amendments may be delayed, resulting in detrimental reliance by foreign investors. New laws and regulations that apply to future businesses may be applied retroactively to existing businesses. We cannot predict what effect the interpretation of existing or new PRC laws or regulations may have on our business.

The laws of China are likely to govern many of our material agreements, including, without limitation the Joint Venture Agreement. We cannot assure you that we will be able to enforce our interests or our material agreements or that expected remedies will be available. The inability to enforce or obtain a remedy under any of our future agreements may have a material adverse impact on our operations.

Our businesses in China are subject to government regulation that limit or prohibit direct foreign investment, limiting our ability to control these businesses, as well as our ability to pursue new ventures and expand further into the Chinese market.

The PRC government has imposed regulations in various industries, including medical research and the stem cell business, that limit foreign investors' equity ownership or prohibit foreign investments altogether in companies that operate in such industries. As a result, our ability to control our existing China-based businesses as well as pursue new ventures and expand further into the Chinese market may be limited.

If new laws or regulations or policies forbid foreign investment in industries in which we want to expand or complete a business combination, they could severely impair our ability to grow our business. Additionally, if the relevant Chinese authorities find us or such business combination to be in violation of any laws or regulations, they would have broad discretion in dealing with such violation, including, without limitation: (i) levying fines; (ii) revoking our business and other licenses; (iii) requiring that we restructure our ownership or operations; and (iv) requiring that we discontinue any portion or all of our business. Accordingly, any of these regulations or violations could have a material adverse effect on our business, operating results and financial condition.

The import into China or export from China of technology relating to stem cell therapy may be prohibited or restricted.

The Chinese Ministry of Commerce, or MOFCOM, and Ministry of Science and Technology of China, or MOST, jointly publish the Catalogue of Technologies the Export of which from China is Prohibited or Restricted, and the Catalogue of Technologies the Import of which into China Prohibited or Restricted. Stem cell-related technologies are not listed in the current versions of these catalogues, and therefore their import or export should not be forbidden or require the approval of MOFCOM and MOST. However, these catalogues are subject to revision and, as the PRC authorities develop policies concerning stem cell technologies, it is possible that the categories would be amended or updated should the PRC government want to regulate the export or import of stem cell related technologies to protect material state interests or for other reasons. Should the catalogues be updated so as to bring any activities of the planned stem cell processing, storage and manufacturing operation in Beijing and related research and development activities under their purview, any such limitations or restrictions imposed on the operations and related activities could materially and adversely affect our business, financial condition and results of operations.

The PRC government does not permit direct foreign investment in stem cell research and development businesses. Accordingly, we operate these businesses through local companies with which we have contractual relationships but in which we do not have controlling equity ownership.

PRC regulations prevent foreign companies from directly engaging in stem cell-related research, development and commercial applications in China. Therefore, to perform these activities, we operate our current stem cell-related business in China through two domestic variable interest entities, or VIEs: Qingdao Neo Bio-Technology Ltd., or Neo Bio-Technology, and Beijing Ruijieao Bio-Technology Ltd., or Beijing Ruijieao, each a Chinese domestic company controlled by the Chinese employees of NeoStem (China), Inc., our wholly foreign-owned entity, or the WFOE, through various business agreements, referred to, collectively, as the VIE documents. We control these companies and operate these businesses through contractual arrangements with the companies and their individual owners, but we have no direct equity ownership or control over these companies. Our contractual arrangements may not be as effective in providing control over these entities as direct ownership. For example, the VIEs could fail to take actions required for our business or fail to conduct business in the manner we desire despite their contractual obligation to do so. These companies are able to transact business with parties not affiliated with us. If these companies fail to perform under their agreements with us, we may have to rely on legal remedies under PRC law, which may not be effective. In addition, we cannot be certain that the individual equity owners of the VIEs would always act in our best interests, especially if they have no other relationship with us.

Although other foreign companies have used WFOEs and VIE structures similar to ours and such arrangements are not uncommon in connection with business operations of foreign companies in China in industry sectors in which foreign direct investments are limited or prohibited, the application of a VIE structure to control companies in a sector in which foreign direct investment is specifically prohibited carries increased risks.

For example, if our structure is deemed in violation of PRC law, the PRC government could revoke the business license of the WFOE, require us to discontinue or restrict our operations, restrict our right to collect revenues, require us to restructure our business, corporate structure or operations, impose additional conditions or requirements with which we may not be able to comply, impose restrictions on our business operations or on our customers, or take other regulatory or enforcement actions against us. We may also encounter difficulties in enforcing related contracts. Any of these events could materially and adversely affect our business, operating results and financial condition.

Due to the relationship between the WFOE and the VIEs, the PRC tax authorities may challenge our VIE structure, including the transfer prices used for related party transactions among our entities in China.

Substantially all profits generated from the VIEs will be paid to the WFOE in China through related party transactions under contractual agreements. We believe that the terms of these contractual agreements are in compliance with the laws in China. However, the tax authorities in China have not examined these contractual agreements. Due to the uncertainties surrounding the interpretation of the transfer pricing rules

relating to related party transactions in China, it is possible that the tax authorities in China could challenge the transfer prices that we will use for related party transactions among our entities in China and this could increase our tax liabilities and diminish the profitability of our business in China, which would materially and adversely affect our operating results and financial condition.

We expect to rely, in part, on dividends paid by our WFOE and/or Erye to supply cash flow for our U.S. business, and statutory or contractual restrictions may limit their ability to pay dividends to us.

We expect to rely partly on dividends paid to us by the WFOE under the contracts with the VIEs, and under the Joint Venture Agreement, attributable to our 51% ownership interest in Erye, to meet our future cash needs. However, there can be no assurance that the WFOE in China will receive payments uninterrupted or at all as arranged under the contracts with the VIEs. In addition, pursuant to the Joint Venture Agreement that governs the ownership and management of Erye, for 2010 and approximately the next two years: (i) 49% of undistributed profits (after tax) will be distributed to EET and loaned back to Erye for use in connection with its construction of the new Erye facility; (ii) 45% of the net profit after tax will be provided to Erye as part of the new facility construction fund, which will be characterized as paid-in capital for our 51% interest in Erye; and (iii) only 6% of the net profit will be distributed to us directly for our operating expenses.

The payment of dividends by entities organized under PRC law to non-PRC entities is subject to limitations. Regulations in the PRC currently permit payment of dividends by our WFOE and Erye only out of accumulated distributable earnings, if any, as determined in accordance with accounting standards and regulations in China. Moreover, our WFOE and Erye are required to appropriate from PRC GAAP profit after tax to other non-distributable reserve funds. These reserve funds include one or more of the following: (i) a general reserve, (ii) an enterprise expansion fund and (iii) a staff bonus and welfare fund. Subject to certain cumulative limits (i.e., 50% of the registered capital of relevant company), the general reserve fund requires annual appropriation at 10% of after tax profit (as determined under accounting principles generally accepted in the PRC at each year-end); the appropriation to the other funds are at the discretion of WFOE and Erye. In addition, if Erye incurs additional debt on its own behalf to finance the building of the new facility in the future, the instruments governing the debt may restrict Erye's or the joint venture's ability to pay dividends or make other distributions to us. This may diminish the cash flow we receive from Erye's operations, which would have a material adverse effect on our business, operating results and financial condition.

Restrictions on currency exchange may limit our ability to utilize our cash flow effectively.

Our interests in China will be subject to China's rules and regulations on currency conversion. In particular, the initial capitalization and operating expenses of the two VIEs are funded by our WFOE. In China, the State Administration for Foreign Exchange, or the SAFE, regulates the conversion of the Chinese Renminbi into foreign currencies and the conversion of foreign currencies into Chinese Renminbi. Currently, foreign investment enterprises are required to apply to the SAFE for Foreign Exchange Registration Certificates, or IC Cards of Enterprises with Foreign Investment. Foreign investment enterprises holding such registration certificates, which must be renewed annually, are allowed to open foreign currency accounts including a "basic account" and "capital account." Currency translation within the scope of the "basic account," such as remittance of foreign currencies for payment of dividends, can be effected without requiring the approval of the SAFE. However, conversion of currency in the "capital account," including capital items such as direct investments, loans, and securities, require approval of the SAFE. According to the *Notice of the General Affairs Department of the State Administration of Foreign Exchange on the Relevant Operating Issues Concerning the Improvement of the Administration of Payment and Settlement of Foreign Currency Capital of Foreign-invested Enterprises* promulgated on August 29, 2008, or the SAFE Notice 142, to apply to a bank for settlement of foreign currency capital, a foreign invested enterprise shall submit the documents certifying the uses of the RMB funds from the settlement of foreign currency capital and a detailed checklist on use of the RMB funds from the last settlement of foreign currency capital. It is stipulated that only if the funds for the settlement of foreign currency capital are of an amount not more than US$50,000 and are to be used for enterprise reserve, the above documents may be exempted by the bank. This SAFE Notice 142, along with the recent practice of Chinese banks of restricting foreign currency conversion for fear of "hot money" going into China, have limited and may continue to limit our ability to channel funds to the two VIE entities for their operation. We are exploring options with our PRC counsels and banking institutions in China as to acceptable

methods of funding the operation of the two VIEs, including advances from Erye, but there can be no assurance that acceptable funding alternatives will be identified. Further, even if we find an acceptable funding alternative, there can be no assurance that the PRC regulatory authorities will not impose further restrictions on the convertibility of the Chinese currency. Future restrictions on currency exchanges may limit our ability to use our cash flow for the distribution of dividends to our stockholders or to fund operations we may have outside of China, which could materially adversely affect our business and operating results.

Fluctuations in the value of the Renminbi relative to the U.S. dollar could affect our operating results.

We prepare our financial statements in U.S. dollars, while our underlying businesses operate in two currencies, U.S. dollars and Chinese Renminbi. It is anticipated that our Chinese operations will conduct their operations primarily in Renminbi and our U.S. operations will conduct their operations in dollars. At the present time, we do not expect to have significant cross currency transactions that will be at risk to foreign currency exchange rates. Nevertheless, the conversion of financial information using a functional currency of Renminbi will be subject to risks related to foreign currency exchange rate fluctuations. The value of Renminbi against the U.S. dollar and other currencies may fluctuate and is affected by, among other things, changes in China's political and economic conditions and supply and demand in local markets. As we have significant operations in China, and will rely principally on revenues earned in China, any significant revaluation of the Renminbi could materially and adversely affect our financial results. For example, to the extent that we need to convert U.S. dollars we receive from an offering of our securities into Renminbi for our operations, appreciation of the Renminbi against the U.S. dollar could have a material adverse effect on our business, financial condition and results of operations.

Beginning in July of 2005, the PRC government changed its policy of pegging the value of Renminbi to the U.S. dollar. Under the new policy, the value of the Renminbi has fluctuated within a narrow and managed band against a basket of certain foreign currencies. However, the Chinese government has come under increasing U.S. and international pressure to revalue the Renminbi or to permit it to trade in a wider band, which many observers believe would lead to substantial appreciation of the Renminbi against the U.S. dollar and other major currencies. There can be no assurance that Renminbi will be stable against the U.S. dollar. On June 19, 2010 the central bank of China announced that it will gradually modify its monetary policy and make the Renminbi's exchange rate more flexible and allow the Renminbi to appreciate in value in line with its economic strength.

If China imposes economic restrictions to reduce inflation, future economic growth in China could be severely curtailed, reducing the profitability of our operations in China.

Rapid economic growth can lead to growth in the supply of money and rising inflation. If prices for any products or services in China are unable, for any reason, to increase at a rate that is sufficient to compensate for any increase in the costs of supplies, materials or labor, it may have an adverse effect on the profitability of Erye and our stem cell activities in China would be adversely affected. In order to control inflation in the past, China has imposed controls on bank credits, limits on loans for fixed assets and restrictions on state bank lending and could adopt additional measures to further combat inflation. Such measures could harm the economy generally and hurt our business by (i) limiting the income of our customers available to spend on our products and services, (ii) forcing us to lower our profit margins, and (iii) limiting our ability to obtain credit or other financing to pursue our expansion plans or maintain our business. We cannot predict with any certainty the degree to which our business will be adversely affected by slower economic growth in China.

Erye's manufacturing operations in China may be adversely affected by changes in PRC government policies regarding ownership of assets and allocation of resources to various industries and companies.

While the PRC government has implemented economic and market reforms, a substantial portion of productive assets in China are still owned by the PRC government. The PRC government also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency and providing preferential treatment to particular industries or companies. Should the PRC government change its policies regarding economic growth and private ownership of manufacturing and other assets of Erye, we may be unable to execute our business plan, we may lose rights to certain business assets and our business, operating results and financial condition may be materially harmed.

If there are any adverse public health developments in China, our business and operations may be disrupted and medical tourism in China may decline, which could delay the launch of our stem cell therapies in China.

Any prolonged occurrence of avian flu, severe acute respiratory syndrome, or SARS, or other adverse public health developments in China or other regions where we operate could disrupt our business and have a material adverse effect on our business and operating results. These could include the ability of our personnel to travel or to promote our services within China or in other regions where we operate, as well as temporary closure of our facilities.

Any closures or travel or other operational restrictions would severely disrupt our business operations and adversely affect our results of operations.

If the anticipated growth of medical tourism in China does not occur, or if fewer people travel abroad for the purpose of cosmetic or medical therapies for any reason, including limitations imposed by governmental authorities, we may not achieve our revenue and profit expectations.

One part of our business plan involves launching innovative, safe, and effective cell therapies in China that have not yet been approved in the U.S., to generate sales revenues in advance of obtaining U.S. regulatory approvals. Different countries have different regulatory requirements and pathways resulting in the availability of therapeutics in one market prior to another. This phenomenon has led to the growth of an industry called "medical tourism" where patients travel to foreign locations and receive treatments that have not yet been approved in their home countries.

If the anticipated growth of medical tourism in China does not occur, or if fewer people travel abroad for the purpose of cosmetic or medical therapies for any reason, including limitations imposed by governmental authorities, we may not achieve our revenue and profit expectations. Any setbacks to the implementation of our business plan could materially and adversely affect our business, operating results and financial condition.

China is a developing nation governed by a one-party communist government and susceptible to political, economic, and social upheaval that could disrupt the economy.

China is a developing country governed by a one-party government. China is also a country with an extremely large population, wide income gaps between rich and poor and between urban and rural residents, minority ethnic and religious populations, and growing access to information about the different social, economic, and political systems found in other countries. China has also experienced extremely rapid economic growth over the last decade, and its legal and regulatory systems have had to change rapidly to accommodate this growth. If China experiences political or economic upheaval, labor disruptions or other organized protests, nationalization of private businesses, civil strife, strikes, acts of war and insurrections, this may disrupt China's economy and could materially and adversely affect our financial performance.

If political relations between China and the U.S. deteriorate, our business in China may be materially and adversely affected.

The relationship between China and the U.S. is subject to periodic tension. Relations may also be compromised if the U.S. becomes a more active advocate of Taiwan or if either government pressures the other regarding its monetary, economic or social policies. Changes in political conditions in China and changes in the state of Sino-U.S. relations are difficult to predict and could adversely affect our operations or financial condition. In addition, because of our involvement in the Chinese market, any deterioration in political relations might cause a public perception in the U.S. or elsewhere that might cause the goods or services we may offer to become less attractive. If any of these events were to occur, it could materially and adversely affect our business, operating results and financial condition.

China's State Food and Drug Administration's regulations may limit our ability to develop, license, manufacture and market our products and services.

Some or all of our operations in China will be subject to oversight and regulation by the PRC's State Food and Drug Administration ("SFDA"). Government regulations, among other things, cover the inspection of and controls over testing, manufacturing, safety and environmental considerations, efficacy, labeling,

advertising, promotion, record keeping and sale and distribution of pharmaceutical products. Such government regulations may increase our costs and prevent or delay the licensing, manufacturing and marketing of any of our products or services. In the event we seek to license, manufacture, sell or distribute new products or services, we likely will need approvals from certain government agencies such as the SFDA. The future growth and profitability of any operations in China would be contingent on obtaining the requisite approvals. There can be no assurance that we will obtain such approvals.

In 2004, the SFDA implemented new guidelines for the licensing of pharmaceutical products. All existing manufacturers with licenses were required to apply for the Good Manufacturing Practices, or cGMP, certifications. Erye has received the requisite certifications. However, should Erye fail to maintain its cGMP certifications or fail to obtain cGMP and other certifications for its new production facilities, this would have a material adverse effect on Erye's and our business, results of operations and financial condition.

In addition, delays, product recalls or failures to receive approval may be encountered based upon additional government regulation, legislative changes, administrative action or changes in governmental policy and interpretation applicable to the Chinese pharmaceutical industry. Our pharmaceutical activities also may subject us to government regulations with respect to product prices and other marketing and promotional related activities. Government regulations may substantially increase our costs for developing, licensing, manufacturing and marketing any products or services, which could have a material adverse effect on our business, operating results and financial condition.

The SFDA and other regulatory authorities in China have implemented a series of new punitive and stringent measures regarding the pharmaceuticals industry to redress certain past misconducts in the industry and certain deficiencies in public health reform policies. Given the nature and extent of such new enforcement measures, the aggressive manner in which such enforcement is being conducted and the fact that newly-constituted local level branches are encouraged to issue such punishments and fines, there is the possibility of large scale and significant penalties being levied on manufacturers. These new measures may include fines, restriction and suspension of operations and marketing and other unspecified penalties. This new regulatory environment has added significantly to the risks of our businesses in China and may have a material adverse effect on our business, operating results and financial condition.

Changes to PRC policies regarding drug pricing may have a material adverse effect on Erye's and our results of operations and financial condition.

Erye's financial performance is heavily dependent on government pricing policies and procedures, which are subject to change. The *Rules on Introduction of Suzhou's Local Enterprises Produced Drugs into Suzhou's Local Medical Insurance Drugs Catalogue*, which was promulgated in 2006, may soon cease to be effective. The cancellation of such Rules would reduce Erye's sales and profits by an estimated $2 million and $1 million, respectively, calculated based on Erye's sales and profits for 2010. On March 2, 2011, the National Development and Reform Commission issued price cuts for drugs covered by national medical insurance which greatly influences two of Erye's drugs. It is anticipated that the price of Piperacillin Sodium Sulbactum Sodium will decrease by 50% and the price of Ligustrazine Phosphate will be cut by 75%. In 2010 Piperacillin Sodium Sulbactum Sodium accounted for approximately 3% of sales and Ligustrazine Phosphate accounted for approximately 2.5% of sales.

Erye's production will be concentrated in two production lines and Erye will be operating in a new facility.

Erye has passed the government inspection by the SFDA to manufacture penicillin powder for injection and cephalosporin powder for injection at its new manufacturing facility which provides 50% greater manufacturing capacity than its existing plant. These two production lines accounted for over 90% of Erye's product sales in 2009 and 2010. These two product lines are fully operational. These production lines, coupled with the approval of the lines earlier in 2010 for solvent crystallization sterile penicillin and freeze dried raw sterile penicillin, has allowed Erye to relocate over 90% of its 2010 sales to the new facility. Any interruptions in production with respect to those lines at the new facility will have a material adverse effect on Erye's business and ours. There are inherent problems in commencing operations at any new production facility. If Erye encounters operational difficulties in commencing production at its new facility, it could have a material adverse effect on Erye's business and ours.

As a result of Erye's relocation to a new manufacturing facility, Erye may experience certain delays and disruptions in its manufacturing operations which could adversely affect our business.

Erye has built a new production facility for purposes of manufacturing its products and is in the process of relocating its manufacturing operations from its existing facility to the new facility. The new facility is expected to be fully operational in 2011. As a result of this relocation, Erye has and may continue to experience certain delays and disruptions in its manufacturing operations which may adversely impact our business.

In China, we may conduct research and development activities related to cell therapy in cooperation with a domestic Chinese company. If these activities are regarded by PRC government authorities as "human genetic resources research and development activities," additional approvals by PRC government authorities will be required.

Our research and development activities in cell therapy in China may be conducted in cooperation with Beijing Ruijieao Biotechnology Ltd. Pursuant to the Interim Measures for the Administration of Human Genetic Resources, or the Measures, that took effect on June 10, 1998, China maintains a reporting and registration system on important pedigrees and genetic resources in specified regions. All entities and individuals involved in sampling, collecting, researching, developing, trading or exporting human genetic resources or taking such resources outside China must abide by the Measures. "Human genetic resources" refers to genetic materials such as human organs, tissues, cells, blood specimens, preparations or any type of recombinant DNA constructs, which contain human genome, genes or gene products as well as to the information related to such genetic materials.

It is possible that our research and development activities conducted by the Lab in cooperation with us in China may be regarded by PRC government authorities as human genetic resources research and development activities, and thus will be subject to approval by PRC government authorities. The sharing of patents or other corresponding intellectual property rights derived from such research and development operations is also subject to various restrictions and approval requirements established under the Measures.

With regard to the ownership of intellectual property rights derived from human genetic resources research and development, the Measures provide that the China-based research and development institution shall have priority access to information about the human genetic resources within China, particularly the important pedigrees and genetic resources in the specified regions and the relevant data, information and specimens and any transfer of such human genetic resources to other institutions shall be prohibited without obtaining corresponding approval from the Human Genetic Resource Administration Office of China, among other governmental authorities or agencies. No foreign collaborating institution or individual that has access to the above-mentioned information may publicize, publish, apply for patent rights or disclose it by any other means without obtaining government approval. In a collaborative research and development project involving human genetic resources of China between any Chinese and foreign institutions, intellectual property rights shall be allocated according to the following principles: (i) patent rights shall be jointly applied for by both parties and the resulting patent rights shall be owned by both parties if an achievement resulting from the collaboration is patentable; (ii) either party has the right to exploit such patent separately or jointly in its own country, subject to the terms of the collaboration; however, the transfer of such patent to any third party or authorizing any third party to implement such patent shall be carried out upon agreement of both parties, and the benefits obtained thereof shall be shared in accordance with their respective contributions; and (iii) the right of utilizing, transferring and sharing any other scientific achievement resulted from the collaboration shall be specified in the collaborative contract or agreement signed by both parties. Both parties are equally entitled to make use of the achievement which is not specified in the collaborative contract or agreement; however, the transfer of such achievement to any third party shall be carried out upon agreement of both parties, and the benefits obtained thereof shall be shared in accordance with their respective contributions.

If the research and development operations conducted by the Lab in cooperation with us in China are regarded by PRC government authorities as human genetic resources research and development activities, we may be required to obtain approval from PRC governmental authorities to continue such operations and the Measures may adversely affect our rights to intellectual property developed from such operations. Our inability to access intellectual property, or our inability to obtain required approvals on a timely basis, or at all, could materially and adversely affect our operations in China, and our operating results and financial condition.

Erye has lost certain preferential tax concessions, which will cause its tax liabilities to increase and profitability to decline.

The National People's Congress of China enacted a new PRC Enterprise Income Tax Law, or the EIT Law, that went into effect on January 1, 2008. Domestic-invested enterprises and foreign-invested entities now are subject to enterprise income tax at a uniform rate of 25% unless they qualify for limited exceptions. During the transition period for enterprises established before March 16, 2007, the tax rate is subject to a gradual increase which started in 2008 and will be equal to the new tax rate in 2011 or 2012. As a result, Erye has lost its preferential tax rates.

Because of the EIT Law, the tax liabilities of Erye have increased. Any future increase in the enterprise income tax rate applicable to Erye or other adverse tax treatments could increase Erye's tax liabilities and reduce its net income, which could have a material adverse effect on Erye's and our results of operations and financial condition.

Foreign-invested enterprises in China will be subject to city maintenance and construction tax and education expenses surtax starting from December 1, 2010.

According to relevant tax rules in China, foreign-invested enterprises (e.g., WFOE) were not subject to city maintenance and construction tax and education expenses surtax in the past; however, the State Council of PRC issued the *Notice regarding Unifying Rules of City Maintenance and Construction Tax and Education Expenses Surtax Applicable to Foreign-invested Enterprises and Domestic Enterprises and Individuals* (Guo Fa (2010) 35) on October 18, 2010, or the State Council Notice No. 35. According to the State Council Notice No. 35, starting from December 1, 2010, the *Interim Measures on City Maintenance and Construction Tax* promulgated by the State Council in the year of 1985 and the *Interim Rules on Levying Education Expenses Surtax* promulgated by the State Council in the year of 1986, and relevant rules, measures promulgated thereafter shall also apply to foreign-invested enterprises, foreign enterprises and foreign individuals. Accordingly, foreign-invested enterprises will be subject to city maintenance and construction tax and education expenses surtax starting from December 1, 2010 (Erye was already subject to such taxes). Both city maintenance and construction tax and education expense surtax are levied based on the value-added tax, consumer tax and business tax actually paid by the tax payer, depending on location of the tax payer, the tax rate of city maintenance and construction tax applicable could be 7%, 5% or 1%, and the tax rate of education expense surtax applicable is currently 3%.

Because of the State Council Notice No. 35, we expect that the tax liabilities of WFOE will increase, which could have a material adverse effect on our results of operations and financial condition.

Some of the laws and regulations governing our business in China are vague and subject to risks of interpretation.

Some of the PRC laws and regulations governing our business operations in China are vague and their official interpretation and enforcement may involve substantial uncertainty. These include, but are not limited to, laws and regulations governing our business and the enforcement and performance of our contractual arrangements in the event of the imposition of statutory liens, death, bankruptcy and criminal proceedings. Despite their uncertainty, we will be required to comply.

New laws and regulations that affect existing and proposed businesses may be applied retroactively. Accordingly, the effectiveness of newly enacted laws, regulations or amendments may not be clear. We cannot predict what effect the interpretation of existing or new PRC laws or regulations may have on our business.

In addition, pursuant to China's Administrative Measures on the Foreign Investment in Commercial Sector, foreign enterprises are permitted to establish or invest in wholly foreign-owned enterprises or joint ventures that engage in wholesale or retail sales of pharmaceuticals in China subject to the implementation of relevant regulations. However, no specific regulations in this regard have been promulgated to date, which creates uncertainty. If specific regulations are not promulgated, or if any promulgated regulations contain clauses that cause an adverse impact to our operations in China, then our business, operating results and financial condition could be materially and adversely affected.

The laws and regulations governing the therapeutic use of stem cells in China are evolving. New PRC laws and regulations may impose conditions or requirements with which could materially and adversely affect our business.

As the stem cell therapy industry is at an early stage of development in China, new laws and regulations may be adopted in the future to address new issues that arise from time to time. As a result, substantial uncertainties exist regarding the interpretation and implementation of current and any future PRC laws and regulations applicable to the stem cell therapy industry. There is no way to predict the content or scope of future Chinese stem cell regulation. There can be no assurance that the PRC government authorities will not issue new laws or regulations that impose conditions or requirements with which we cannot comply. Noncompliance could materially and adversely affect our business, results of operations and financial condition.

We may be subject to fines and legal sanctions imposed by the SAFE or other PRC government authorities if we or our PRC employees fail to comply with recent PRC regulations relating to employee stock options granted by offshore listed companies to PRC citizens.

On April 6, 2007, the SAFE issued the "*Operating Procedures for Administration of Domestic Individuals Participating in the Employee Stock Ownership Plan or Stock Option Plan of An Overseas Listed Company*," referred to as Circular 78. It is not clear whether Circular 78 covers all forms of equity compensation plans or only those which provide for the granting of stock options. For any plans which are so covered and are adopted by a non-PRC listed company after April 6, 2007, Circular 78 requires all participants who are PRC citizens to register with and obtain approvals from the SAFE prior to their participation in the plan. In addition, Circular 78 also requires PRC citizens to register with the SAFE and make the necessary applications and filings if they participated in an overseas listed company's covered equity compensation plan prior to April 6, 2007. The 2009 Non-U.S. Plan authorizes the grant of certain equity awards to our officers, directors and employees, some of whom are PRC citizens. Circular 78 may require our officers, directors and employees who receive option grants and are PRC citizens to register with the SAFE. We believe that the registration and approval requirements contemplated in Circular 78 will be burdensome and time consuming. If it is determined that any of our equity compensation plans are subject to Circular 78, failure to comply with such provisions may subject us and participants of our equity incentive plan who are PRC citizens to fines and legal sanctions and prevent us from being able to grant equity compensation to our PRC employees. In that case, our ability to compensate our officers, directors and employees through equity compensation would be hindered and our business operations may be adversely affected.

Failure to comply with the U.S. Foreign Corrupt Practices Act could subject us to penalties and other adverse consequences.

We are subject to the U.S. Foreign Corrupt Practices Act, which generally prohibits U.S. companies from engaging in bribery or other prohibited payments to foreign officials for the purpose of obtaining or retaining business. Foreign companies, including some that may compete with us, are not subject to these prohibitions. Corruption, extortion, bribery, pay-offs, theft and other fraudulent practices occur from time-to-time in the PRC. There can be no assurance, however, that our employees or other agents will not engage in such conduct for which we might be held responsible. If our employees or other agents are found to have engaged in such practices, we could suffer severe penalties and other consequences that may have a material adverse effect on our business, financial condition and results of operations.

Under the EIT Law, we may be classified as a "resident enterprise" of the PRC, which could result in unfavorable tax consequences to us and to non-PRC stockholders.

Under the EIT Law, an enterprise established outside of China with "de facto management bodies" within China is considered a "resident enterprise," meaning that it can be treated in a manner similar to a Chinese enterprise for enterprise income tax purposes, although the dividends paid to one resident enterprise from another may qualify as "tax-exempt income." The implementing rules of the EIT Law define de facto management as "substantial and overall management and control over the production and operations, personnel, accounting, and properties" of the enterprise. The EIT Law and its implementing rules are relatively new and ambiguous in terms of some definitions, requirements and detailed procedures, and currently no official interpretation or application of this new "resident enterprise" classification, other than for enterprises

established outside of China whose main holding investor/s is/are enterprise/s established in China, is available; therefore, it is unclear how tax authorities will determine tax residency based on the facts of each case.

If the PRC tax authorities determine that we are a "resident enterprise" for PRC enterprise income tax purposes, the PRC could impose a 10% PRC tax on dividends we pay to our non-PRC stockholders and gains derived by our non-PRC stockholders from transferring our shares, if such income is considered PRC-sourced income by the relevant PRC authorities. In addition, we could be subject to a number of unfavorable PRC tax consequences, including: (a) we could be subject to enterprise income tax at a rate of 25% on our worldwide taxable income, as well as PRC enterprise income tax reporting obligations; and (b) although under the EIT Law and its implementing rules, dividends paid to us from our PRC subsidiaries through our sub-holding companies may qualify as "tax-exempt income," we cannot guarantee that such dividends will not be subject to withholding tax. Any increase in the taxation of our PRC-based revenues could materially and adversely affect our business, operating results and financial condition.

Taxing authorities in the PRC may attempt to impose an enterprise income tax on the gain on the transfer of the ownership of the 51% ownership interest in Erye.

Transactions involving the merger of two non-PRC companies, but that result in the change in ownership of joint venture interests in the PRC, historically have not been taxed by the taxing authorities in the PRC. However, the PRC State Administration of Taxation issued the *Notice on Strengthening the Administration of Enterprise Income Tax on Equity Transfer Gains of Non-residence Enterprise*, or Circular 698, in December of 2009, according to which, if any non-residence enterprise indirectly transfers the shares of any residence enterprise, and if the total tax rate applicable in the country/jurisdiction, where the offshore holding company transferred is incorporated, is lower than 12.5% or there is no income tax on income of its residents sourced outside of such country/region, relevant parties shall submit the share transfer agreement and other relevant documents and information to the competent tax authority having jurisdiction over the residence enterprise, whose equity is indirectly transferred, within 30 days after the share transfer agreement is signed. Subject to approval by the State Administration of Taxation, if the non-residence enterprise transferring party is deemed to have indirectly transferred the shares of the residence enterprise for purpose of evading PRC enterprise income tax through abuse of transaction structure, and the transaction structure does not have reasonable commercial purposes, relevant tax authorities have the right to re-determine the nature of the transaction based on its substance and deny the existence of offshore vehicles established for purpose of evading PRC tax and levy enterprise income tax on the share transfer gains pursuant to PRC laws. The tax rate applicable to the share transfer gains under such circumstance should be 10% or lower treaty tax rate under EIT Law and its implementation rules. Accordingly, recently the taxing authorities in the PRC have levied enterprise income tax at the rate of approximately 10% of the gain on a few real estate and mining transactions that resulted in a change in ownership in joint ventures located in the PRC. Circular 698 applies retrospectively and shall be deemed to have become effective since January 1, 2008. Although it is still unclear on whether or not the Circular 698 shall also apply to the merger, as opposed to share transfer, of two non-PRC companies resulting in the change in ownership of PRC companies, there can be no assurance that the PRC taxing authorities will not impose enterprise income tax on the gain on the transfer to us of ownership of the 51% equity interests in Erye.

Risks Related to Our Securities

We will need to raise additional financing to fund our current business, including the development of our VSEL™ Technology and other research and development efforts related to product development, as well as marketing activities in the United States and China.

We will need to raise additional funding in the future to fund certain segments of our current business, including the development of our VSEL™ Technology and other research and development efforts related to product development, as well as marketing activities in the United States and China. Cash requirements may vary materially from those now planned because of expenses relating to marketing, advertising, sales, distribution, research and development and regulatory affairs, as well as the costs of maintaining, expanding and protecting our intellectual property portfolio, including potential litigation costs and liabilities.

If we cannot generate a sufficient amount of revenue to fully fund our cash requirements, which we may never do, we will need to finance future cash needs primarily through equity issuances, debt arrangements, a

combination of the above or other arrangements. Our ability to raise such funding may be limited by certain restrictions on incurring debt and issuing preferred stock that are contained in the certificate of designations for our Series E 7% Senior Convertible Preferred Stock (the "Preferred Shares" or the "Series E Preferred Stock"). Any issuance of convertible debt securities, preferred stock or common stock may be at a discount from the then-current trading price of our common stock. If we issue additional common or preferred stock or securities convertible into common stock, our stockholders will experience additional dilution, which may be significant. Further, we do not know whether additional funding will be available on acceptable terms, or at all. The trading volume of our common stock, coupled with our history of operating losses and liquidity problems, may make it difficult for us to raise capital on acceptable terms or at all. The demand for the equity and debt of small cap biopharmaceutical companies like ours is dependent upon many factors, including the general state of the financial markets. If we are unable to raise substantial additional funding on acceptable terms or at all, our business, results of operations and financial condition could be adversely affected.

Our common stock has had limited trading volume.

Our common stock is currently listed on the NYSE Amex and has had limited trading volume since its listing on August 9, 2007. Low volumes can result in fluctuating prices and downward pressure on the price per share should there develop an imbalance between the shares available for sale and the number of shares sought to be purchased. We cannot assure you that the liquidity of our common stock will improve or that it will not decline from current levels. Our Class A Warrants also trade on the NYSE Amex, but have had very limited trading volume. Investors holding our common stock may find it difficult to dispose of such shares.

The market price and trading volume of our common stock has been and may continue to be volatile and issuances of large amounts of shares of our common stock could cause the market price of our common stock to decline.

In 2010, our common stock traded as low as $1.10 and as high as $3.50, and in 2009 traded as low as $0.43 and as high as $2.72. In addition to our low stock trading volume, some of the other factors contributing to our stock's price volatility include the issuance of a significant number of shares of our common stock or securities convertible into common stock in a short period of time, announcements of government regulation, new products or services introduced by us or by our competition, healthcare legislation, trends in health insurance, litigation, fluctuations in operating results, our success in commercializing our business, market conditions for healthcare stocks in general as well as economic recession. We cannot assure you that the market price of our shares of common stock will not fluctuate or decline significantly in the future.

You will experience dilution upon the issuance of common stock upon the conversion or in connection with redemption payments under the Preferred Shares issued in our recent senior convertible preferred stock offering, if we issue additional equity securities in future fundraising transactions and if shares of our common stock underlying our significant number of outstanding warrants and options are purchased by the holders thereof.

The issuance of common stock as mandatory redemption payments or upon conversion of some or all of the Preferred Shares issued in our November 2010 senior convertible preferred stock offering will dilute the ownership interests of our existing holders of our shares of common stock. We expect to make the mandatory redemption payments under the terms of the Preferred Shares in shares of our common stock. Although the dollar amount of such redemption payments are known, the number of shares to be issued in connection with such redemption payments will fluctuate based on our stock price. All payments made in stock will be at the VWAP Price (defined below). The price of the shares will be calculated based on 92% of the average of the lowest five VWAPs (volume weighted average prices) of the 20 trading days prior to the payment date (the "VWAP Price"). Any sales or perceived sales in the public market of our shares of common stock issuable upon such mandatory redemption payments or upon conversion could adversely affect prevailing market prices of our shares of common stock. The issuance of common stock upon conversion of the Preferred Shares or upon such redemption payments may also have the effect of reducing our net income per share. In addition, the existence of the Preferred Shares may encourage short selling by market participants because the conversion of the Preferred Shares or the existence of the redemption payments could depress the market price of our shares of common stock.

If in the future we issue additional common stock, or securities convertible into or exchangeable or exercisable for common stock, our stockholders, including investors who received shares of our common stock and warrants in the PCT Merger, will experience additional dilution, and any such issuances may result in downward pressure on the price of our common stock.

Investors in our company will be subject to increased dilution upon conversion of our outstanding preferred stock and upon the exercise of outstanding stock options and warrants. There were 78,083,372 shares of our common stock outstanding as of March 14, 2011. As of that date, the Series B preferred stock outstanding could be converted into 10,000 shares of our common stock, the Preferred Shares outstanding could be converted into approximately 5,300,000 shares of our common stock and stock options and warrants outstanding represented an additional 39,977,502 shares of our common stock that could be issued in the future. The Preferred Shares and the warrants issued with the Preferred Shares also have weighted-average anti-dilution protection. Most of the outstanding shares of our common stock, as well as the vast majority of the shares of our common stock that may be issued under our outstanding options and warrants, are not restricted from trading or have the contractual right to be registered.

Any significant increase in the number of shares offered for sale could cause the supply of our common stock available for purchase in the market to exceed the purchase demand for our common stock. Such supply in excess of demand could cause the market price of our common stock to decline.

Future sales of a significant number of shares of our common stock in the public markets, or the perception that such sales could occur, could depress the market price of our shares of common stock.

Sales of a substantial number of shares of our common stock in the public markets, or the perception that such sales could occur, could depress the market price of our shares of common stock and impair our ability to raise capital through the sale of additional equity securities. It is anticipated that the purchasers of the Preferred Shares will be selling shares of common stock issued to them as mandatory redemption shares on each mandatory redemption date. A substantial number of shares of common stock were issued in our recent offerings and we cannot predict if and when the investors in our recent offerings may sell such shares of common stock in the public markets. We cannot predict the number of these shares that might be sold nor the effect that future sales of shares of our common stock would have on the market price of shares of our common stock.

We have never paid dividends on our common stock and we do not anticipate paying any cash dividends on our common stock in the foreseeable future.

We have never declared or paid cash dividends on our common stock. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be our stockholders' sole source of gain for the foreseeable future.

Failure to maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could have a material adverse effect on our business and stock price.

We have concluded that we did not have effective internal control over financial reporting as of December 31, 2010 as a result of a material weakness in our accounting for share-based payment arrangements. If we fail to (1) fully remediate the material weakness identified, or (2) we fail to maintain the adequacy of internal control over our financial reporting, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act, as such standards are modified, supplemented or amended from time to time.

As a private company, PCT was not subject to the requirements of Section 404 of the Sarbanes-Oxley Act. Now that the PCT Merger has been consummated, we expect to devote management time and other resources to ensure that the combined company complies with the requirements of Section 404. During the course of testing our disclosure controls and procedures and internal control over financial reporting, we may identify and disclose material weaknesses or significant deficiencies in internal control over financial reporting (which may or may not be related to PCT) that will have to be remedied. Implementing any appropriate changes to our internal control may require specific compliance training of our directors, officers and

employees, entail substantial costs in order to modify our existing accounting systems, and take a significant period of time to complete. Such changes may not, however, be effective in maintaining the adequacy of our internal control over financial reporting, and any failure to maintain that adequacy or inability to produce accurate financial statements on a timely basis could result in our financial statements being unreliable, increase our operating costs and materially impair our ability to operate our business.

Failure to achieve and maintain effective internal control over financial reporting could result in a loss of investor confidence in our financial reports and could have a material adverse effect on our stock price. Additionally, failure to maintain effective internal control over our financial reporting could result in government investigation or sanctions by regulatory authorities.

Actual and beneficial ownership of large quantities of our common stock by our executive officers and directors may substantially reduce the influence of other stockholders.

As of March 14, 2011, our executive officers and directors collectively owned 32,581,220 shares of our common stock, representing approximately 41.73% of our common stock. As of such date, our executive officers and directors collectively beneficially owned 42,883,310 shares of our common stock. These beneficial holdings represent approximately 48.5% of our common stock. As a result, such persons may have the ability to exercise enhanced control over the approval process for actions that require stockholder approval, including: the election of our directors and the approval of mergers, sales of assets or other significant corporate transactions or other matters submitted for stockholder approval. Because of the beneficial ownership position of these persons, other stockholders may have less influence over matters submitted for stockholder approval. Furthermore, at certain times the interests of our substantial stockholders may conflict with the interests of our other stockholders.

Some of our directors and officers have positions of responsibility with other entities, and therefore have loyalties and fiduciary obligations to both our company and such other entities. These dual positions subject such persons to conflicts of interest in related party transactions which may cause such related party transactions to have consequences to our company that are less favorable than those which we could have attained in comparable transactions with unaffiliated entities.

Eric H.C. Wei, a member of our Board of Directors, is also the Managing Partner of RimAsia Capital Partners, L.P., or RimAsia. RimAsia, a substantial stockholder of our company, beneficially owns approximately 32.2% of our common stock as of March 14, 2011. Mr. Shi Mingsheng (who became a director of our company in March 2010) and Madam Zhang Jian (our Vice President of Pharmaceutical Operations and the General Manager of Erye), together with certain other persons, have shared voting and dispositive power over the shares of our common stock held by Fullbright Finance Limited, or Fullbright. Fullbright is a substantial stockholder of our company, and together with Mr. Shi, and Madam Zhang, beneficially owns approximately 6.3% of our common stock as of March 14, 2011. These relationships create, or, at a minimum, appear to create potential conflicts of interest when members of our company's senior management are faced with decisions that could have different implications for our company and the other entities with which our directors or officers are associated.

Although our company has established procedures designed to ensure that material related party transactions are fair to the company, no assurance can be given as to how potentially conflicted board members or officers will evaluate their fiduciary duties to our company and to other entities that they may owe fiduciary duties, respectively, or how such individuals will act in such circumstances. Furthermore, the appearance of conflicts, even if such conflicts ultimately do not harm our company, might adversely affect the public's perception of our business, as well as its relationship with its existing customers, licensors, licensees and service providers and its ability to enter into new relationships in the future.

We may not have the cash necessary to redeem the Preferred Shares.

We have the obligation to make monthly redemption payments on the Preferred Shares commencing four months from the initial issuance dates, which mandatory redemption payments may be made at our option in cash or in shares of our common stock at the discounted formula price described above, except that our right to make payment in shares of common stock is dependent upon our satisfying certain Equity Conditions

(defined in the certificate of designations for the Series E Preferred Stock) and is also subject to certain Dollar Volume Limitations (as defined). If we cannot satisfy the Equity Conditions, or if our trading prices and volume are such that we do not meet the Dollar Volume Limitations necessary for us to be able to make our monthly mandatory redemption payments in stock, we may be forced to make such monthly payments in cash. We may not have sufficient cash resources at the applicable time to make those cash payments, or to make such cash payments in full. Further, any failure to pay any amounts due to the holders of the Preferred Shares, as well as certain other Trigger Events (as defined in the certificate of designations), including without limitation certain change in control transactions, our failure to timely deliver shares, our suspension of trading, and breaches of certain representations, warranties and covenants that are not timely cured, where a cure period is permitted, would permit the holders of our Preferred Shares to compel repurchase of such Preferred Shares at a price per share equal to the sum of the liquidation preference plus accrued dividends plus the then applicable prepayment premium (15%, or 10% if the repurchase occurs more than 12 months after the initial issuance date). If we are required to repurchase the Preferred Shares in cash prior to maturity, no assurance can be given that we would have the cash or financial resources available to us to make such a payment, and such an acceleration could have a material adverse effect on our business and financial condition and may impair our ability to continue in business as a going concern.

The Preferred Shares are senior obligations of ours, and rank prior to our common stock with respect to dividends, distributions and payments upon liquidation.

The rights of the holders of the Preferred Shares rank senior to the obligations to holders of our common stock. Upon our liquidation, the holders of Preferred Shares are entitled to receive a liquidation preference of $1.00 per share, plus all accrued but unpaid dividends at the rate of 7% per annum prior and in preference to any distribution to the holders of any other class of our equity securities. Further, no dividends can be paid without the consent of the holders of a majority of the outstanding Preferred Shares, and the holders of Preferred Shares, as well as the holders of the warrants being issued to the purchasers of Preferred Shares, have the right to participate in any payment of dividends or other distributions made to the holders of our common stock to the same extent as if they had converted the Preferred Shares or exercised the warrants. The existence of such a senior security could have an adverse effect on the value of our common stock.

Holders of the Preferred Shares have rights that may restrict our ability to operate our business.

Under the securities purchase agreement pursuant to which the Preferred Shares were sold, we are subject to certain covenants that limit our ability to create new series of preferred stock, other than series junior to the Preferred Shares. We are also limited, with certain exceptions, in our ability and the ability of our subsidiaries (other than Erye) to incur debt and to pledge our assets. Such restrictions may have an adverse effect on our ability to operate our business while the Preferred Shares are outstanding.

The repurchase right in the Preferred Shares triggered by a change in control could discourage a potential acquiror.

The repurchase rights in the Preferred Shares triggered by certain change in control transactions could discourage a potential acquiror. The interests of the holders of the Preferred Shares in deciding to exercise their repurchase right may not align with your interests as a holder of our common stock in potential change of control transactions. The holders of Preferred Shares may exercise their repurchase right which may discourage potential acquirors even in situations where the common stock holders may have the opportunity to realize a premium in connection with such change in control transaction.

ITEM 1B. UNRESOLVED STAFF COMMENTS.

Not applicable.

ITEM 2. PROPERTIES.

PCT

We presently operate two cell therapy manufacturing facilities, in Allendale, New Jersey and in Mountain View, California. Longer-term plans could include the acquisition and development of other such buildings within and outside of the United States, to be developed into replicable and scalable manufacturing facilities,

strategically located to best serve clients' needs. Inherent in the nature of cell therapy today is the biologic shelf life of the cell therapy product itself. This limits the transit times between the time the cell product is extracted from a patient until it arrives at a manufacturing facility and the time that a processed product leaves the manufacturing facility and arrives for re-infusion in the patient. Therefore, it is preferable for cell therapy manufacturing facilities to be located in major population centers and within close proximity of major airport hubs.

In 2007, PCT acquired the facility in Allendale, New Jersey which has been developed into a cell manufacturing facility. 22,000 square feet of the Allendale facility's approximately 30,000 square feet have been developed. The Allendale facility is comprised of ISO Class 7, Class 10,000 manufacturing suites, in addition to quality control, research and development laboratories and support facilities. It has been designed to meet the accreditation requirements of the Foundation for the Accreditation of Cellular Therapy (FACT) and to comply with the FDA's requirements, including applicable cGMP regulations, and to meet the standards of the American Association of Blood Banks (AABB). The facility is also in compliance with a range of state and federal regulatory and licensing requirements. The Allendale facility is subject to two mortgages in favor of T.D. Bank, N.A. having an aggregate principal amount of approximately $3.8 million as of December 31, 2010.

The Mountain View facility is also a licensed cell therapy manufacturing facility, encompassing 25,024 square feet within a single building, of which 17,425 square feet is developed. The developed space is presently used for manufacturing client products. Mountain View is equipped with ISO Class 7, Class 10,000 manufacturing suites, quality control, research and development laboratories and support facilities. We expect to further develop space for cell therapy manufacturing within the facility on an as needed basis. The Mountain View facility is subject to a lease agreement having a current term that extends through June 2012. The base monthly rent is currently $42,541, and scheduled to increase to $46,294 per month in July 2011. We have the option to extend the lease for an additional five years thereafter.

Because of the specialized nature of these cell processing facilities and the time required to conceptualize, design, build, and obtain certification and operating authority, it takes approximately nine months to go from concept to operations once space has been qualified.

These properties are used in the Company's Cell Therapy — United States reportable segment.

NeoStem

Effective April 1, 2009, we leased executive offices at 420 Lexington Avenue, New York, NY 10170, which serve as our headquarters. The lease has a current term that extends through June 2013 and is believed to be sufficient space for the foreseeable future. The base monthly rent, which includes storage space, is currently approximately $21,500 per month, scheduled to increase to approximately $22,000 in July 2011. This property is used as our corporate headquarters.

In September 2009, we leased office and laboratory space at 840 Memorial Drive, Cambridge, Massachusetts for approximately three years. The Cambridge space has served as our research and development headquarters. The base rent under the Cambridge lease is currently $29,737 per month, scheduled to increase to $30,750 per month in September 2011. The Company is assessing its need for the Cambridge facility going forward given the acquisition of PCT with its Allendale, NJ and Mountain View, CA facilities. This property was used in the Company's Cell Therapy — United States reportable segment.

China Stem Cell Operations

In May 2009, Neo Bio-Technology entered into leases (assigned to NeoStem (China) in February 2010) with Beijing Zhong-guan-cun Life Science Park Development Corp., Ltd. pursuant to which NeoStem (China) is leasing laboratory, office and storage space in Beijing for the aggregate monthly amount of approximately $23,000. Lease payments are due quarterly in advance. The term of the leases is for approximately three years. The Beijing Facility is being equipped to provide comprehensive adult stem cell collection, processing and storage capabilities, and a laboratory to support a number of our therapeutic programs. In order to implement the establishment of the Beijing Facility, as of December 31, 2009, our Company, NeoStem (China) and PCT, entered into an agreement, whereby NeoStem and NeoStem (China) engaged PCT to perform the services necessary (1) to construct the Beijing Facility and (2) to effect the installation of quality control systems which comply with cGMP standards and regulatory standards that would be applicable in the United States under

GTP standards, as well as all regulatory requirements applicable to the program under the laws of the PRC. The project commenced on April 1, 2010 and construction was completed at year-end. The aggregate cost of the program, including the Phase 1 equipment purchases, is expected to be approximately $3,000,000. The Beijing Facility is located at the Life Science Innovation Center, Life Science Park, Zhongguancum, Beijing. This property is used in the Company's Regenerative Medicine — China reportable segment.

Neo Bio-Technology has been leasing office space in Qingdao since August 2009. The current lease is effective through September 2011 at a monthly rent of approximately $1,300. It is expected that Neo Bio-Technologywill move to Tianjin to take advantage of tax and other concessions that are being made available. This property is used as corporate offices.

Erye

The current operations of Erye are located in Suzhou City and the Xiangcheng District of Suzhou. As to the operations in Suzhou City, all buildings are occupied and used by Erye and the ages of all buildings are over 25 years. The land on which the facilities are situated is located at the heart of the city and is restricted by government regulation from any new building development. In 2005, the government issued a mandate requiring the relocation of many of Suzhou's existing manufacturing facilities. To comply with this mandate, and to meet the growing demands of its business, Erye acquired land use rights to approximately 27 acres in the Xiangcheng District of Suzhou for approximately $2.0 million and, in 2007, commenced the construction of a new, state-of-the-art production facility. This new campus-style facility includes 16 buildings containing a total of approximately 53,186 square meters, for which the external building construction has been completed. Certain elements of the project have been completed and put into service in 2010 and the relocation is expected to be completed in 2011. The land use rights end in 2057.

The total cost of the new facility is estimated to be approximately $38 million, of which approximately $34 million has been incurred through December 31, 2010. Construction has been and will continue to be self-funded by Erye and EET, the holder of the minority joint venture interest in Erye. We have agreed for 2010 and approximately the next two years to reinvest in Erye approximately 90% of the net earnings we would be entitled to receive under the Joint Venture Agreement by reason of our 51% interest in Erye.

These properties are used in the Company's Pharmaceutical Manufacturing — China reportable segment.

In 2008, CBH, the then 51% owner of Erye, and EET, as the owner of the remaining 49% of Erye, and RimAsia Capital Partners L.P. ("RimAsia"), entered into a Memorandum of Understanding (the "MOU") which established, among other things, certain terms and conditions concerning the operation and relocation of Erye. The MOU calls for all proceeds associated with the relocation of the current facility in which Erye manufactures product to be sold, to the new facilities currently under construction, to be paid to EET. In September 2009, Erye agreed to transfer the land and building for its principal manufacturing facility to a new joint venture beneficially owned by EET. Erye and the new joint venture, which was approved by the Jiangsu Provincial Bureau of Commerce on December 28, 2009, have agreed to Erye's continued use of the land and buildings for a nominal fee until the construction of the new plant and Erye's relocation are completed.

ITEM 3. LEGAL PROCEEDINGS.

We may be subject to litigation in the ordinary course. Currently, we are not a party to any litigation that could have a material adverse effect on our financial condition.

ITEM 4. (REMOVED AND RESERVED).

PART II

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

ITEM 5(a). MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Market For Our Common Equity

Our Common Stock trades on the NYSE-Amex under the symbol "NBS." The following table sets forth the high and low sales prices of our Common Stock for each quarterly period presented, as reported by the NYSE-Amex.

2010	High	Low
First Quarter	$2.15	$ 1.26
Second Quarter	$ 3.50	$ 1.58
Third Quarter	$2.15	$ 1.52
Fourth Quarter	$2.15	$ 1.10
2009	**High**	**Low**
First Quarter	$ 1.08	$ 0.43
Second Quarter	$2.72	$ 0.80
Third Quarter	$ 2.33	$ 1.40
Fourth Quarter	$2.50	$ 1.28
2008	**High**	**Low**
First Quarter	$ 2.24	$ 1.18
Second Quarter	$ 1.48	$ 0.41
Third Quarter	$ 1.80	$ 0.70
Fourth Quarter	$2.15	$ 0.41

Holders

As of March 14, 2011, there were approximately 1,396 stockholders of record of our Common Stock (which does not include beneficial owners for whom Cede & Co. or others act as nominees).

Dividends and Dividend Policy

We have not paid cash dividends on our Common Stock during the periods set forth in the stock price table that appears above. The holders of our Common Stock are each entitled to receive dividends when and if declared by the board of directors out of funds legally available therefor, subject to the terms of any outstanding series of preferred stock (as further described below). Other than payments that are required pursuant to the terms of our Series E 7% Senior Convertible Preferred Stock (the "Series E Preferred Stock"), we intend to retain any future earnings to fund the development and growth of our business, and therefore we do not anticipate paying any cash dividends on our Common Stock in the foreseeable future.

So long as any shares of our Series E Preferred Stock are outstanding, no dividends can be paid on our Common Stock without the consent of the holders of a majority of the outstanding shares of Series E Preferred Stock, and the holders of the Series E Preferred Stock, as well as the holders of the warrants issued to the purchasers of the Series E Preferred Stock, have the right to participate in any payment of dividends or other distributions made to the holders of our Common Stock to the same extent as if they had converted the Series E Preferred Stock or exercised the warrants.

Furthermore, we expect to rely on dividend payments from our subsidiaries, NeoStem (China) and China Biopharmaceuticals Holdings, Inc. (which is the holder of our 51% interest in Erye), which may, from time to time, be subject to certain additional restrictions on their ability make distributions to us. PRC accounting standards and regulations currently permit payment of dividends only out of accumulated profits, a portion of which must be set aside to fund certain reserve funds. Our inability to receive all of the revenues from

NeoStem (China) and Merger Sub may in turn provide an additional obstacle to our ability to pay dividends on our common stock in the future. Additionally, because the PRC government imposes controls on the convertibility of RMB into foreign currencies and, in certain cases, the remittance of currency out of the PRC, shortages in the availability of foreign currency may occur, which could restrict our ability to remit sufficient foreign currency to pay dividends.

Finally, any distributions we may receive by reason of our ownership of a 51% interest in Erye will be subject to the provisions of the Joint Venture Agreement, which presently provides that, for 2010 and for a period of approximately two years thereafter, we will receive annual distributions of only six percent of Erye's net profit.

Recent Sales of Unregistered Securities

Effective October 15, 2010 and January 19, 2011, respectively, the Company entered into agreements with a media consultant pursuant to which this consultant was engaged in each case to provide services for a two month term. In addition to certain specified cash consideration, in consideration for providing services under the October 2010 agreement, the Company issued to this consultant effective December 14, 2010 a total of 10,000 shares of Restricted Common Stock and in consideration for providing services under the January 2011 agreement, the Company agreed to issue to this consultant a total of 10,000 shares of Restricted Common Stock, vesting as to 5,000 shares at the end of each month during the term.

Effective December 16, 2010, the Company entered into an agreement with a consultant pursuant to which this consultant was retained to develop, coordinate, manage and execute a comprehensive corporate finance and investor relations campaign for the Company for a six month term. In consideration for providing services under this agreement, in addition to certain specified cash consideration, the Company agreed to issue to this consultant a total of 50,000 shares of Restricted Common Stock, vesting (a) as to 8,334 shares on each of the effective date and the first monthly anniversary of the effective date and (b) as to 8,333 shares on each of the second, third, fourth and fifth monthly anniversaries of the effective date.

Effective December 22, 2010, the Company entered into an agreement with a consultant pursuant to which this consultant was retained to assist and consult with the Company in matters concerning corporate finance, investor communications and public relations with existing shareholders, brokers, dealers and other investment professionals for a six month term. In consideration for providing services under this agreement, the Company agreed to issue to this consultant a total of 240,000 shares of Restricted Common Stock, as follows (i) 40,000 shares on each of the effective date, one month after the effective date and two months after the effective date and (ii) 40,000 shares on each of 90 days, 120 days, and 150 days, respectively, after the effective date.

Effective January 5, 2011, the Company entered into an agreement with a law firm which has been providing legal services to the Company since 2006, pursuant to which this firm was retained to provide additional legal services for a one year term with regard to assisting the Company in the negotiation, drafting and finalization of contracts, in the development of strategic plans, and with regard to funding from various agencies of the State of New Jersey and the Federal Government. In consideration for providing services under this agreement, the Company agreed to issue to this consultant a five year warrant to purchase up to an aggregate of 60,000 shares of Restricted Common Stock at $1.44 per share, vesting as to 30,000 shares on each of June 30, 2011 and December 31, 2011. The issuance of such securities is subject to the approval of the NYSE Amex.

Effective January 12, 2011, the Company entered into an agreement with a consultant pursuant to which a consultant was engaged for a term commencing January 12, 2011 through July 1, 2011 to provide additional specified business development services under an October 9, 2009 agreement with the Company. As compensation for these additional services, the Company agreed to issue to this consultant (i) a total of 100,000 shares of Restricted Common Stock, vesting as to 50,000 shares on each of the effective date and July 1, 2011 and (ii) a five year warrant to purchase up to an aggregate of 50,000 shares of Restricted Common Stock at $1.50 per share, vesting in its entirety at the end of the term.

Effective January 23, 2011, the Company entered into a consulting agreement pursuant to which a consultant was retained to assist the Company in providing sponsorship of the Company's securities in the

public markets and perform investor relations services for a one year term. In consideration for providing services under this agreement, the Company agreed to issue to this consultant a five year warrant to purchase up to an aggregate of 50,000 shares of Restricted Common Stock at $1.50 per share, vesting as to 12,500 shares on each of the effective date and the third, sixth and ninth month anniversaries of the effective date.

Effective February 8, 2011 and April 4, 2011, the Company entered into agreements with a consultant to provide consulting services to the Company for a two-month term, and three month term, respectively, relating to potential sources of media in addition to making strategic advertising introductions. In consideration for providing services under these agreements, in addition to certain specified cash consideration, the Company agreed to issue to this consultant 120,000 shares of Restricted Common Stock, vesting on February 18, 2011 and 180,000 shares of Restricted Common Stock, vesting on April 4, 2011, respectively. The issuance of such securities is subject to the approval of the NYSE Amex.

Effective February 24, 2011, the Company entered into a one year extension and amendment of a February 26, 2010 agreement with a consultant to continue to provide to the Company necessary information for designing a successful marketing plan and product list for the penetration (Phase II) of Federal, State and local government markets. In consideration for providing the services, in addition to certain specified cash and other consideration, the Company agreed to issue a five year warrant in the Company's standard form to purchase 110,000 shares of Restricted Common Stock at $1.41 per share, vesting in its entirety on the effective date. The issuance of such securities is subject to the approval of the NYSE Amex.

On March 3, 2011, we consummated a private placement pursuant to which five persons and entities acquired an aggregate of 2,343,750 shares of Common Stock for an aggregate consideration of $3,000,000 (purchase price $1.28 per share). The investors included Steven S. Myers (one of our directors) (who purchased 390,625 shares) and Dr. Andrew L. Pecora (the Chief Medical Officer of our subsidiary PCT) (who purchased 78,125 shares).

Effective March 16, 2011, the Company entered into a consulting agreement pursuant to which a consultant was retained to assist the Company for a three-month term in providing sponsorship of the Company's securities in the public markets and perform specified investor relations services. In consideration for providing services under this agreement, the Company agreed to issue to this consultant 120,000 shares of Restricted Common Stock, vesting as to one-third of the shares on each of the first, second and third one-month anniversaries of the effective date. The issuance of such securities is subject to the approval of the NYSE Amex.

On April 5, 2011, we consummated a private placement pursuant to which nine persons and entities acquired an aggregate of 1,244,375 shares of Common Stock for an aggregate consideration of $1,592,800 (purchase price $1.28 per share).

The offer and sale by the Company of the securities described above were made in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), for transactions by an issuer not involving a public offering. The offer and sale of such securities were made without general solicitation or advertising to "accredited investors" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act and/or pursuant to Regulation D or Regulation S, each promulgated under the Securities Act and may not be resold in the United States or to U.S. persons unless registered under the Securities Act or pursuant to an exemption from registration under the Securities Act.

ITEM 5(b). USE OF PROCEEDS.

Not applicable.

ITEM 5(c). REPURCHASES OF EQUITY SECURITIES.

There were no repurchases of equity securities by or on behalf of the Company or any affiliated purchaser during the fourth quarter of the fiscal year ended December 31, 2010 as to which information is required to be furnished.

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Cautionary Note Regarding Forward-Looking Statements" and under "Risk Factors" and elsewhere in this annual report. The following discussion should be read in conjunction with our consolidated financial statements and related notes thereto included in Item 8 of this annual report.

Overview

NeoStem, Inc. is an international biopharmaceutical company operating in three reportable segments: (i) Cell Therapy — United States; (ii) Regenerative Medicine — China; (iii) Pharmaceutical Manufacturing — China.

Through the Cell Therapy — United States segment, NeoStem is focused on the development of proprietary cellular therapies in oncology, immunology and regenerative medicine and becoming a single source for collection, storage, manufacturing, therapeutic development and transportation of cells for cell based medicine and regenerative science globally . Within this segment, we also are a provider of adult stem cell collection, processing and storage services in the U.S., enabling healthy individuals to donate and store their stem cells for personal therapeutic use. During 2010, we expanded our network of adult stem cell collection centers to include ten centers throughout the country.

We strengthened our expertise in cellular therapies with our January 19, 2011 acquisition of Progenitor Cell Therapy, LLC, a Delaware limited liability company ("PCT"), pursuant to which we acquired all of the membership interests of PCT, and PCT is now a wholly-owned subsidiary of NeoStem. PCT is engaged in a wide range of services in the cell therapy market for the treatment of human disease, including, but not limited to, contract manufacturing, product and process development, regulatory consulting, product characterization and comparability, and storage, distribution, manufacturing and transportation of cell therapy products. PCT's legacy business relationships also afford NeoStem introductions to innovative therapeutic programs. For example, Amorcyte, now a NeoStem customer, has completed a Phase I clinical trial using stem cells post acute myocardial infarction and is ready to move into Phase II testing. Also, through the PCT acquisition, NeoStem now owns approximately an 80% interest in Athelos, a company developing a T-cell based immunomodulatory therapeutic. Results from ongoing Phase 1 trials will determine the next phase of trials under this program. We view the PCT acquisition as fundamental to building a foundation in achieving our strategic mission of capturing the paradigm shift to cell therapy.

Through our Regenerative Medicine — China segment, in 2009, we began several China-based, Regenerative Medicine initiatives including: (i) creating a separate China-based cell therapy operation, (ii) constructing a stem cell research and development laboratory and processing facility in Beijing, (iii) establishing relationships with hospitals to provide cell-based therapies, and (iv) obtaining product licenses covering several adult stem cell therapeutics focused on regenerative medicine.

We acquired our Pharmaceutical Manufacturing — China segment when on October 30, 2009, China Biopharmaceuticals Holdings, Inc. ("CBH") merged with and into CBH Acquisition LLC ("Merger Sub"), a wholly-owned subsidiary of NeoStem, with Merger Sub as the surviving entity (the "Erye Merger"). As a result of the Erye Merger, NeoStem acquired CBH's 51% ownership interest in Erye, a Sino-foreign joint venture with limited liability organized under the laws of the People's Republic of China. Erye was founded more than 50 years ago and represents an established, vertically-integrated pharmaceutical business. Historically, Erye has concentrated its efforts on the manufacturing and distribution of generic antibiotic products. In 2010, Erye began transferring its operations to its newly constructed manufacturing facility. The relocation is continuing as the new production lines are completed and receive cGMP certification through 2011. The relocation is significantly increasing Erye's manufacturing capacity and allowing for growth in line with rising demand as a result of healthcare reform in China today.

Results of Operations

Year Ended December 31, 2010 Compared to Year Ended December 31, 2009

Revenues

For the year ended December 31, 2010, total revenues were $69,821,300 compared to $11,565,100 for the year ended December 31, 2009. Revenues for 2010 were comprised of $69,584,300 of pharmaceutical product sales and $237,000 related to stem cell collections, cell therapy services, license fees and royalties and revenues for 2009 were comprised of $11,386,700 of pharmaceutical product sales and $178,400 related to stem cell collections, license fees and royalties. The increase in pharmaceutical product sales in 2010 compared to 2009 was due to Erye being included in the results of operations for a full year in 2010 compared to two months in 2009 as the Erye Merger closed on October 30, 2009.

Cost of Revenues

For the year ended December 31, 2010, cost of revenues was $49,668,300 compared to $9,706,000 for the year ended December 31, 2009. Cost of revenues was comprised of cost of goods sold of $49,639,400 related to pharmaceutical product sales, and $28,900 of direct costs related to collecting autologous stem cells from clients and providing cell therapy services. The increase in cost of goods sold in 2010 compared to 2009 was due to Erye being included in the results of operations for a full year in 2010 compared to two months in 2009 as the Erye Merger closed on October 30, 2009. Included in this increase is a charge for the disposal of assets of $1,350,100 as a result of Erye's move to a new manufacturing facility.

Gross Margin

For the year ended December 31, 2010, gross margin was $20,153,000 compared to $1,859,100 for the year ended December 31, 2009. The sale of pharmaceutical products accounted for 99% of our gross margin in both 2010 and 2009.

Operating Expenses

For the year ended December 31, 2010 operating expenses totaled $39,031,300 compared to $27,728,000 for the year ended December 31, 2009, representing an increase of $11,303,300 or 41%.

Historically, to minimize our use of cash, we have used a variety of equity and equity-linked instruments to pay for services and to incentivize employees, consultants and other service providers. The use of these instruments has resulted in significant charges to the results of operations. In general, these equity and equity-linked instruments were used to pay for employee and consultant compensation, director fees, marketing services, investor relations and other activities. For the year ended December 31, 2010 the use of equity and equity-linked instruments to pay for such expenses resulted in charges to selling, general, and administrative, and research and development expenses totaling $7,376,500 representing a decrease of $4,882,400 from the year ended December 31, 2009, primarily due to non-recurring expenses, in 2009, associated with the vesting of stock options, an issuance of stock options and issuance of common and restricted stock to employees, directors and consultants which were tied to the completion of the Erye Merger and related events.

The composition of our share-based compensation charges were as follows:

- $4,718,800 related to recurring expenses associated with options issued to employees and consultants that vest over time;
- $1,605,800 related to expenses associated with options issued to employees and consultants that vested upon achievement of certain business milestones;
- $577,100 related to expenses associated with the issuance of common stock and the vesting of restricted stock to consultants for providing services;
- $474,800 related to expenses associated with warrants issued to consultants for the payment of business services.

For the year ended December 31, 2010, our selling, general, and administrative expenses were $31,346,800 compared to $23,400,400 for the year ended December 31, 2009, representing an increase of $7,946,800, which was the result of:

- An increase in expenses of $7,210,300 at Erye due to Erye being included in the results of operations for a full year in 2010 compared to two months in 2009 as the Erye Merger closed on October 30, 2009. Included in this increase was a charge related to patent infringement costs totaling $734,600. In addition, the 2010 costs also included the impact of operating out of two facilities during 2010 as the new production facility was not fully operational as of December 31, 2010.
- An increase in the amortization of intangible assets of $1,521,400 related to the intangible assets that were established as part of the Erye Merger.
- An increase in legal and accounting fees of $1,159,800 due to the Erye Merger and the number of financing transactions during 2010.
- An increase in marketing related costs of $989,600 related to the Company's Cell Therapy — United States Segment, related to efforts to increase the size of the medical network supporting our collection of adult stem cells and efforts to make individuals aware of the value of banking their stem cells before they are needed medically.
- An increase in costs of $796,500 related to our efforts to establish a stem cell operation in China to provide advanced therapies, related processing and storage, as well as research and development capabilities.
- A goodwill impairment charge of $558,200 related to our Cell Therapy — United States reportable segment.
- An increase in Board fees paid in cash of $312,800 due to the implementation of the 2009 Directors Compensation Plan.
- A decrease in share-based compensation discussed above of $4,431,600.

For the year ended December 31, 2010, our research and development expenses were $7,684,500 compared to $4,327,600 for the year ended December 31, 2009, representing an increase of $3,356,900, which was the result of:

- An increase in expenses of $1,430,900 at Erye due to Erye being included in the results of operations for a full year in 2010 compared to two months in 2009 as the Erye Merger closed on October 30, 2009.
- An increase in staffing costs of $921,500, facility expenses of $374,900, lab operating expenses of $621,800, and $186,400 of sponsored research at our Cambridge research laboratory related to the development of VSEL ^{TM} technology.
- An increase in consulting fees of $392,400 related to the Company's VSEL ^{TM} technology and wound healing initiatives. This increase is related to increased efforts to secure research grants hiring consultants to help in the identification of appropriate grants and agencies and writing grants.
- An increase in patent costs of $339,200, related to the retention of new patent counsel resulting in significant review of our patent portfolio and patent strategy, an increase in activity, both foreign and domestic, related to a number of patents filed related to VSEL and other cell therapies.
- An increase in facility costs of $297,400 related to our Beijing research facility which was operational as of December 31, 2010.
- A decrease in expenses of $918,100 related to the recovery of costs incurred in 2009 for the development of a platform research organization in China.
- A decrease in share-based compensation discussed above of $450,800.

Other Income and Expense

Included in other income and expense in 2010 was other income of $656,300 due to a settlement agreement reached with a business partner involved in the development of the platform research organization in China, whereby the business partner relinquished rights to certain shares of our common stock. The Company valued the shares at their fair market value on the day the shares were relinquished. Also included in other income and expense in 2010 was $138,300 in expense for fair value adjustments on derivative liabilities related to the Company's Series E Preferred Stock issuance in November 2010 and other outstanding warrants. Included in interest expense in 2010 was $281,200 in amortization of preferred stock discount and issuance costs related to the Company's Series E Preferred Stock.

Provision for Taxes

The provision for taxes of $550,900 represents income taxes due on income of Erye for the year ended December 31, 2010. At December 31, 2009, the Company had a reserve for income taxes of $1,099,000 related to uncertain tax positions at Erye. An audit of Erye's tax returns was finalized for the years ending December 31, 2000 through 2008 in September 2010. This audit resulted in a payment of approximately $663,800 in income taxes and penalties and the remaining reserve was credited to income taxes.

In 2010, Erye's statutory tax rate was 12.5%. In 2011, this rate will increase to 25% due to the expiration of certain high technology tax credits. The overall effective rate is impacted by the recording of additional valuation allowance as it is not more likely than not that the Company's net deferred tax assets will be realized.

Non-Controlling Interests

The Company owns a 51% interest in Suzhou Erye Pharmaceutical Company Ltd. ("Erye"). We account for the 49% minority shareholders' share of Erye's net income with a charge to net income attributable to noncontrolling interests. For the year ended December 31, 2010, Erye's minority shareholders' share of net income totaled $3,908,700 compared to $220,900 for the year ended December 31, 2009.

Preferred Dividends

Included in preferred dividends for 2010 was $153,500 related to the Company's Series C Preferred Stock which was converted to common stock in May 2010 and $84,500 related to the Company's Series E Preferred Stock issued in November 2010. Included in preferred dividends in 2009 was $5,542,500 which was recognized in 2009 as the value of the beneficial conversion feature of the Series C Preferred Stock. The conversion feature did not require any minimum holding period or vesting before the preferred stock was able to be converted. Because the preferred shareholder was not required to hold the preferred stock for any length of time before conversion we accreted the value of the beneficial conversion feature as a dividend of $5,542,500.

Year Ended December 31, 2009 Compared to Year Ended December 31, 2008

Revenues

For the year ended December 31, 2009, total revenues were $11,565,100 compared to $83,500 for the year ended December 31, 2008. Revenues for 2009 were comprised of $11,386,700 of pharmaceutical product sales and $178,400 related to stem cell collections, license fees and royalties. The pharmaceutical product sales of $11,386,700 represented two months' sales generated by Erye given the Erye Merger closed on October 30, 2009. The stem cell revenues generated in the years ended December 31, 2009 and 2008 were derived from a combination of revenues from the collection of autologous adult stem cells and license fees collected from collection centers in our collection center network. For the year ended December 31, 2009, we earned $143,700 from the collection and storage of autologous adult stem cells and $34,700 of license fees. For the year ended December 31, 2008, we earned $51,900 from the collection and storage of autologous adult stem cells and $31,000 from license fees. The increase in stem cell collection and storage revenue in 2009 compared to 2008 was due primarily to our efforts on recruiting clients into the existing network in the Northeast and Southern California.

Cost of Revenues

For the year ended December 31, 2009, cost of revenues was $9,706,000 compared to $32,000 for the year ended December 31, 2008. Cost of revenues was comprised of cost of goods sold of $9,593,100 related to pharmaceutical product sales, and $112,900 of direct costs related to collecting autologous stem cells from clients. The cost of goods sold for 2009 included $1,957,600 related to the step up in basis of inventory that was recorded as part of the Erye Merger and sold through as of December 31, 2009.

Gross Margin

For the year ended December 31, 2009, gross margin was $1,859,100 compared to $51,600 for the year ended December 31, 2008. The sale of pharmaceutical products accounted for 96% of our gross margin.

Operating Expenses

For the year ended December 31, 2009 operating expenses totaled $27,728,000 compared to $9,285,000 for the year ended December 31, 2008, representing an increase of $18,443,000 or 199%.

Historically, to minimize our use of cash, we have used a variety of equity and equity-linked instruments to pay for services and to incentivize employees, consultants and other service providers. The use of these instruments has resulted in significant charges to the results of operations. In general, these equity and equity-linked instruments were used to pay for employee and consultant compensation, director fees, marketing services, investor relations and other activities. For the year ended December 31, 2009 the use of equity and equity-linked instruments to pay for such expenses resulted in charges to selling, general, and administrative, and research and development expenses of $12,258,900 representing an increase of $8,368,500 over the year ended December 31, 2008, primarily due to non-recurring expenses associated with the vesting of stock options an issuance of stock options and issuance of common and restricted stock to employees, directors and consultants which were tied to the completion of the Erye Merger and related events; in addition the Company's activity related to the granting of stock options increased in 2009 over 2008 due to the approval of the 2009 Equity Plan since the number of shares available to be issued from the 2003 Equity Participation Plan was limited.

The composition of our share-based compensation charges were as follows:

- $6,198,500 related to nonrecurring expenses associated with the vesting of stock options and issuance of common and restricted stock to employees, directors and consultants which were tied to the completion of the Erye Merger and related events;
- $4,230,400 related to recurring expenses associated with options issued to employees and consultants that vest over time;
- $102,800 related to expenses associated with options issued to employees and consultants that vested upon achievement of certain business milestones;
- $1,458,100 related to expenses associated with the issuance of common stock and the vesting of restricted stock to consultants for providing services; and
- $269,100 related to expenses associated with warrants issued to consultants for the payment of business services.

For the year ended December 31, 2009, our selling, general, and administrative expenses were $23,400,400 compared to $8,492,800 for the year ended December 31, 2008, representing an increase of $14,907,600, which was the result of:

- The activities related to our Erye Merger which totaled $1,578,000 and increased our expenses by $771,900 primarily from the legal and professional services utilized to prepare for public filings and shareholder approval of the Erye Merger and related matters.
- Our efforts to establish a stem cell operation in China to provide advanced therapies, related processing and storage, as well as research and development capabilities which totaled $5,209,500. Such expenses included expenditures for the rental of laboratory space, legal expenses associated with establishing our subsidiary company and related operations in China, consultants retained to

support our implementation and introduction of advanced therapies in China, recruiting fees for identifying senior managers for our operation in China and travel. In addition these operating expenses reflect charges resulting from issuing various equity instruments to incentivize staff members and consultants totaling $2,163,900.

- Administrative expenses increased by approximately $8,154,200. Approximately $799,600 of this increased operating expense was the result of the Erye Merger and the attendant operating expenses of this operation and amortization costs associated with amortizing intangible assets that were capitalized as part of accounting for the Erye Merger. The Company's US administrative operating expenses increased by $7,354,600. The use of equity instruments to incentivize staff, compensate directors and pay for services totaled $7,521,700, an increase of $4,404,200 over 2008. Salaries and wages increased by $1,586,900 as the result of increased staffing levels required to absorb the acquisition of Erye, contractual salary increases and tax payments and tax withholdings we paid on behalf of certain executives and other staff members in connection with common stock grants made during year. Professional fees, including legal and accounting fees, increased by $603,500 as the result of our expanded operations in China and related professional services required to evaluate the Company's internal controls and preparation work for the common stock offering that closed in February 2010. Investor relations services increased by $165,300, and fees for preparing documents for various SEC filings and production of reports and materials needed for shareholder meetings in connection with the Erye Merger together increased operating expenses by $212,900. Additionally, travel and entertainment increased by $121,900 primarily as a result of the Company's expanded operations in China, rent increased by $22,700 as a result of the leasing of office space in New York, franchise taxes increased $155,000 and the majority of the balance of the increase in administrative expense resulted from increases and decreases in office expenses, insurance and other expenses.
- Sales and marketing expenses increased by $772,000 over 2008. Approximately $373,300 of this increased operating expense was the result of the Erye Merger and the attendant sales and marketing expenses of the Erye operation. The use of equity instruments to incentivize staff, and pay for services totaled $897,700, an increase of $360,900 over 2008 and other US sales and marketing costs increased by approximately $37,800.

For the year ended December 31, 2009, our research and development expenses totaled $4,327,600 compared to $792,200 for the year ended December 31, 2008, representing an increase of $3,535,400, which was the result of:

- The use of equity instruments to incentivize staff totaled $1,374,300, an increase of $1,138,000 over 2008. Research related to our VSEL™ technology increased operating expenses by $1,385,300. In particular, the operation of our Cambridge research laboratory and related staff increased operating expenses by $859,300, fees paid to consultants to support our research efforts increased VSEL™ technology research expense by $168,000, clinical studies initiated during the period increased our operating expenses by $162,000, patents and other legal expenses increased our research expense by $159,000, and increases in a variety of other areas increased our research expenses by $37,000. During 2009 we initiated efforts to create a research facility in China and incurred fees and expenses totaling $773,000 related to this effort. Our acquisition of Erye added $132,000 of research and development expense to our operating expenses. The balance of the increase in research and development expense is related to costs associated with our wound healing research.

Other Income and Expense

Interest expense increased $79,600 primarily due to accrued interest on dividends paid to Erye's minority shareholder in 2009 which were loaned back to Erye to provide funds to continue the construction of Erye's new production facility. The loan calls for interest to accrue at rate of 5% annually and at December 31, 2009 this loan totaled approximately $7,954,400, including accrued interest. Interest accrued on this loan was capitalized as part of construction in progress and totalled approximately $61,000

Provision for taxes

The provision for taxes of $41,700 represents income taxes due on income of Erye for the two months ended December 31, 2009.

Non-Controlling Interests

When the Company acquired China Biopharmaceutical Holdings, Inc. it acquired a 51% interest in Suzhou Erye Pharmaceutical Company Ltd. ("Erye"). The full operations of Erye are reflected in our results of operations beginning on October 30, 2009. We account for the 49% minority shareholders' share of Erye's net income with a charge to net income attributable to noncontrolling interests. For the year ended December 31, 2009, Erye's minority shareholders' share of net income (for the two months ended December 31, 2009) totaled $220,900.

Preferred Dividends

In connection with the Erye Merger, the Company issued 8,177,512 shares of Convertible Redeemable Series C Preferred Stock ("Series C Preferred Stock") which called for annual dividends of 5% based on the stated value of the preferred stock. For 2009 we recorded a dividend of $69,500 as the prorated dividend due at December 31, 2009. In addition in connection with the issuance of the Series C Preferred Stock a dividend of $5,542,500 was recognized in 2009 as the value of the beneficial conversion feature of the Series C Preferred Stock. The conversion feature did not require any minimum holding period or vesting before the preferred stock was able to be converted. Because the preferred shareholder was not required to hold the preferred stock for any length of time before conversion we accreted the value of the beneficial conversion feature as a dividend of $5,542,500.

Analysis of Liquidity and Capital Resources

Since our inception, we have financed our operations primarily through preferred and common stock offerings. At December 31, 2010, we had $15,612,400 in cash and cash equivalents, with an additional $5,881,400 in restricted cash (in current and non-current assets). Working capital increased to $14,038,200 at December 31, 2010 from $6,575,000 at December 31, 2009.

The following table represents the net cash used in operating activities, net cash used in investing activities and net cash provided by financing activities for the years ended December 31, 2010, 2009 and 2008 (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Net cash used in operating activities	$ (8,476.7)	$ (8,371.9)	$ (4,732.2)
Net cash used in investing activities	$ (17,105.8)	$ (2,651.0)	$ (9.8)
Net cash provided by financing activities	$ 33,855.5	$ 17,783.8	$ 2,868.5

Operating Activities

Net cash used in operating activities for the year ended December 31, 2010 primarily resulted from our net loss of $19,397,000 which included non-cash items of $13,916,200 primarily related to share-based compensation and depreciation and amortization, and an increase in inventory of $7,469,100 due to increased production levels at Erye, both of which were partially offset by an increase in accounts payable and accrued expenses as a result of the increase in inventory and construction in progress related to Erye. Net cash used in operating activities for the year ended December 31, 2009 primarily resulted from our net loss of $25,949,800 which included non-cash items of expenses of $14,609,200 primarily related to share based compensation and depreciation and amortization, partially offset by a decrease in prepaid expenses, other current assets and accounts receivable, and an increase in unearned revenues at Erye, and an increase in accounts payable and accrued expenses in the US as a result of professional fees associated with the Erye Merger. Net cash used in operating activities for the year ended December 31, 2008 primarily resulted from our net loss of $9,242,100 which included non-cash expense of $4,027,900 primarily related to share-based compensation and depreciation and amortization.

Investing Activities

Net cash used in investing activities for the year ended December 31, 2010 was primarily due to the construction of a new production facility at Erye. Erye spent a total of $14,038,700 on the new production facility during 2010. The Company expects that the construction will be completed in 2011 and the estimated cost to complete the construction will be approximately $4 million. In addition, as part of the Series E Preferred Stock Offering in November 2010, the Company was required to place $2,500,000 in escrow for a maximum of 2.5 years as security for the Company's obligations relative to the Preferred Shares. Net cash used in investing activities for the year ended December 31, 2009 was primarily due to the construction of the new production facility at Erye which totaled $1,057,100 and the build out of a new research laboratory in Cambridge, MA to support the research and development requirements of our VSEL ^{TM} technology as well as our other research efforts regarding adult stem cells which totaled $592,700.

Financing Activities

Net cash provided by financing activities for the year ended December 31, 2010 was primarily due to the following:

- On February 18, 2010, the Company completed a public offering of its common stock, selling 5,750,000 shares priced at $1.35 per share. The Company received approximately $6,821,600 in net proceeds from the offering, after underwriting discounts, commissions and expenses, of approximately $940,900.
- Effective March 15, 2010, RimAsia exercised a warrant to purchase 1,000,000 shares of restricted Common Stock. This warrant was issued to RimAsia in a private placement completed by the Company in September 2008. The exercise price was $1.75 per share, resulting in proceeds to the Company of $1,750,000.
- On May 19, 2010, the Company entered into a Common Stock Purchase Agreement (the "Purchase Agreement") with Commerce Court Small Cap Value Fund, Ltd. ("Commerce Court"), which provides that, subject to certain terms and conditions, Commerce Court is committed to purchase up to $20,000,000 worth of shares of the Company's common stock over a term of approximately 24 months. The Purchase Agreement provides that at the Company's discretion, it may present Commerce Court with draw down notices under this $20 million equity line of credit arrangement from time to time, to purchase the Company's Common Stock, provided certain price requirements are met and limited to 2.5% of the Company's market capitalization at the time of such draw down, which may be waived or modified. The per share purchase price for these shares will equal the daily volume weighted average price of the Company's common stock on each date during the draw down period on which shares are purchased, less a discount of 5.0%. The Purchase Agreement also provides that the Company in its sole discretion may grant Commerce Court the right to exercise one or more options to purchase additional shares of Common Stock during each draw down period at a price which would be based on a discount calculated in the same manner as it is calculated in the draw down notice. The issuance of shares of common stock to Commerce Court pursuant to the Purchase Agreement, and the sale of those shares from time to time by Commerce Court to the public, are covered by an effective registration statement on Form S-3 filed with the SEC. On May 27, 2010, the Company presented Commerce Court with a Draw Down Notice. Pursuant to the Purchase Agreement, the shares were offered at a discount price to Commerce Court mutually agreed upon by the parties under the Purchase Agreement equal to 95.0% of the daily volume weighted average price of the common stock during the Pricing Period or a 5% discount. Pursuant to the Draw Down Notice, the Company also granted Commerce Court the right to exercise one or more options to purchase additional shares of common stock during the Pricing Period, based on the trading price of the common stock. The Company settled with Commerce Court on the purchase of 685,226 shares of common stock under the terms of the Draw Down Notice and the Purchase Agreement at an aggregate purchase price of $1,800,000, or approximately $2.63 per share, on June 7, 2010. The Company and Commerce Court agreed to waive the minimum threshold price of $3.00 per share set forth in the Purchase Agreement. The Company received net proceeds from the sale of these shares of approximately $1,744,000 after deducting its offering expenses.

- On June 1, 2010, Fullbright Finance Limited exercised a warrant to purchase 400,000 shares of restricted Common Stock. This warrant was issued to Fullbright in a private placement of securities by the Company in November 2008. The exercise price was $1.75 per share, resulting in proceeds to the Company of $700,000.
- On June 25, 2010, the Company entered into definitive securities purchase agreements with investors in a registered direct public offering, pursuant to which such investors agreed to purchase, and the Company agreed to sell, an aggregate of 2,325,582 Units, consisting of an aggregate of 2,325,582 shares of common stock and warrants to purchase an aggregate of 581,394 shares of common stock. The offering closed on June 30, 2010 with gross proceeds of $5,000,000. Each Unit was priced at $2.15 and consisted of one share of common stock and a warrant which will allow the investor to purchase 0.25 shares of common stock at a per share price of $2.75. The warrants may be called by the Company in the event that the common stock trades over $4.50 per share for 10 consecutive trading days. Subject to certain ownership limitations, the warrants were exercisable on the date of the closing and will expire 2 years thereafter. The number of shares of common stock issuable upon exercise of the warrants and the exercise price of the warrants are adjustable in the event of stock dividends, splits, recapitalizations, reclassifications, combinations or exchanges of shares, reorganizations, liquidations, consolidation, acquisition of the Company (whether through merger or acquisition of substantially all the assets or stock of the Company) or similar events. The issuance of the securities in this offering was registered on a registration statement on Form S-3 filed with the SEC. Rodman & Renshaw LLC acted as the Company's placement agent in this offering and received a total payment of $340,000 in fees and expenses and Placement Agent Warrants to purchase up to 93,023 shares of our Common Stock at an exercise price of $2.6875 per share expiring May 10, 2015. The Placement Agent Warrants are not covered by the Form S-3. The net proceeds to the Company from such offering, after deducting the Placement Agent's fees and expenses, the Company's offering expenses, and excluding the proceeds, if any, from the exercise of the warrants issued in the offering were approximately $4,497,900.
- On September 30, 2010 a warrant holder exercised a warrant to purchase 600,000 shares of Common Stock. The exercise price was $.78 per share, resulting in proceeds to the Company of $468,000.
- On November 16, 2010, the Company entered into an Underwriting Agreement with Cowen and Company, LLC, relating to a public offering by the Company of 6,337,980 units, consisting of one share of the Company's common stock, and a warrant to purchase 0.50 of a share of Common Stock. The public offering price for each Underwritten Unit was $1.45 and the net proceeds were $8,138,500. Each Underwritten Warrant will have an exercise price of $1.85 per share, will be exercisable six months after issuance and will expire five years from the date of issuance.
- On November 19, 2010, the Company sold 10,582,011 Preferred Offering Units consisting of (i) one share ("Preferred Share") of Series E 7% Senior Convertible Preferred Stock, par value $0.01 per share, of the Company, (ii) a warrant to purchase 0.25 of a share of Common Stock (an aggregate of 1,322,486 warrants) and (iii) 0.0155 of a share of Common Stock (an aggregate of 164,418 shares). Each Preferred Offering Unit was priced at $0.945 and total gross and net proceeds received by the Company were $10,000,000 and $8,876,700, respectively. Upon issuance, each warrant had an initial exercise price of $2.0874, will be exercisable six months after issuance and will expire three years after the initial exercise date.

Net cash provided by financing activities for the year ended December 31, 2009 was primarily due to the following:

- In April 2009, we completed a private placement financing totaling $11,000,000, or the April 2009 Private Placement. The April 2009 Private Placement consisted of the issuance of 880,000 units priced at $12.50 per unit, with each unit consisting of one share of our Series D Convertible Redeemable Preferred Stock, or Series D Stock (convertible into 10 shares of our common stock) and ten warrants, or the Series D Warrants, with each Series D Warrant to purchase one share of our common stock. In June 2009, and with a final closing on July 6, 2009, we completed an additional

private placement financing with net proceeds of $4,679,220, or the June 2009 Private Placement. The June 2009 Private Placement consisted of the issuance of 400,280 Series D Units priced at $12.50 per unit. A total of 400,280 Series D Preferred Stock and 4,002,800 Series D Warrants were issued. We paid $324,280 in fees and issued 12,971 Series D Units to agents that facilitated the June 2009 Private Placement. The Series D Units issued to the selling agents were comprised of 12,971 shares of Series D Stock and 129,712 Series D Warrants. In total, in the April 2009 and June 2009 Private Placements, the number of shares of Series D Stock issued was 1,293,251 and the number of Series D Warrants issued was 12,932,512. Upon the affirmative vote of holders of a majority of the voting power of our common stock received in October 2009, the Series D Stock was automatically converted into 12,932,510 shares of our common stock at a conversion price of $1.25 per share. The Series D Warrants have a per share exercise price equal to $2.50 and are callable by us if our common stock trades at a price greater than or equal to $3.50 for a specified period of time. The Series D Warrants are exercisable for five years.

- In July of 2009, in order to facilitate working capital requirements in China, NeoStem (China) issued a promissory note to China Xingye Bank in the amount of $146,700. The note was due on January 1, 2010 and carried an interest rate of 4.86%. The note was paid off in December 2009 and replaced with a promissory note to the Bank of Rizhao Qingdao Branch in the amount of $643,700.
- In December 2009, Erye obtained a loan of approximately $2,200,500 from the Industrial and Commercial Bank with an interest rate of 4.86% that was due in June 2010. In April 2010 this loan was paid in full.

Net cash provided by financing activities for the year ended December 31, 2008 was primarily due to the following:

- In May 2008, the Company completed a private placement of securities pursuant to which $900,000 in gross proceeds was received. The private placement consisted of the issuance of an aggregate of 750,006 units at per-unit price of $1.20, each unit comprised of one share of our common stock and one redeemable five year warrant to purchase one share of common stock at a purchase price of $1.75 per share.
- In September 2008, the Company completed a private placement of securities pursuant to which $1,250,000 in gross proceeds was received. The private placement consisted of the issuance of 1,000,000 units at a per-unit price of $1.25, each unit comprised of one share of our common stock and one redeemable five-year warrant to purchase one share of common stock at a purchase price of $1.75 per share.
- In October 2008, the Company completed a private placement of securities pursuant to which $250,000 in gross proceeds was received. The private placement consisted of the issuance of 200,000 units at a per-unit price of $1.25, each unit comprised of one share of our common stock and one redeemable five-year warrant to purchase one share of common stock at a purchase price of $1.75 per share.
- In November 2008, the Company completed a private placement of securities pursuant to which $500,000 in gross proceeds was received. The private placement consisted of the issuance of 400,000 units at a per-unit price of $1.25, each unit comprised of one share of our common stock and one redeemable five-year warrant to purchase one share of common stock at a purchase price of $1.75 per share.

Liquidity and Capital Requirements Outlook

With our acquisition of a controlling interest in Erye and expansion into China, we have transitioned from being a one-dimensional U.S. service provider with nominal revenues to being a multi-dimensional international biopharmaceutical company with current revenues and operations in three distinct segments: (i) Cell Therapy — United States; (ii) Regenerative Medicine — China; and (iii) Pharmaceutical Manufacturing — China. The following is an overview of our collective liquidity and capital requirements.

Erye is constructing a new pharmaceutical manufacturing facility and began transferring its operations in January 2010. The relocation is continuing as the new production lines are completed and receive cGMP

certification through 2011. In January 2010, Eyre received notification that the SFDA approved Erye's application for cGMP certification to manufacture solvent crystallization sterile penicillin and freeze dried raw sterile penicillin at the new facility, which provides for 50% to 100% greater manufacturing capacity, than its existing facility. Historically these lines accounted for 20% of Erye's sales. In June 2010, Erye passed the government inspection by the SFDA to manufacture penicillin and cephalosporin powder at the new facility. The facility is fully operational with respect to these lines. Erye has now relocated 90% of its 2010 sales capacity to the new facility. The new facility is estimated to cost approximately $38 million, of which approximately $34 million has been incurred through December 31, 2010. Construction has been and will continue to be self-funded by Erye and EET, the holder of the minority joint venture interest in Erye. We have agreed for a period of another two years to reinvest in Erye approximately 90% of the net earnings we would be entitled to receive under the Joint Venture Agreement by reason of our 51% interest in Erye.

We are also engaged in other initiatives to expand our operations into China including with respect to technology licensing, establishment of stem cell processing and storage capabilities and research and clinical development. In June 2009 we established NeoStem (China) as our wholly foreign-owned subsidiary or WFOE. To comply with PRC's foreign investment regulations regarding stem cell research and development, clinical trials and related activities, we conduct our current stem cell business in the PRC through two domestic variable interest entities ("VIEs"). We have incurred and expect to continue to incur substantial expenses in connection with our China activities.

We expect to rely partly on dividends paid to us by the WFOE under the contracts with the VIEs, and under the Joint Venture Agreement attributable to our 51% ownership interest in Erye, to meet some of our future cash needs. However, there can be no assurance that the WFOE in China will receive payments uninterrupted or at all as arranged under the contracts with the VIEs. In addition, pursuant to the Joint Venture Agreement that governs the ownership and management of Erye, for 2010 and approximately the next two years: (i) 49% of undistributed profits (after tax) will be distributed to EET and loaned back to Erye for use in connection with its construction of the new Erye facility; (ii) 45% of the net profit after tax due to the Company will be provided to Erye as part of the new facility construction fund, which will be characterized as paid-in capital for our 51% interest in Erye; and (iii) only 6% of the net profit will be distributed to us directly for our operating expenses. The net assets of Erye at December 31, 2010 were $79,908,500.

The payment of dividends by entities organized under PRC law to non-PRC entities is subject to limitations. Regulations in the PRC currently permit payment of dividends by our WFOE and Erye only out of accumulated distributable earnings, if any, as determined in accordance with accounting standards and regulations in China. Moreover, our WFOE and Erye are required to appropriate from PRC GAAP profit after tax to other non-distributable reserve funds. These reserve funds include one or more of the following: (i) a general reserve, (ii) an enterprise expansion fund and (iii) a staff bonus and welfare fund. Subject to certain cumulative limits (i.e., 50% of the registered capital of the relevant company), the general reserve fund requires annual appropriation at 10% of after tax profit (as determined under accounting principles generally accepted in the PRC at each year-end); the appropriation to the other funds are at the discretion of WFOE and Erye. In addition, if Erye incurs debt on its own behalf in the future, the instruments governing the debt may restrict Erye's or the joint venture's ability to pay dividends or make other distributions to us. This may diminish the cash flow we receive from Erye's operations, which would have a material adverse effect on our business, operating results and financial condition.

Our interests in China are subject to China's rules and regulations on currency conversion. In particular, the initial capitalization and operating expenses of the two VIEs are funded by our WFOE. In China, the State Administration for Foreign Exchange, or the SAFE, regulates the conversion of the Chinese Renminbi into foreign currencies. Currently, foreign investment enterprises are required to apply to the SAFE for Foreign Exchange Registration Certificates, or IC Cards of Enterprises with Foreign Investment. Foreign investment enterprises holding such registration certificates, which must be renewed annually, are allowed to open foreign currency accounts including a "basic account" and "capital account." Currency translation within the scope of the "basic account," such as remittance of foreign currencies for payment of dividends, can be effected without requiring the approval of the SAFE. However, conversion of currency in the "capital account," including capital items such as direct investments, loans, and securities, require approval of the SAFE. According to the *Notice of the General Affairs Department of the State Administration of Foreign Exchange*

on the Relevant Operating Issues Concerning the Improvement of the Administration of Payment and Settlement of Foreign Currency Capital of Foreign-invested Enterprises promulgated on August 29, 2008, or the SAFE Notice 142, to apply to a bank for settlement of foreign currency capital, a foreign invested enterprise shall submit the documents certifying the uses of the RMB funds from the settlement of foreign currency capital and a detailed checklist on use of the RMB funds from the last settlement of foreign currency capital. It is stipulated that only if the funds for the settlement of foreign currency capital are of an amount not more than US$50,000 and are to be used for enterprise reserve, the above documents may be exempted by the bank. This SAFE Notice 142, along with the recent practice of Chinese banks of restricting foreign currency conversion for fear of "hot money" going into China, have limited and may continue to limit our ability to channel funds to the two VIE entities for their operation. We are exploring options with our PRC counsels and banking institutions in China as to acceptable methods of funding the operation of the two VIEs, including advances from Erye, but there can be no assurance that acceptable funding alternatives will be identified.

Neither Erye nor our other expansion activities into China are expected to generate sufficient excess cash flow to support our platform business or our initiatives in China in the near term.

NeoStem, Inc. acquired Progenitor Cell Therapy, LLC ("PCT"), by means of a merger (the "PCT Merger") of a newly formed wholly-owned subsidiary of NeoStem ("Subco"), with and into PCT pursuant to an Agreement and Plan of Merger, dated September 23, 2010 (the "PCT Agreement and Plan of Merger").

Pursuant to the terms of the PCT Agreement and Plan of Merger, all of the membership interests of PCT outstanding immediately prior to the effective time of the PCT Merger (the "Effective Time") were converted into the right to receive, in the aggregate, 10,600,000 shares of the common stock of NeoStem and, subject to the satisfaction of certain conditions as to 1,000,000 shares, warrants to purchase 3,000,000 shares of NeoStem Common Stock. Immediately after the PCT Merger closed, the Company made a payment of $3,000,000 to repay certain indebtedness owed by PCT.

In order to fund the development of advanced cell therapies in the U.S. and China, management believes that we will need to raise additional capital. We will also require additional cash in connection with the expansion of the PCT business. We currently expect to fund our operating activities through the use of existing cash balances, the use of our current or other equity lines or through capital raising transactions, potential additional warrant and option exercises, the 6% of net profits to which we are entitled from Erye, and, ultimately, the growth of our revenue generating activities. In addition, we will continue to seek grants for scientific and clinical studies from the National Institutes of Health, Department of Defense, and other governmental agencies and foundations, but there can be no assurance that we will be successful in obtaining such grants. We also review acquisition opportunities for revenue generating businesses around which we could consider raising capital and consider from time to time other restructuring activities, including with respect to the potential divestiture of assets.

At December 31, 2010, we had cash and cash equivalents of $15,612,400 and restricted cash totaling $5,881,400 (in current and non-current assets). The trading volume of our common stock, coupled with our history of operating losses and liquidity problems, may make it difficult for us to raise capital on acceptable terms or at all. The demand for the equity and debt of small cap biopharmaceutical companies like ours is dependent upon many factors, including the general state of the financial markets. During times of extreme market volatility, capital may not be available on favorable terms, if at all. Our inability to obtain such additional capital on acceptable terms could materially and adversely affect our business operations and ability to continue as a going concern.

The following table reflects a summary of NeoStem's contractual cash obligations and commitments as of December 31, 2010 (in thousands):

	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	More than 5 Years
Employment Agreements	$ 3,499.9	$ 2,226.1	$ 1,273.2	$ 0.6	$ —
Facility Leases	1,849.3	1,004.3	812.0	33.0	—
Equipment Leases	868.8	281.7	457.3	57.7	72.0
License Fees	180.0	30.0	60.0	60.0	30.0
Sponsored Research Agreements	350.3	350.3	—	—	—
Consulting Agreements	1,243.9	1,096.9	147.0	—	—
Design & Construction of Laboratory	80.5	80.5	—	—	—
Series E Preferred Stock[(1)]	11,633.8	4,621.3	7,012.5	—	—
	$ 19,706.5	$ 9,691.1	$ 9,762.0	$ 151.3	$ 102.0

(1) Amounts include dividends.

SEASONALITY

NeoStem does not believe that its operations are seasonal in nature.

OFF-BALANCE SHEET ARRANGEMENTS

NeoStem does not have any off-balance sheet arrangements.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and judgments that affect the amounts reported in the financial statements. On an ongoing basis, the Company evaluates its estimates and assumptions. The Company bases its estimates on historical experience and other assumptions believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could differ from these estimates.

An accounting policy is considered to be critical if it is important to the Company's financial condition and results of operations and if it requires management's most difficult, subjective and complex judgments in its application. For a summary of all of the Company's significant accounting policies, see Note 2 to the Company's Consolidated Financial Statements.

Share-Based Compensation

The Company expenses all share-based payment awards to employees and consultants, including grants of stock options, warrants, and restricted stock, over the requisite service period based on the grant date fair value of the awards. For awards with performance-based vesting criteria, we estimate the probability of achievement of the performance criteria and recognize compensation expense related to those awards expected to vest. The Company determines the fair value of certain share based awards using the Black-Scholes option-pricing model which uses both historical and current market data to estimate the fair value. This method incorporates various assumptions such as the risk-free interest rate, expected volatility, expected dividend yield and expected life of the options or warrants. The fair value of our restricted stock and restricted stock units is based on the closing market price of our common stock on the date of grant.

The Company estimates an expected dividend yield of zero because the Company has never paid cash dividends on its common stock and has no present intention to pay cash dividends. Expected volatility is based on the Company's historical stock prices using a mathematical formula to measure the standard deviation of the change in the natural logarithm of the Company's underlying stock price that is expected over a period of time commensurate with the expected life of the share-based award. The risk-free interest rate is derived from the zero coupon rate on U.S. Treasury instruments for the expected life of the share-based award. The expected life calculation is based on the actual life of historical share-based awards.

Share-based compensation expense recognized in the consolidated statement of operations is based on awards ultimately expected to vest. The guidance requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates with a cumulative catch up adjustment.

The Company evaluates the assumptions used to value share-based awards on a regular basis. If factors change and the Company employs different assumptions, share-based compensation expense may differ significantly from what the Company has recorded in the past. If there are any modifications or cancellations of share-based awards, the Company may be required to accelerate, increase or cancel any remaining, unrecognized share-based compensation expense. To the extent that the Company grants any additional equity securities, its share-based compensation expense will increase by the fair value of the additional grants. Compensation expense is only recognized for those awards that are expected to vest and therefore the Company estimates a forfeiture rate and revises those estimates in subsequent periods if the actual forfeitures differs from the prior estimates. In addition, for awards with performance-based vesting criteria, the Company estimates the probability of achievement of the performance criteria and recognizes compensation expense related to those awards expected to vest. Compensation expense may be significantly impacted in the future to the extent the Company's estimates differ from actual results.

Impairments of Long-Lived Assets

The Company assesses changes in economic, regulatory and legal conditions and makes assumptions regarding estimated future cash flows in evaluating the value of the Company's property, plant and equipment, goodwill and other intangible assets.

The Company periodically evaluates whether current facts or circumstances indicate that the carrying values of its long-lived assets to be held and used may not be recoverable. If such circumstances are determined to exist, an estimate of the undiscounted future cash flows of these assets, or appropriate asset groupings, is compared to the carrying value to determine whether an impairment exists. If the asset is determined to be impaired, the loss is measured based on the difference between the asset's fair value and its carrying value. If quoted market prices are not available, the Company will estimate fair value using a discounted value of estimated future cash flows approach.

The Company tests its goodwill for impairment at least annually, or more frequently if impairment indicators exist, using a fair value based test. Goodwill represents the excess of the consideration transferred over the fair value of net assets of businesses purchased and is assigned to reporting units. Other acquired intangibles (excluding In process R&D) are recorded at fair value and amortized on a straight-line basis over their estimated useful lives. When events or circumstances warrant a review, the Company will assess recoverability from future operations using pretax undiscounted cash flows derived from the lowest appropriate asset groupings. Impairments are recognized in operating results to the extent that the carrying value of the intangible asset exceeds its fair value, which is determined based on the net present value of estimated cash flows.

As part of the Company's 2010 annual goodwill impairment review on its Pharmaceutical Manufacturing — China reporting unit, the Company used a discounted cash flow model, to determine the estimated fair value of its reporting unit and where appropriate, a market value approach was also utilized to corroborate the discounted cash flow model. The Company made estimates and assumptions regarding future cash flows, discount rates, long-term growth rates and market values to determine the reporting unit's estimated fair value. The methodology used to estimate the fair value of the Company's reporting unit on October 31, 2010, was consistent with the one used in 2009 to determine the fair value of certain intangible assets that were acquired in the Erye Merger. The Company made changes to certain assumptions utilized in the discounted cash flow model in 2010 compared with the prior year due largely to the growth expected in the pharmaceutical market in China. The key assumptions used by the Company were as follows:

- Expected cash flows underlying the Company's business plans for the periods 2011 through 2015. The expected cash flows took into account historical growth rates and the effect of economic outlook and growth expected in the pharmaceutical market in China.

- Cash flows beyond 2015 were projected to grow at a long-term growth rate, which the Company estimated at between 8% and 13%.
- The Company used a discount rate of 19.0% to risk adjust the cash flow projections in determining the estimated fair value.

If the Pharmaceutical Manufacturing – China reporting unit fails to achieve the growth rates assumed by the Company or national healthcare policies in China reduce general pricing on antibiotics or otherwise restrict growth, the carrying value of our goodwill associated with this reporting unit may be impaired.

At December 31, 2010 the Company determined that the Goodwill associated with its Cell Therapy – United States segment was impaired and the entire value, $558,200, was written off. The Company based this decision on several factors: 1) The discounted value of expected future cash flows does not exceed the carrying value of Goodwill; 2) The Company's patent applications related to the collection and banking of adult stem cells have been rejected by the US Patent and Trademark Office and the Company does not intend to pursue alternative strategies to seek approval of these patents; and 3) The Company intends to direct its internal resources toward other commercial activities.

The Company tests its indefinite-lived intangibles, including In process R&D, for impairment at least annually, or more frequently if impairment indicators exist, through a one-step test that compares the fair value of the indefinite lived intangible asset with the asset's carrying value. For impairment testing purposes, the Company may combine separately recorded indefinite-lived intangible assets into one unit of accounting based on the relevant facts and circumstances. Generally, the Company will combine indefinite-lived intangible assets for testing purposes if they operate as a single asset and are essentially inseparable. If the fair value is less than the carrying amount, an impairment loss is recognized within the Company's operating results.

Revenue Recognition

The Company recognizes revenue from pharmaceutical and pharmaceutical intermediary products sales when title has passed, the risks and rewards of ownership have been transferred to the customer, the fee is fixed and determinable, and the collection of the related receivable is reasonably assured which is at the time of delivery. The Company regularly assesses its best estimate of the intransit delivery period based upon actual experience of the number of days on average it takes for the Company's products to reach their final destination. The Company recognizes revenue related to the collection and cryopreservation of autologous adult stem cells when the cryopreservation process is completed which is generally twenty four hours after cells have been collected. Revenue related to advance payments of storage fees is recognized ratably over the period covered by the advanced payments. The Company earns revenue, in the form of license fees, from physicians seeking to establish autologous adult stem cell collection centers. These license fees are typically billed upon signing of the collection center agreement and qualification of the physician by the Company's credentialing committee and at various times during the term of license agreement based on the terms of the specific agreement. These fees are recognized as revenue ratably over the appropriate period of time to which the revenue element relates. The Company also receives licensing fees from a licensee for use of its technology and knowledge to operate an adult stem cell banking operation in China, which licensing fees are recognized as revenues ratably over the appropriate period of time to which the revenue element relates. In addition, the Company earns royalties for the use of its name and scientific information in connection with its License and Referral Agreement with Ceregenex Corporation, which royalties are recognized as revenue when they are received.

Accounts Receivable

Accounts receivable are carried at original invoice amount less an estimate made for doubtful accounts. The Company applies judgment in connection with establishing the allowance for doubtful accounts. Specifically, the Company analyzes the aging of accounts receivable balances, historical bad debts, customer concentration and credit-worthiness, current economic trends and changes in the Company's customer payment terms. Significant changes in customer concentrations or payment terms, deterioration of customer credit-worthiness or weakening economic trends could have a significant impact on the collectability of the receivables and the Company's operating results. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be

required. Management regularly reviews the aging of receivables and changes in payment trends by its customers, and records a reserve when it believes collection of amounts due are at risk.

Convertible Redeemable Preferred Stock Features

As a result of the November 2010 Series E Preferred Stock Offering, each reporting period we will value the holders' conversion option, forced redemption option, and warrants as derivative liabilities.

To value the holders' conversion option and forced redemption option, the Company used a multi-nomial lattice model that values the compound embedded derivatives based on a probability weighted discounted cash flow model. This model is based on future projections of the various potential outcomes. Based on the embedded derivatives, there are four primary events that can occur; the holder converts the Series E Preferred Stock, the holder redeems the Series E Preferred Stock, the Company redeems the Series E Preferred Stock, or the Company defaults/liquidates. The model analyzed the underlying economic factors that influenced which of these events would occur, when they were likely to occur, and the specific terms that would be in effect at the time (i.e. stock price, conversion price, etc.). Projections were then made on these underlying factors which led to a set of potential scenarios. Probabilities were assigned to each of these scenarios based on stock volatility and management projections regarding default and availability of alternative financing. This led to a cash flow projection and a probability associated with that cash flow. A discounted weighted average cash flow over the various scenarios was completed, and it was compared to the discounted cash flow of a 7% debt instrument without the embedded derivatives, thus determining a value for the compound embedded derivatives.

To value the warrants issued in connection with the Series E Preferred Stock, the Company used a multi-nomial lattice model that values the derivative liability of the warrant based on a probability weighted discounted cash flow model. This model is based on future projections of the various potential outcomes. Based on the features of the warrants, there are two primary events that can occur; the holder exercises the warrants (for scenarios above exercise prices) or the warrants are held to expiration. The model analyzed the underlying economic factors that influenced which of these events would occur, when they were likely to occur, and the specific terms that would be in effect at the time (i.e. stock price, exercise price, volatility, etc.). Projections were then made on these underlying factors which led to a set of potential scenarios. Probabilities were assigned to each of these scenarios based on stock volatility and management assumptions where appropriate. This led to a cash flow projection and a probability associated with that cash flow. A discounted weighted average cash flow over the various scenarios was completed to determine the value of the warrant derivative liability.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The financial statements and notes thereto required to be filed under this Item are presented commencing on page 86 of this Annual Report on Form 10-K.

NeoStem, Inc. and Subsidiaries

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
NeoStem, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of NeoStem, Inc. and Subsidiaries as of December 31, 2009 and 2008 and the related consolidated statements of operations, shareholders' equity/ (deficit) and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, audits of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of NeoStem, Inc. and Subsidiaries as of December 31, 2009 and 2008 and the results of their operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 4 to the consolidated financial statements, the financial statements for the year ended December 31, 2009 have been retrospectively adjusted for the final allocation of the purchase price associated with the Erye Merger.

/s/ Holtz Rubenstein Reminick LLP

Holtz Rubenstein Reminick LLP

Melville, New York
March 31, 2010 (except with respect to the retrospective adjustment of the financial statements for the year ended December 31, 2009 for the final allocation of the purchase price associated with the Erye acquisition discussed in Note 4, as to which the date is April 5, 2011)

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders
NeoStem, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheet of NeoStem, Inc. and subsidiaries (the "Company") as of December 31, 2010, and the related consolidated statements of operations, equity and cash flows for the year ended December 31, 2010. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of NeoStem, Inc. and subsidiaries as of December 31, 2010, and the results of their operations and their cash flows for the year ended December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

/s/ DELOITTE & TOUCHE LLP

Parsippany, New Jersey
April 5, 2011

NEOSTEM, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

	December 31, 2010	December 31, 2009
ASSETS		
Current Assets		
Cash and cash equivalents	$ 15,612,391	$ 7,159,369
Short term investments	512	287,333
Restricted cash	3,381,369	4,714,610
Accounts receivable trade, net of allowance for doubtful accounts of $210,977 and $273,600, respectively	5,871,474	5,725,241
Inventories	21,023,388	12,979,008
Prepaids and other current assets	993,711	933,657
Total current assets	46,882,845	31,799,218
Property, plant and equipment, net	36,998,241	21,275,749
Land use rights, net	4,807,834	4,711,716
Goodwill	27,002,044	26,634,630
Intangible assets, net	24,466,597	26,414,914
Other assets	2,867,188	240,052
	$143,024,749	$ 111,076,279
LIABILITIES AND EQUITY		
Current Liabilities		
Accounts payable	$ 14,286,929	$ 8,263,719
Accrued liabilities	2,772,019	1,069,290
Bank loans	3,034,000	2,197,500
Notes payable	9,568,398	9,793,712
Income taxes payable	1,242,911	1,860,269
Deferred income taxes	232,075	—
Unearned revenues	1,708,280	2,039,716
Total current liabilities	32,844,612	25,224,206
Long-term Liabilities		
Deferred income taxes	5,959,508	6,796,005
Deferred rent liability	45,489	—
Unearned revenues	282,518	233,386
Derivative liabilities	2,571,367	35,966
Amount due related parties	8,301,361	7,234,291
Total long-term liabilities	17,160,243	14,299,648
Commitments and Contingencies		
Redeemable Securities		
Convertible Redeemable Series E Preferred Stock; 10,582,011 shares designated, liquidation value $1.00 per share; 10,582,011 shares issued and outstanding at December 31, 2010	6,532,275	—
Convertible Redeemable Series C Preferred Stock; 8,177,512 shares designated, liquidation value $12.50 per share; 8,177,512 shares issued and outstanding at December 31, 2009	—	13,720,048
	6,532,275	13,720,048
EQUITY		
Shareholders' Equity		
Preferred stock; authorized, 20,000,000 shares Series B convertible redeemable preferred stock liquidation value, 1 share of common stock, $.01 par value; 825,000 shares designated; issued and outstanding, 10,000 shares at December 31, 2010 and December 31, 2009	100	100
Common stock, $.001 par value, authorized 500,000,000 shares; issued and outstanding, 64,221,130 and 63,813,504 shares, respectively, at Decemeber 31, 2010 and 37,193,491 shares at December 31, 2009	63,813	37,193
Additional paid-in capital	141,137,522	95,709,491
Accumulated deficit	(95,320,620)	(71,776,951)
Accumulated other comprehensive income (loss)	2,779,066	(56,504)
Total NeoStem, Inc. shareholders' equity	48,659,881	23,913,329
Noncontrolling interests	37,827,738	33,919,048
Total equity	86,487,619	57,832,377
	$143,024,749	$ 111,076,279

The accompanying notes are an integral part of these consolidated financial statements

NEOSTEM, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

	Years Ended December 31,		
	2010	2009	2008
Revenues	$ 69,821,294	$ 11,565,118	$ 83,541
Cost of revenues	49,668,262	9,706,005	31,979
Gross profit	20,153,032	1,859,113	51,562
Research and development	7,684,537	4,327,608	792,182
Selling, general, and administrative	31,346,806	23,400,430	8,492,833
Operating loss	(18,878,311)	(25,868,925)	(9,233,453)
Other income (expense):			
Other income (expense), net	513,110	(16,053)	3,044
Interest expense	(480,903)	(23,135)	(11,662)
	32,207	(39,188)	(8,618)
Loss from operations before provision for income taxes and noncontrolling interests	(18,846,104)	(25,908,113)	(9,242,071)
Provision for income taxes	550,912	41,675	—
Net loss	(19,397,016)	(25,949,788)	(9,242,071)
Less – net income attributable to noncontrolling interests	3,908,690	220,865	—
Net loss attributable to NeoStem, Inc.	(23,305,706)	(26,170,653)	(9,242,071)
Preferred dividends	237,963	5,611,989	—
Net loss attributable to NeoStem, Inc. common shareholders	$(23,543,669)	$ (31,782,642)	$ (9,242,071)
Basic and diluted loss per share	$ (0.46)	$ (2.44)	$ (1.53)
Weighted average common shares outstanding	51,632,417	13,019,518	6,056,886

The accompanying notes are an integral part of these consolidated financial statements

NEOSTEM, INC. AND SUBSIDIARIES

Consolidated Statements of Equity

	Series B Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (loss)	Accumulated Deficit	Non-Controlling Interest in Subsidiary	Total
	Shares	Amount	Shares	Amount					
Balance at December 31, 2007	10,000	$ 100	4,826,055	$ 4,826	$ 34,063,506	$ —	$ (30,752,238)	$ —	$ 3,316,194
Exercise of stock options	—	—	2,500	2	1,873	—	—	—	1,875
Share-based compensation	—	—	523,701	524	3,884,247	—	—	—	3,884,771
Proceeds from issuance of common stock	—	—	2,359,221	2,359	2,894,401	—	—	—	2,896,760
Shares issued to pay debt	—	—	3,529	4	5,643	—	—	—	5,647
Net loss	—	—	—	—	—	—	(9,242,071)	—	(9,242,071)
Balance at December 31, 2008	10,000	100	7,715,006	7,715	40,849,670	—	(39,994,309)	—	863,176
Share-based compensation	—	—	2,795,808	2,795	12,321,202	—	—	—	12,323,997
Warrants issued with Series D Preferred stock	—	—	—	—	7,931,772	—	—	—	7,931,772
Conversions of Series D Preferred	—	—	12,932,510	12,933	7,724,515	—	—	—	7,737,448
Acquisition of CBH non-controlling interest	—	—	—	—	—	—	—	33,698,183	33,698,183
Beneficial conversion feature of Series C Preferred	—	—	—	—	5,542,536	—	(5,542,536)	—	—
Exchange of exisitng CBH Warrants for Series E Warrants	—	—	—	—	590,790	—	—	—	590,790
Issuance of common stock in connection with CBH Merger	—	—	13,750,167	13,750	20,749,006	—	—	—	20,762,756
Dividends on Series C Preferred	—	—	—	—	—	—	(69,453)	—	(69,453)
Foreign currency translation	—	—	—	—	—	(56,504)	—	—	(56,504)
Net income attributable to non- controlling interest	—	—	—	—	—	—	—	220,865	220,865
Net loss attributable to NeoStem, Inc.		—		—	—	—	(26,170,653)	—	(26,170,653)
Balance at December 31, 2009	10,000	100	37,193,491	37,193	95,709,491	(56,504)	(71,776,951)	33,919,048	57,832,377
Exercise of stock options			90,000	90	140,010	—	—	—	140,100
Exercise of warrants	—	—	2,025,000	2,025	2,959,725	—	—	—	2,961,750
Share-based compensation	—	—	349,517	350	7,564,643	—	—	—	7,564,993
Proceeds from issuance of common stock	—	—	15,326,998	15,327	21,410,211	—	—	—	21,425,538
Conversion of Series C preferred	—	—	9,086,124	9,086	13,710,962	—	—	—	13,720,048
Shares issued for charitable contribution	—	—	150,000	150	298,350	—	—	—	298,500
Receipt of treasury shares	—	—	—	(408)	(655,870)	—	—	—	(656,278)
Dividends on Series C preferred stock	—	—	—	—	—	—	(153,469)		(153,469)
Dividends on Series E preferred stock	—	—	—	—	—	—	(84,494)		(84,494)
Foreign currency translation	—	—	—	—	—	2,835,570	—	—	2,835,570
Net income attributable to non- controlling interest	—	—	—	—	—	—	—	3,908,690	3,908,690
Net loss attributable to NeoStem, Inc.	—	—	—	—	—	—	(23,305,706)		(23,305,706)
Balance at December 31, 2010	10,000	$ 100	64,221,130	$ 63,813	$141,137,522	$ 2,779,066	$ (95,320,620)	$37,827,738	$86,487,619

The accompanying notes are an integral part of these consolidated financial statements

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NEOSTEM, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

	Years Ended December 31,		
	2010	2009	2008
Cash flows from operating activities:			
Net Loss	$ (19,397,016)	$(25,949,788)	$ (9,242,071)
Adjustments to reconcile net loss to net cash used in operating activities:			
Common stock, stock options and warrants issued as payment for compensation, and services rendered	7,863,492	12,323,997	3,890,419
Depreciation and amortization	5,136,159	720,268	115,961
Amortization of preferred stock discount and issuance costs	281,211	—	—
Changes in fair value adjustment on derivative liabilities	138,325	—	—
Gain on contract termination	(656,278)	—	—
Interest expense	165,567	—	—
Realized gain on short term investments	(24,934)	—	—
Bad debt expense (recovery)	(70,829)	(90,216)	21,500
Goodwill impairment charge	558,168	—	—
Loss on disposal of property and equipment	1,355,971	—	—
Deferred income taxes	(830,681)	(302,525)	—
Realization of stepup in basis of inventory recorded at date of merger	—	1,957,631	—
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	(24,140)	1,796,691	(46,197)
Accounts receivable	98,505	571,689	(4,088)
Inventory	(7,469,128)	(2,427,095)	—
Unearned revenues	(336,704)	1,991,816	6,947
Other assets	(127,113)	(238,941)	—
Income taxes payable	(667,729)	—	—
Accounts payable, accrued expenses and other current liabilities	5,530,454	1,274,621	525,364
Net cash used in operating activities	(8,476,699)	(8,371,852)	(4,732,165)
Cash flows from investing activities:			
Purchase of short-term investments	(2,424,132)	—	—
Proceeds from short-term investments	2,742,018	—	—
Increase in restricted cash	(1,045,955)	(959,890)	—
Cash associated with merger	—	696,456	—
Acquisition of property and equipment	(16,377,722)	(2,387,555)	(9,785)
Net cash used in investing activities	(17,105,791)	(2,650,989)	(9,785)
Cash flows from financing activities:			
Net proceeds from the exercise of warrants and options	3,101,850	—	—
Net proceeds from issuance of capital stock	21,212,974	—	2,898,635
Net proceeds from issuance of preferred stock	8,894,062	15,669,220	—
Payment of dividends	(222,924)	—	—
Proceeds from (payments to) related parties	566,845	(243,777)	—
Proceeds from bank loan	3,000,000	2,197,500	—
Repayment of bank loan	(2,203,650)	—	—
Proceeds from notes payable	20,506,518	2,918,269	131,617
Repayment of notes payable	(21,000,225)	(2,742,669)	(136,337)
Repayment of capitalized lease obligations	—	(14,726)	(25,406)
Net cash provided by financing activities	33,855,450	17,783,817	2,868,509
Effect of currency exchange rate change	180,062	(32,393)	—
Net increase (decrease) in cash and cash equivalents	8,453,022	6,728,583	(1,873,441)
Cash and cash equivalents at beginning of year	7,159,369	430,786	2,304,227
Cash and cash equivalents at end of year	$ 15,612,391	$ 7,159,369	$ 430,786
Supplemental Disclosure of Cash Flow Information:			
Cash paid during the period for:			
Interest	$ 279,596	$ 23,137	$ 11,662
Income taxes	$ 2,056,250	$ —	$ —
Supplemental Schedule of non-cash investing activities			
Acquisition of property and equipment	$ 2,443,958	$ —	$ —
Capitalized interest	$ 391,466	$ —	$ —
Issuance of common stock for CBH acquisition	$ —	$ 20,762,753	$ —
Issuance of warrants for CBH acquisition	$ —	$ 590,790	$ —
Issuance of Series C preferred stock for CBH acquisition	$ —	$ 8,177,512	$ —
Supplemental Schedule of non-cash financing activities			
Financing costs for capital raises	$ 33,355	$ —	$ —
Conversion of Convertible Redeemable Series C Preferred Stock	$ 13,720,048	$ —	$ —
Issuance of common stock for the conversion of the Series D preferred stock	$ —	$ 15,669,220	$ —
Preferred stock dividend	$ —	$ 5,611,989	$ —

The accompanying notes are an integral part of these consolidated financial statements

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 1 — The Company

NeoStem, Inc. ("NeoStem" or the "Company") was incorporated under the laws of the State of Delaware in September 1980 under the name Fidelity Medical Services, Inc. The Company's corporate headquarters are located at 420 Lexington Avenue, Suite 450, New York, NY 10170, the Company's telephone number is (212) 584-4180 and its website address is *www.neostem.com*.

NeoStem is an international biopharmaceutical company operating in three reportable segments: (i) Cell Therapy – United States; (ii) Regenerative Medicine – China; and (iii) Pharmaceutical Manufacturing – China.

Through the Cell Therapy – United States segment, NeoStem is focused on the development of proprietary cellular therapies in oncology, immunology and regenerative medicine and becoming a single source for collection, storage, manufacturing, therapeutic development and transportation of cells for cell based medicine and regenerative science globally . Within this segment, the Company is a provider of adult stem cell collection, processing and storage services in the U.S., enabling healthy individuals to donate and store their stem cells for personal therapeutic use. Pre-donating cells at birth or at a younger age helps to ensure a supply of autologous stem cells should they be needed for future medical treatment. During 2010, the Company expanded its network of adult stem cell collection centers to include ten centers throughout the country.

The Company strengthened its expertise in cellular therapies with its January 19, 2011 acquisition of Progenitor Cell Therapy, LLC, a Delaware limited liability company ("PCT"), pursuant to which the Company acquired all of the membership interests of PCT, and PCT is now a wholly-owned subsidiary of NeoStem. PCT is engaged in a wide range of services in the cell therapy market for the treatment of human disease, including, but not limited to contract manufacturing, product and process development, regulatory consulting, product characterization and comparability, and storage, distribution, manufacturing and transportation of cell therapy products. PCT's legacy business relationships also afford Neostem introductions to innovative therapeutic programs. For example, Amorcyte, now a NeoStem customer, has completed a Phase I clinical trial using stem cells post acute myocardial infarction and is ready to move into Phase II testing. Also, through the PCT acquisition, NeoStem now owns approximately an 80% interest in Athelos, a company developing a T-cell based immunomodulatory therapeutic. Results from ongoing phase 1 trials will determine the next phase of trials under this program. The Company views the PCT acquisition as fundamental to building a foundation in achieving its strategic mission of capturing the paradigm shift to cell therapy.

Through its Regenerative Medicine – China segment, in 2009, the Company began several China-based, Regenerative Medicine initiatives including: (i) creating a separate China-based cell therapy operation, (ii) constructing a stem cell research and development laboratory and processing facility in Beijing, (iii) establishing relationships with hospitals to provide cell-based therapies, and (iv) obtaining product licenses covering several adult stem cell therapeutics focused on regenerative medicine.

The Company acquired its Pharmaceutical Manufacturing – China segment on October 30, 2009, when China Biopharmaceuticals Holdings, Inc. ("CBH") merged with and into CBH Acquisition LLC ("Merger Sub"), a wholly-owned subsidiary of NeoStem, with Merger Sub as the surviving entity (the "Erye Merger"). As a result of the Erye Merger, NeoStem acquired CBH's 51% ownership interest in Suzhou Erye Pharmaceutical Company Ltd. ("Erye"), a Sino-foreign joint venture with limited liability organized under the laws of the People's Republic of China. Erye was founded more than 50 years ago and represents an established, vertically-integrated pharmaceutical business. Historically, Erye has concentrated its efforts on the manufacturing and distribution of generic antibiotic products. In 2010, Erye began transferring its operations to its newly constructed manufacturing facility. The relocation is continuing as the new production lines are completed and receive cGMP certification through 2011. The relocation is significantly increasing Erye's manufacturing capacity and allowing for growth in line with rising demand as a result of healthcare reform in China today.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies

Principles of Consolidation: The consolidated financial statements include the accounts of NeoStem, Inc. and its wholly owned and partially owned subsidiaries and affiliates as listed below:

Entity	Percentage of Ownership	Location
NeoStem, Inc.	Parent Company	United States of America
NeoStem Therapies, Inc.	100%	United States of America
Stem Cell Technologies, Inc.	100%	United States of America
NeoStem (China) Inc.	100%	People's Republic of China
Qingdao Neo Bio-Technology Ltd.*	*	People's Republic of China
Beijing Ruijiao Bio-Technology Ltd.*	*	People's Republic of China
China Biopharmaceuticals Holdings, Inc. (CBH)	100%	United States of America
Suzhou Erye Pharmaceuticals Company Ltd.	51% owned by CBH	People's Republic of China

* Because certain regulations in the People's Republic of China ("PRC") currently restrict or prohibit foreign entities from holding certain licenses and controlling certain businesses in China, the Company created a wholly foreign-owned entity, or WFOE, NeoStem (China), to implement its expansion initiatives in China. To comply with China's foreign investment regulations with respect to stem cell-related activities, these business initiatives in China are conducted via two Chinese domestic entities, Qingdao Neo Bio-Technology Ltd., or Neo Bio-Technology, and Beijing Ruijieao Bio-Technology Ltd., or Beijing Ruijieao, that are controlled by the WFOE through various contractual arrangements and under the principles of consolidation the Company consolidates 100% of their operations.

We expect to rely partly on dividends paid to us by the WFOE under the contracts with the VIEs, and under the Joint Venture Agreement attributable to our 51% ownership interest in Erye, to meet some of our future cash needs. However, there can be no assurance that the WFOE in China will receive payments uninterrupted or at all as arranged under the contracts with the VIEs. In addition, pursuant to the Joint Venture Agreement that governs the ownership and management of Erye, for 2010 and the next two years: (i) 49% of undistributed profits (after tax) will be distributed to EET and loaned back to Erye for use in connection with its construction of the new Erye facility; (ii) 45% of the net profit after tax due to the Company will be provided to Erye as part of the new facility construction fund, which will be characterized as paid-in capital for our 51% interest in Erye; and (iii) only 6% of the net profit will be distributed to us directly for our operating expenses.

Basis of Presentation: Certain reclassifications have been made to prior year amounts to conform to the current year presentation. In particular, at December 31, 2009, the Company reclassified (i) Short term investments of $287,300 from Prepaid and other current assets to Short term investments, (ii) Income taxes payable of $1,860,300 from Accrued liabilities to Income taxes payable, (iii) Unearned revenues in excess of one year of $233,400 from Current liabilities to Long-term liabilities, and (iv) a warrant derivative liability of $36,000 from Accrued liabilities to Derivative liabilities. In addition, for the Statement of Cash Flows for the year ended December 31, 2009 the Company revised its presentation of the reconciliation of cash flows from operating activities to reconcile such cash flows from Net loss attributable to common shareholders to Net loss. Lastly, the Company reclassified the 2009 amount related to cash restricted as collateral for bank loans from financing activities to investing activities and payments to related parties from operating activities to financing activities.

See Note 4 – Acquisitions for retrospective adjustments made to the Company's Consolidated Balance Sheet at December 31, 2009, the Consolidated Statement of Operations for the year ended December 31, 2009, the Consolidated Statement of Equity for the year ended December 31, 2009 and the Consolidated Statement of Cash Flows for the year ended December 31, 2009 in connection with the Company's acquisition of CBH's 51% ownership interest in Erye on October 30, 2009 as a result of the finalization of the allocation of purchase price.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

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

Cash and Cash Equivalents: Cash and cash equivalents include short-term, highly liquid investments with maturities of ninety days or less when purchased.

Concentration of Risks: For the year ended December 31, 2010, two major suppliers provided approximately 18.3% of Erye's purchases of raw materials with each supplier individually accounting for approximately 11.2% and 7.1%. As of December 31, 2010, the total accounts payable to the two major suppliers represented 17.9% of the total accounts payable balance.

Approximately 93% of Erye's revenues are derived from products that use penicillin or cephalosporin as the key active ingredient. These products are manufactured on two of the eight production lines in Erye's manufacturing facility. Any issues or incidents that might disrupt the manufacturing of products requiring penicillin or cephalosporin could have a material impact on the operating results of Erye. Any interruption or cessation in production could impact market sales.

Restricted Cash: Restricted cash represents cash required to be deposited with banks in China as collateral for the balance of bank notes payable and are subject to withdrawal restrictions according to the agreement with the bank. The required deposit rate is approximately 30 – 50% of the notes payable balance. Such restricted cash associated with these notes payable is reflected within current assets. In addition, the Company has restricted cash associated with its Series E Preferred Stock, which is held in escrow, and is recorded in other assets.

Accounts Receivable: Accounts receivable are carried at original invoice amount less an estimate made for doubtful accounts. The Company applies judgment in connection with establishing the allowance for doubtful accounts. Specifically, the Company analyzes the aging of accounts receivable balances, historical bad debts, customer concentration and credit-worthiness, current economic trends and changes in the Company's customer payment terms. Significant changes in customer concentrations or payment terms, deterioration of customer credit-worthiness or weakening economic trends could have a significant impact on the collectability of the receivables and the Company's operating results. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required. Management regularly reviews the aging of receivables and changes in payment trends by its customers, and records a reserve when it believes collection of amounts due are at risk.

Inventories: Inventories are stated at the lower of cost or market using the first-in, first-out basis. The Company reviews its inventory periodically and will reduce inventory to its net realizable value depending on certain factors, such as product demand, remaining shelf life, future marketing plans, obsolescence and slow-moving inventories.

Inventories consisted of the following (in thousands):

	December 31,	
	2010	2009
Raw materials and supplies	$ 8,043.8	$ 6,338.8
Work in process	4,792.4	666.7
Finished goods	8,187.2	5,973.5
Total inventory	$ 21,023.4	$ 12,979.0

Property, Plant, and Equipment: The cost of property and equipment is depreciated over the estimated useful lives of the related assets. The cost of computer software programs are amortized over their estimated

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

useful lives of five years. Depreciation is computed on the straight-line method. Repairs and maintenance expenditures that do not extend original asset lives are charged to expense as incurred.

Property, plant, and equipment consisted of the following (in thousands):

	Useful Life	December 31, 2010	December 31, 2009
Building and improvements	30 years	$ 6,091.9	$ —
Machinery and equipment	8 – 12 years	19,387.6	3,317.3
Lab equipment	5 years	716.2	704.1
Furniture and fixtures	5 – 10 years	392.5	273.2
Vehicles	8 years	273.9	75.3
Software	5 years	99.6	81.7
Leasehold improvements	2 – 3 years	2,109.8	58.4
Construction in progress		10,339.2	17,075.1
		39,410.7	21,585.1
Accumulated depreciation		(2,412.5)	(309.4)
		$ 36,998.2	$ 21,275.7

The Company's results included depreciation expense of approximately $2,277,000, $165,800, and $74,400 for the years ended December 31, 2010, 2009 and 2008, respectively.

Erye is constructing a new factory and is in the process of relocating to the new facility as the project is completed. Construction in progress is related to this production facility which is being built in accordance with the PRC's Good Manufacturing Practices ("GMP") Standard. The Company expects that the construction will be completed in 2011; however, certain elements of the project have been completed and put into service in 2010. The estimated additional cost to complete construction will be approximately $4 million. No depreciation is provided for construction-in-progress until such time the assets are completed and placed into service. Interest incurred during the period of construction, if material, is capitalized. The Company capitalized $391,500 of interest expense for the year ended December 31, 2010.

Land Use Rights: According to Chinese law, the government owns all the land in China. Companies or individuals are authorized to possess and use the land only through land use rights granted by the Chinese government. Land use rights are being recognized ratably using the straight-line method over the lease term of 50 years.

Income Taxes: The Company recognizes (a) the amount of taxes payable or refundable for the current year and (b) deferred tax liabilities and assets for the future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The Company continues to evaluate the accounting for uncertainty in tax positions. The guidance requires companies to recognize in their financial statements the impact of a tax position if the position is more likely than not of being sustained on audit. The position ascertained inherently requires judgment and estimates by management. At December 31, 2009 the Company had a reserve for income taxes of $1,099,000 related to uncertain tax positions at Erye. An audit of Erye's tax returns was finalized for the years ending December 31, 2000 through 2008 in September 2010. This audit resulted in a payment of approximately $663,800 in income taxes and penalties and the remaining reserve was credited to income taxes. For the year ended December 31, 2010, management does not believe the Company has any material uncertain tax positions that would require it to measure and reflect the potential lack of sustainability of a position on audit in its financial statements. The Company will continue to evaluate its uncertain tax positions in future periods to determine if measurement and recognition in its financial statements is necessary. The Company does not believe there will be any material changes in its unrecognized tax positions over the next year.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

The Company recognizes interest and penalties as a component of income tax expense. Interest and penalties for the year ended December 31, 2010 was $251,800 and for the years ended December 31, 2009 and 2008 was zero.

The Company files income tax returns with the U.S. Federal government and various state and foreign jurisdictions. The statute of limitations has expired on all consolidated U.S. Federal corporate income tax returns filed through 2006, and the Internal Revenue Service is not currently examining any of the post-2006 returns filed by the Company. In 2010 Erye concluded a 10 year audit of its corporate taxes through December 31, 2009.

Comprehensive Income (Loss): The accumulated other comprehensive income (loss) balance at December 31, 2010 and December 31, 2009 in the amount of $2,779,100 and $(56,500), respectively, is comprised entirely of foreign currency translation adjustments. Comprehensive loss for the years ended December 31, 2010, 2009 and 2008 was as follows (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Net loss	$ (19,397.0)	$(25,949.8)	$ (9,242.1)
Other comprehensive income (loss)			
Foreign currency translation	2,835.6	(56.5)	—
Total other comprehensive income (loss)	2,835.6	(56.5)	—
Comprehensive loss	(16,561.4)	(26,006.3)	(9,242.1)
Comprehensive income attributable to noncontrolling interests	5,264.6	191.9	—
Comprehensive loss attributable to common shareholders	$ (21,826.0)	$(26,198.2)	$ (9,242.1)

Goodwill and Other Intangible Assets: Goodwill is the excess of purchase price over the fair value of identified net assets of businesses acquired. The Company's intangible assets with an indefinite life are related to in process research and development at Erye, as the Company expects this research and development to provide the Company with substantial benefit for a period that extends beyond the foreseeable horizon. Amortized intangible assets consist of Erye's customer list, manufacturing technology, standard operating procedures, tradename, lease rights and patents, as well as patents and rights associated primarily with the VSEL™ Technology. These intangible assets are amortized on a straight line basis over their respective useful lives.

The Company reviews goodwill and indefinite-lived intangible assets at least annually for possible impairment. Goodwill and indefinite-lived intangible assets are reviewed for possible impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying value. The Company tests its goodwill and indefinite-lived intangible assets for its Adult Stem Cell Banking – United States, Regenerative Medicine – United States, and Regenerative Medicine – China reporting units on December 31 and for its Pharmaceutical Manufacturing – China, reporting unit on October 31. The Company reviews the carrying value of goodwill and indefinite-lived intangible assets utilizing a discounted cash flow model, and, where appropriate, a market value approach is also utilized to supplement the discounted cash flow model. The Company makes assumptions regarding estimated future cash flows, discount rates, long-term growth rates and market values to determine each reporting unit's estimated fair value. If these estimates or related assumptions change in the future, the Company may be required to record impairment charges. See Note 5.

Derivatives: Derivative instruments, including derivative instruments embedded in other contracts, are recorded on the balance sheet as either an asset or liability measured at its fair value. Changes in the fair

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

value of derivative instruments are recognized currently in results of operations unless specific hedge accounting criteria are met. The Company has not entered into hedging activities to date. As a result of certain financings (see Note 8), derivative instruments were created that are measured at fair value and marked to market at each reporting period. Changes in the derivative value are recorded as other income (expense) on the consolidated statements of operations.

Evaluation of Long-lived Assets: The Company reviews long-lived assets and finite-lived intangibles assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset exceeds the fair value of the asset. If other events or changes in circumstances indicate that the carrying amount of an asset that the Company expects to hold and use may not be recoverable, the Company will estimate the undiscounted future cash flows expected to result from the use of the asset or its eventual disposition, and recognize an impairment loss. The impairment loss, if determined to be necessary, would be measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets.

Share-Based Compensation: The Company expenses all share-based payment awards to employees and consultants, including grants of stock options, warrants, and restricted stock, over the requisite service period based on the grant date fair value of the awards. For awards with performance-based vesting criteria, the Company estimates the probability of achievement of the performance criteria and recognize compensation expense related to those awards expected to vest. The Company determines the fair value of certain share-based awards using the Black-Scholes option-pricing model which uses both historical and current market data to estimate the fair value. This method incorporates various assumptions such as the risk-free interest rate, expected volatility, expected dividend yield and expected life of the options or warrants. The fair value of the Company's restricted stock and restricted stock units is based on the closing market price of the Company's common stock on the date of grant. See Note 9.

Earnings Per Share: Basic loss per share is based on the weighted effect of all common shares issued and outstanding, and is calculated by dividing net loss attributable to common shareholders by the weighted average shares outstanding during the period. Diluted loss per share, which is calculated by dividing net loss attributable to common shareholders by the weighted average number of common shares used in the basic earnings per share calculation plus the number of common shares that would be issued assuming conversion of all potentially dilutive securities outstanding, is not presented as such potentially dilutive securities are anti-dilutive in all periods presented. For the years ended December 31, 2010, 2009 and 2008, the Company incurred net losses and therefore no common stock equivalents were utilized in the calculation of earnings per share. At December 31, 2010, 2009 and 2008, the Company excluded the following potentially dilutive securities:

	December 31,		
	2010	2009	2008
Stock Options	13,032,214	9,990,574	1,725,300
Warrants	21,843,507	19,838,802	5,322,333
Series C Preferred Stock, Common stock equivalents	—	9,086,124	—
Series E Preferred Stock, Common stock equivalents	5,289,948	—	—

Revenue Recognition: The Company recognizes revenue from pharmaceutical and pharmaceutical intermediary product sales when title has passed, the risks and rewards of ownership have been transferred to the customer, the fee is fixed and determinable, and the collection of the related receivable is reasonably assured which is at the time of delivery. The Company recognizes revenue related to the collection and cryopreservation of autologous adult stem cells when the cryopreservation process is completed which is twenty four hours after cells have been collected. Revenue related to advance payments of storage fees is recognized ratably over the period covered by the advanced payments. The Company earns revenue, in the form of license fees, from physicians seeking to establish autologous adult stem cell collection centers. These license fees are typically billed upon signing of the collection center agreement and qualification of the

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

physician by the Company's credentialing committee and at various times during the term of license agreement based on the terms of the specific agreement. These fees are recognized as revenue ratably over the appropriate period of time to which the revenue element relates. The Company also receives licensing fees from a licensee for use of its technology and knowledge to operate an adult stem cell banking operation in China, which licensing fees are recognized as revenues ratably over the appropriate period of time to which the revenue element relates. In addition, the Company earns royalties for the use of its name and scientific information in connection with its License and Referral Agreement with Ceregenex Corporation (see Note 12), which royalties are recognized as revenue when they are received.

Revenues for the years ended December 31, 2010, 2009, and 2008 were comprised of the following (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Revenues			
Prescription drugs and intermediary pharmaceutical products	$69,584.3	$ 11,386.7	$ —
Stem cell revenues	237.0	178.4	83.5
	$69,821.3	$11,565.1	$ 83.5

Fair Value Measurements: Fair value of financial assets and liabilities that are being measured and reported are defined as the exchange price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market at the measurement date (exit price). The Company is required to classify fair value measurements in one of the following categories:

Level 1 inputs which are defined as quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

Level 2 inputs which are defined as inputs other than quoted prices included within Level 1 that are observable for the assets or liabilities, either directly or indirectly.

Level 3 inputs are defined as unobservable inputs for the assets or liabilities. Financial assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement requires judgment, and may affect the valuation of the fair value of assets and liabilities and their placement within the fair value hierarchy levels.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

The Company determined the fair value of funds invested in short term investments, which are considered trading securities, to be level 1 inputs measured by quoted prices of the securities in active markets. The Company determined the fair value of funds invested in money market funds to be level 2 inputs, which does not entail material subjectivity because the methodology employed does not necessitate significant judgment, and the pricing inputs are observed from actively quoted markets. The Company determined the fair value of the embedded derivative liabilities and warrant derivative liabilities to be level 3 inputs. These inputs require material subjectivity because value is derived through the use of a lattice model that values the derivatives based on probability weighted discounted cash flows. The following table sets forth by level within the fair value hierarchy the Company's financial assets and liabilities that were accounted for at fair value on a recurring basis as of December 31, 2010, and December 31, 2009 (in thousands):

	December 31, 2010		
	Fair Value Measurements Using Fair Value Hierarchy		
	Level 1	Level 2	Level 3
Money market investments	$ —	$ 2,501.0	$ —
Short term investments	0.5	—	—
Embedded derivative liabilities	—	—	2,281.8
Warrant derivative liabilities	—	—	289.6

	December 31, 2009		
	Fair Value Measurements Using Fair Value Hierarchy		
	Level 1	Level 2	Level 3
Money market investments	$ —	$ 1,031.0	$ —
Short term investments	287.3	—	—
Warrant derivative liabilities	—	—	36.0

There was no movement in financial assets and liabilities between levels during the years ended December 31, 2010 and 2009.

For those financial instruments with significant Level 3 inputs, the following table summarizes the activity for the years ended December 31, 2009 and 2010 by type of instrument (in thousands):

Description	Embedded Derivatives	Warrants
Beginning liability balance, December 31, 2008	$ —	$ —
Warrants issued	—	32.5
Changes in fair value recorded in earnings	—	3.5
Ending liability balance, December 31, 2009	—	36.0
Convertible redeemable Series E preferred stock and warrants issued	2,131.1	266.0
Changes in fair value recorded in earnings	150.7	(12.4)
Ending liability balance, December 31, 2010	$ 2,281.8	$ 289.6

Some of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate fair value due to their liquid or short-term nature, such as cash and cash equivalents, restricted cash, accounts receivable, accounts payable, notes payable, bank loans, and amount due related parties.

Foreign Currency Translation: As the Company's Chinese pharmaceutical business is a self-contained and integrated entity, and the Company's Chinese stem cell business' future cash flow is expected to be sufficient to service its additional financing requirements, the Chinese subsidiaries' functional currency is the

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 2 — Summary of Significant Accounting Policies – (continued)

Renminbi ("RMB"), and the Company's reporting currency is the US dollar. Results of foreign operations are translated at the average exchange rates during the period, and assets and liabilities are translated at the closing rate at the end of each reporting period. Cash flows are also translated at average exchange rates for the period, therefore, amounts reported on the consolidated statement of cash flows will not necessarily agree with changes in the corresponding balances on the consolidated balance sheet.

Translation adjustments resulting from this process are included in accumulated other comprehensive income (loss) and amounted to $2,779,100 and $(56,500) as of December 31, 2010 and December 31, 2009, respectively.

Research and Development Costs: Research and development ("R&D") expenses include salaries, benefits, and other headcount related costs, clinical trial and related clinical manufacturing costs, contract and other outside service fees including sponsored research agreements, and facilities and overhead costs. The Company expenses the costs associated with research and development activities when incurred.

To further drive the Company's stem cell initiatives, the Company will continue targeting key governmental agencies, congressional committees and not-for-profit organizations to contribute funds for the Company's research and development programs. The Company accounts for government grants as a deduction to the related expense in research and development operating expenses when earned.

Statutory Reserves: Pursuant to laws applicable to entities incorporated in the PRC, the PRC subsidiaries are prohibited from distributing their statutory capital and are required to appropriate from PRC GAAP profit after tax to other non-distributable reserve funds. These reserve funds include one or more of the following: (i) a general reserve, (ii) an enterprise expansion fund and (iii) a staff bonus and welfare fund. Subject to certain cumulative limits (i.e., 50% of the registered capital of the relevant company), the general reserve fund requires annual appropriation at 10% of after tax profit (as determined under accounting principles generally accepted in the PRC at each year-end); the appropriation to the other funds are at the discretion of the subsidiaries.

The general reserve is used to offset extraordinary losses. Subject to approval by the relevant authorities, a subsidiary may, upon a resolution passed by the shareholders, convert the general reserve into registered capital provided that the remaining general reserve after the conversion shall be at least 25% of the registered capital of the subsidiary before the capital increase as a result of the conversion. The staff welfare and bonus reserve is used for the collective welfare of the employees of the subsidiary. The enterprise expansion reserve is for the expansion of the subsidiary's operations and can also be converted to registered capital upon a resolution passed by the shareholders subject to approval by the relevant authorities. These reserves represent appropriations of the retained earnings determined in accordance with Chinese law, and are not distributable as cash dividends to the parent company, NeoStem. Statutory reserves are $2,234,600 and $1,126,300 as of December 31, 2010 and December 31, 2009, respectively.

Relevant PRC statutory laws and regulations permit payment of dividends by the Company's PRC subsidiaries only out of their accumulated earnings, if any, as determined in accordance with PRC accounting standards and regulations. As a result of these PRC laws and regulations, the Company's PRC subsidiaries are restricted in their ability to transfer a portion of their net assets either in the form of dividends, loans or advances. The restricted amount was $214,200 at December 31, 2010, and $213,100 at December 31, 2009.

Note 3 — Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (the "FASB") issued an amendment to the accounting and disclosure requirements for transfers of financial assets, which was effective January 1, 2010. The amendment eliminates the concept of a qualifying special-purpose entity, changes the requirements for derecognizing financial assets and requires enhanced disclosures to provide financial statement users with

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 3 — Recent Accounting Pronouncements – (continued)

greater transparency about transfers of financial assets, including securitization transactions, and an entity's continuing involvement in and exposure to the risks related to transferred financial assets. The adoption of this standard did not have a material impact on the consolidated financial statements.

In June 2009, the FASB amended the existing accounting and disclosure guidance for the consolidation of variable interest entities, which was effective January 1, 2010. The amended guidance requires enhanced disclosures intended to provide users of financial statements with more transparent information about an enterprise's involvement in a variable interest entity. The adoption of this standard did not have a material impact on the consolidated financial statements.

In October 2009, the FASB issued new guidance which addresses the accounting for multiple-deliverable arrangements to enable vendors to account for products or services separately rather than as a combined unit and modifies the manner in which the transaction consideration is allocated across the separately identified deliverables. The new guidance significantly expands the disclosure requirements for multiple-deliverable revenue arrangements. The new guidance will be effective for the first annual reporting period beginning on or after June 15, 2010, and may be applied retrospectively for all periods presented or prospectively to arrangements entered into or materially modified after the adoption date. Early adoption is permitted, provided that the guidance is retroactively applied to the beginning of the year of adoption. The Company will not early adopt the guidance and will continue evaluating the impact of this new guidance on the consolidated financial statements.

In January 2010, the FASB amended the existing disclosure guidance on fair value measurements, which was effective January 1, 2010, except for disclosures about purchases, sales, issuances, and settlements in the roll forward of activity in Level 3 fair value measurements, which is effective January 1, 2011. Among other things, the updated guidance requires additional disclosure for the amounts of significant transfers in and out of Level 1 and Level 2 measurements and requires certain Level 3 disclosures on a gross basis. Additionally, the updates amend existing guidance to require a greater level of disaggregated information and more robust disclosures about valuation techniques and inputs to fair value measurements. Since the amended guidance requires only additional disclosures, the adoption of the provisions effective January 1, 2010 did not, and for the provisions effective in 2011, will not materially impact the consolidated financial statements.

In March 2010, the FASB issued guidance which allows the milestone method to be used as an acceptable revenue recognition methodology when an arrangement includes substantive milestones. The guidance provides a definition of substantive milestone and should be applied regardless of whether the arrangement includes single or multiple deliverables or units of accounting. The guidance is limited to the transactions involving milestones relating to research and development deliverables. The guidance includes enhanced disclosure requirements about each arrangement, individual milestones and related contingent consideration, information about substantive milestones and factors considered in the determination. The guidance is effective prospectively to milestones achieved in fiscal years, and interim periods within those years, after June 15, 2010. Early application and retrospective application are permitted. The Company will not early adopt this guidance and is evaluating the effect it will have upon adoption.

In April 2010, the FASB issued an update which addresses the accounting for stock options when denominating the exercise price of a share-based payment award in the currency of the market in which the underlying equity security trades. A share-based payment award with an exercise price denominated in the currency of market in which a substantial portion of the entity's equity securities trades shall not be considered to contain a condition that is not a market, performance, or service condition. Therefore such an award shall not be classified as a liability if it otherwise qualifies for equity classification. This standard is effective in fiscal years beginning on or after December 15, 2010. The Company is evaluating the effect this standard will have upon adoption.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 3 — Recent Accounting Pronouncements – (continued)

In December 2010, the FASB issued an update which addresses when to perform Step 2 of the goodwill impairment test for reporting units with zero or negative carrying amounts. The update modifies Step 1 of the goodwill impairment test for reporting units with zero or negative carrying amounts. For those reporting units, an entity is required to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. In determining whether it is more likely than not that goodwill impairment exists, an entity should consider whether there are any adverse qualitative factors indicating that impairment may exist. The qualitative factors are consistent with the existing guidance, which requires that goodwill of a reporting unit be tested for impairment between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. This update is effective for fiscal years, and interim periods within those years, beginning after December 15, 2010. Early adoption is not permitted. The Company is currently evaluating the impact of adopting this pronouncement.

In December 2010, the FASB issued an update which addresses the disclosure of supplementary pro forma information for business combination. The update requires public entities to disclose pro forma information for business combinations that occurred in the current reporting period, including revenue and earnings of the combined entity for the current reporting period as though the acquisition date for all business combinations that occurred during the year had been as of the beginning of the annual reporting period. If comparative financial statements are presented, the pro forma revenue and earnings of the combined entity for the comparable prior reporting period should be reported as though the acquisition date for all business combinations that occurred during the current year had been as of the beginning of the comparable prior annual reporting period. Amendments in this update are effective prospectively for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010. The Company does not believe this will have a material impact on its financial reporting.

Note 4 — Acquisitions

On October 30, 2009, NeoStem consummated the Erye Merger pursuant to which CBH was merged with and into Merger Sub, a wholly-owned subsidiary of NeoStem, with Merger Sub as the surviving entity in accordance with the terms of the Agreement and Plan of Merger, dated November 2, 2008, as amended (the "Erye Merger Agreement") by and between NeoStem, Merger Sub, CBH and China Biopharmaceuticals Corp., a wholly-owned subsidiary of CBH ("CBC"). As a result of the Erye Merger, NeoStem acquired CBH's 51% ownership interest in Erye, a Sino-foreign joint venture with limited liability organized under the laws of the PRC. Erye specializes in the production and sale of pharmaceutical products, as well as chemicals used in pharmaceutical products. Erye, which was founded more than 50 years ago, currently manufactures both antibiotic prescription drugs and active pharmaceutical intermediaries. Suzhou Erye Economy and Trading Co. Ltd. ("EET") owns the remaining 49% ownership interest in Erye.

Pursuant to the terms of the Erye Merger Agreement, NeoStem issued an aggregate of 13,750,167 shares of its common stock, with a fair value of $20,762,800, and 8,177,512 shares of Series C Convertible Preferred Stock, with a fair value of $13,720,000, in exchange for outstanding CBH securities. In addition, the Company issued Class E warrants to purchase 1,603,191 shares of NeoStem Common Stock, with a fair value of $590,800, to replace warrants issued by CBH.

The fair value of the identifiable net assets acquired in the Erye Merger was $42,701,400. The fair value of the equity issued as consideration by NeoStem was $35,073,600 and the fair value of the noncontrolling interests of Erye was $33,698,200. The goodwill that has been created by this acquisition is reflective of the values and opportunities of expanded access to healthcare in the PRC, the designation of certain antibiotics as essential medicines in China, and that a majority of Erye's antibiotics are on the central or provincial governments' drug formularies. Due to the structure of the transaction, none of the goodwill is expected to be tax deductible.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 4 — Acquisitions – (continued)

The summary of assets acquired and liabilities assumed on October 30, 2009 was as follows (in thousands):

Cash & restricted cash	$ 4,451.2
Accounts receivable	$ 6,199.5
Inventories	$ 12,509.1
Other current assets	$ 3,101.0
Property, plant and equipment	$ 18,922.6
Intangibles and land use rights	$ 31,038.9
Goodwill	$ 26,070.4
Accounts payable	$ 6,025.5
Other liabilities	$ 3,302.3
Deferred tax liability	$ 7,096.9
Notes payable	$ 9,618.1
Amount due related parties	$ 7,478.1

A preliminary allocation of the consideration transferred to the net assets of CBH was made as of the Erye Merger date. During 2010, the Company continued to review its preliminary allocation of the purchase price associated with the Erye Merger and made the following retrospective adjustments as of the Erye Merger date:

The Company determined that finished goods inventory acquired in connection with the Erye Merger was incorrectly valued and should have been increased by approximately $1,957,200 to step-up such inventory to fair value at the Erye Merger date. Such finished goods inventory was sold through as of December 31, 2009. Therefore, at December 31, 2009, there is no effect on the reported balance of inventories in the consolidated balance sheets.

The Company also identified additional intangible assets associated with Erye's manufacturing technology and standard operating procedures with a fair value of $3,984,700 and $1,030,000 respectively. The Company determined that Erye's trade name has a fair value of $927,100 and will be amortized over a period of 10 years. Erye's in-process research and development represents the fair value assigned to incomplete research projects of $2,143,000 which has been classified as an indefinite-lived intangible asset, subject to impairment testing until completion or abandonment of the projects. Adjustments to the fair value of other intangible assets and land use rights were identified resulting in an increase in assets of $312,000.

The Company determined that it had incorrectly accounted for the book/tax basis differences that arose in recording the fair value of the net assets acquired in connection with the Erye Merger. Such increases to fair value, while deductible for book purposes, are not deductible for local Chinese tax purposes but require recognition of the impact such non-deductibility will have on future tax expense. Specifically, the Company did not establish at the Erye Merger date deferred tax liabilities of approximately $7,096,900 for such book/tax basis differences.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 4 — Acquisitions – (continued)

The Company evaluated the materiality of these errors from both a qualitative and quantitative perspective and concluded that these errors were immaterial to the consolidated financial statements taken as a whole for the fiscal year ended December 31, 2009. The effect of these immaterial errors and related retrospective adjustments at December 31, 2009 and for the year then ended along with other reclassifications made as discussed in Note 2 are summarized as follows (in thousands, except share and per share amounts):

	As Previously Reported	Adjustments and Reclassifications	As Adjusted
Consolidated Balance Sheet			
Assets:			
Current assets	$ 31,799.2	$ —	$ 31,799.2
Property, plant and equipment, net	21,299.4	(23.6)	21,275.8
Goodwill	29,862.1	(3,227.5)	26,634.6
Intangible assets and land use rights, net	22,835.2	8,291.4	31,126.6
Other assets	238.9	1.2	240.1
	$ 106,034.8	$ 5,041.5	$111,076.3
Liabilities and Equity			
Current liabilities	$ 25,493.6	$ (269.4)	$ 25,224.2
Deferred income taxes	—	6,796.0	6,796.0
Unearned revenues	—	233.4	233.4
Derivative liabilities	—	36.0	36.0
Amount due related parties	7,234.3	—	7,234.3
Convertible redeemable Series C preferred stock	13,720.0	—	13,720.0
Preferred stock Series B convertible, redeemable	0.1	—	0.1
Common stock	37.2	—	37.2
Additional paid-in capital	95,709.5	—	95,709.5
Accumulated deficit	(70,878.8)	(898.2)	(71,777.0)
Accumulated other comprehensive loss	(67.9)	11.4	(56.5)
Non controlling interests	34,786.8	(867.7)	33,919.1
Total equity	59,586.9	(1,754.5)	57,832.4
	$ 106,034.8	$ 5,041.5	$111,076.3

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 4 — Acquisitions – (continued)

	As Previously Reported	Adjustments and Reclassifications	As Adjusted
Consolidated Statement of Operations			
Revenues	$ 11,565.1	$ —	$ 11,565.1
Cost of revenues	7,587.2	2,118.8	9,706.0
Gross Profit	3,977.9	(2,118.8)	1,859.1
Research and Development	4,318.8	8.8	4,327.6
Selling, general and administrative	23,459.6	(59.2)	23,400.4
Operating Loss	(23,800.5)	(2,068.4)	(25,868.9)
Other income (expense):			
Other income (expense), net	52.1	(68.2)	(16.1)
Interest expense	(91.3)	68.2	(23.1)
Other expense	(39.2)	—	(39.2)
Loss from operations before provision for income taxes and noncontrolling interests	(23,839.7)	(2,068.4)	(25,908.1)
Provision for taxes	344.2	(302.5)	41.7
Net loss	(24,183.9)	(1,765.9)	(25,949.8)
Less – net income attributable to noncontrolling interests	1,088.6	(867.7)	220.9
Net Loss attributable to NeoStem, Inc.	(25,272.5)	(898.2)	(26,170.7)
Preferred Dividends	5,612.0	—	5,612.0
Net Loss attributable to NeoStem, Inc. common shareholders	$ (30,884.5)	$ (898.2)	$ (31,782.7)
Basic and diluted loss per share	13,019,518	13,019,518	13,019,518
Weighted average common shares outstanding	$ (2.37)	$ (0.07)	$ (2.44)

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 4 — Acquisitions – (continued)

	As Previously Reported	Adjustments and Reclassifications	As Adjusted
Consolidated Statement of Cash Flow			
Cash flows from operating activities:			
Net Loss	$ (24,183.9)	$ (1,765.9)	$ (25,949.8)
Adjustments to reconcile net loss to net cash used in operating activities:			
Common Stock, stock options and warrants issued as payment for compensation and services rendered	12,324.0	—	12,324.0
Depreciation and amortization	577.0	143.3	720.3
Bad debt expense	(90.2)	—	(90.2)
Deferred income taxes	—	(302.5)	(302.5)
Realization of step up in basis of inventory recorded at date of merger	—	1,957.6	1,957.6
Changes in operating assets and liabilities:			
Prepaid expenses and other current assets	1,796.7	—	1,796.7
Accounts receivable	571.7	—	571.7
Inventory	(2,427.1)	—	(2,427.1)
Other assets	(238.9)	—	(238.9)
Unearned revenues	1,991.8	—	1,991.8
Payments to related party	(243.8)	243.8	—
Accounts payable, accrued expenses and other current liabilities	1,274.6	—	1,274.6
Net cash used in operating activities	(8,648.1)	276.3	(8,371.8)
Cash flows from investing activities:			
Increase in restricted cash	—	(959.9)	(959.9)
Cash associated with Merger	696.5	—	696.5
Acquisition of property and equipment	(2,387.6)	—	(2,387.6)
Net cash used in investing activities	(1,691.1)	(959.9)	(2,651.0)
Cash flows from financing activities:			
Net proceeds from issuance of Series D Preferred Stock	15,669.2	—	15,669.2
Proceeds from (payments to) related parties	—	(243.8)	(243.8)
Proceeds from bank loans	2,197.5	—	2,197.5
Cash restricted as collateral for bank loans	(959.9)	959.9	—
Proceeds from notes payable	2,918.3	—	2,918.3
Payment of capitalized lease obligations	(14.7)	—	(14.7)
Proceeds from sale of convertible debentures	(2,742.7)	—	(2,742.7)
Net cash provided by financing activities	17,067.7	716.1	17,783.8
Effect of currency exchange rate change	—	(32.5)	(32.5)
Net increase in cash	6,728.5	—	6,728.5
Cash and cash equivalents at beginning of year	430.8	—	430.8
Cash and cash equivalents at end of year	$ 7,159.3	$ —	$ 7,159.3

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 4 — Acquisitions – (continued)

Presented below is the unaudited proforma information as if the acquisition had occurred at the beginning of the years ended December 31, 2009 and 2008 along with a comparison to the reported results for the years ended December 31, 2009, and 2008 (in thousands, except share and per share amounts):

	Years Ended December 31,		Years Ended December 31,	
	2009	2009	2008	2008
	(As Reported)	(Proforma)	(As Reported)	(Proforma)
Revenues	$ 11,565.1	$ 61,686.4	$ 83.5	$ 49,809.4
Cost of revenues	9,706.0	42,723.8	32.0	35,461.2
Gross profit	1,859.1	18,962.6	51.5	14,348.2
Research and development	4,327.6	6,032.6	792.2	1,152.2
Selling, general, and administrative	23,400.4	29,562.5	8,492.8	15,797.9
Operating loss	(25,868.9)	(16,632.5)	(9,233.5)	(2,601.9)
Other income (expense), net	(39.2)	155.7	(8.6)	130.3
Loss from operations before provision for income taxes and noncontrolling interests	(25,908.1)	(16,476.8)	(9,242.1)	(2,471.6)
Provision for income taxes	41.7	952.6	—	1,061.2
Net loss	(25,949.8)	(17,429.4)	(9,242.1)	(3,532.8)
Less – net income attributable to noncontrolling interests	220.9	4,248.9	—	2,797.5
Preferred dividends	5,612.0	5,612.0	—	—
Net loss attributable to NeoStem, Inc. common shareholders	$ (31,782.7)	$ (27,290.3)	$ (9,242.1)	$ (6,330.3)
Basic and diluted loss per share	$ (2.44)	$ (1.12)	$ (1.53)	$ (0.32)
Weighted average common shares outstanding	13,019,518	24,427,624	6,056,886	19,807,053

The unaudited supplemental pro forma financial information should not be considered indicative of the results that would have occurred if the Erye Merger had been consummated on January 1, 2009 or January 1, 2008, nor are they indicative of future results.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 5 — Goodwill and Other Intangible Assets

As part of the Company's annual impairment review as of December 31, 2010, a $558,200 goodwill impairment charge was recorded within the Company's Cell Therapy – United States reportable segment due to lower than expected revenue and operating income growth of its Adult Stem Cell Banking – United States reporting unit since its acquisition. The Company estimated the fair value utilizing a discounted cash flow model.

The changes in the carrying amount of goodwill, by reportable segment during 2010 and 2009 were as follows (in thousands):

	Cell Therapy – United States	Regenerative Medicine – China	Pharmaceutical Manufacturing – China
Balance as of December 31, 2008			
Goodwill	$ 558.2	$ —	$ —
Accumulated impairment losses	—	—	—
	558.2	—	—
Acquisitions	—	—	26,070.4
Foreign currency exchange rate changes	—	—	6.0
Balance as of December 31, 2009			
Goodwill	558.2	—	26,076.4
Accumulated impairment losses	—	—	—
	558.2	—	26,076.4
Impairment	(558.2)	—	—
Foreign currency exchange rate changes	—	—	925.6
Balance as of December 31, 2010			
Goodwill	558.2	—	27,002.0
Accumulated impairment losses	(558.2)	—	—
	$ —	$ —	$ 27,002.0

As of December 31, 2010 and 2009, the Company's intangible assets and related accumulated amortization consisted of the following (in thousands):

		December 31,					
		2010			2009		
	Useful Life	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Amortized intangible assets:							
Customer list	10	$ 17,740.0	$ (2,069.7)	$ 15,670.3	$ 17,131.9	$ (285.5)	$ 16,846.4
Manufacturing technology	10	4,220.6	(492.4)	3,728.2	4,075.9	(67.9)	4,008.0
In process R&D	Indefinite	2,219.6	—	2,219.6	2,143.5	—	2,143.5
Standard operating procedures	10	1,066.8	(124.5)	942.3	1,030.2	(17.1)	1,013.1
Tradename	10	983.9	(114.7)	869.2	950.2	(15.8)	934.4
Lease rights	2	817.2	(476.7)	340.5	789.2	(65.8)	723.4
VSEL patent rights	19	669.0	(105.6)	563.4	669.0	(70.4)	598.6
Patents	8	164.3	(31.2)	133.1	158.7	(11.1)	147.6
Intangible assets, net		$ 27,881.4	$ (3,414.8)	$ 24,466.6	$ 26,948.6	$ (533.6)	$ 26,415.0

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 5 — Goodwill and Other Intangible Assets – (continued)

Total intangible amortization expense was classified in the operating expense categories for the periods included below as follows (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Cost of revenues	$ 912.5	$ 150.9	$ —
Selling, general, and administrative	1,842.0	312.5	—
Research and development	35.2	35.2	35.2
Total	$ 2,789.7	$ 498.6	$ 35.2

Estimated intangible amortization expense on an annual basis for the succeeding five years is as follows (in thousands):

Years Ending December 31,	Amount
2011	$ 2,796.6
2012	2,456.1
2013	2,456.1
2014	2,456.1
2015	2,456.1
Thereafter	9,626.0
Total	$ 22,247.0

Note 6 — Accrued Liabilities

Accrued liabilities were as follows (in thousands):

	December 31,	
	2010	2009
Patent infringement costs	$ 758.5	$ —
Professional fees	564.7	116.8
Other	537.4	58.1
Utilities	253.6	—
Customer security deposits	284.8	—
Construction costs	154.1	—
Dividends payable	84.5	69.5
Rent	26.5	69.1
Salaries and related taxes	68.8	531.7
Franchise taxes	33.3	139.0
Collection cost	5.8	85.1
	$ 2,772.0	$ 1,069.3

Note 7 — Notes Payable and Bank Loans

In 2009, in order to move forward certain research and development activities, strategic relationships in various clinical and therapeutic areas, as well as to support activities related to the Erye Merger, on February 25, 2009 and March 6, 2009, respectively, the Company issued promissory notes to RimAsia Capital Partners L.P. ("RimAsia"), a principal shareholder of the Company, in the principal amounts of $400,000 and $750,000, respectively. The notes bore interest at the rate of 10% per annum and were due and payable on October 31, 2009, except that all principal and accrued interest on the notes was immediately due and payable in the event the Company raised over $10 million in equity financing prior to October 31, 2009. The notes

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 7 — Notes Payable and Bank Loans – (continued)

contained standard events of default and in the event of a default that was not subsequently cured or waived, the interest rate would increase to a rate of 15% per annum and, at the option of RimAsia and upon notice, the entire unpaid principal balance together with all accrued interest thereon would be immediately due and payable. The notes or any portion thereof could be prepaid at any time at the discretion of the Company without premium or penalty. On April 9, 2009 these notes and the related accrued interest were repaid from the proceeds of an $11,000,000 offering of units consisting of shares of the Company's Series D Convertible Redeemable Preferred Stock and warrants to purchase shares of Common Stock.

In December 2009, Erye obtained a loan of approximately $2,200,500 from the Industrial and Commercial Bank with an interest rate of 4.86% that was due in June 2010. In April 2010 this loan was paid in full.

In December 2009, in order to facilitate working capital requirements in China, NeoStem (China) issued a promissory note to the Bank of Rizhao Qingdao Branch for approximately $645,500. The note bore an interest rate of 4.05%. The note was repaid in the second quarter of 2010. The loan was collateralized by cash in a restricted bank account totaling approximately $761,100 and these funds were returned when the note was repaid.

On May 25, 2010 NeoStem (China) issued a promissory note to the Bank of Rizhao Qingdao Branch for approximately $538,000 due November 25, 2010 and bearing interest at 4.86% per annum. The loan was collateralized by cash in a restricted bank account totaling approximately $600,900. This note was repaid in full in November 2010 and the funds were returned when the note was repaid.

In November 2010, Erye obtained a loan of approximately $3,034,000 from the CITIC Bank International with an interest rate of 5.56% and is due in November 2011.

Erye has approximately $9,451,500 of notes payable outstanding as of December 31, 2010. Notes are payable to the banks who issue bank notes to Erye's creditors. Notes payable are interest free and usually mature after a three to six month period. In order to issue notes payable on behalf of Erye, the banks require collateral, such as cash deposits which are approximately 30%-50% of notes to be issued, or properties owned by Erye. Restricted cash pledged as collateral for the balance of notes payable at December 31, 2010 and 2009, amounted to approximately $3,381,400 and $3,955,400, respectively. At December 31, 2010 and 2009, the restricted cash amounted to 35.8% and 43.2% of the notes payable Erye issued, and the remainder of the notes payable is collateralized by pledging the land use right Erye owns, which amounted to approximately $4,807,800 and $4,711,700 at December 31, 2010 and 2009, respectively.

The Company has financed certain insurance policies and has notes payable at December 31, 2010 of approximately $116,900 related to these policies. These notes require monthly payments and mature in less than one year.

Note 8 — Preferred Stock

Series D Mandatorily Redeemable Convertible Preferred Stock

In April 2009, the Company completed a private placement financing totaling $11,000,000 (the "April 2009 Private Placement"). This financing consisted of the issuance of 880,000 units priced at $12.50 per unit, with each unit (the "Series D Units") consisting of one share of the Company's Series D Convertible Redeemable Preferred Stock (the "Series D Stock") and ten warrants with each warrant to purchase one share of Common Stock (the "Series D Warrants"). A total of 880,000 shares of Series D Stock and 8,800,000 Series D Warrants were issued. RimAsia, a principal shareholder in the Company, purchased $5,000,000 in Series D Units in the April 2009 Private Placement and thus acquired 400,000 shares of Series D Stock and 4,000,000 Series D Warrants. In June 2009, with a final closing on July 6, 2009, the Company completed an additional private placement financing totaling $5,003,500 with net proceeds of $4,679,220 (the "June 2009 Private Placement"). This financing consisted of the issuance of 400,280 Series D Units priced at

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 8 — Preferred Stock – (continued)

$12.50 per unit, and a total of 400,280 shares of Series D Stock and 4,002,800 Series D Warrants were issued. The Company paid $324,280 in fees and issued 12,971 Series D Units to agents that facilitated the June 2009 Private Placement. The Series D Units issued to the selling agents were comprised of 12,971 shares of the Series D Stock and 129,712 Series D Warrants. Fullbright Finance Limited, a beneficial holder of more than 5% of the Company's stock, purchased an aggregate of $800,000 in Series D Units in the June 2009 Private Placement and thus acquired 64,000 shares of Series D Stock and 640,000 Series D Warrants; the securities purchased by Fullbright in the June 2009 Private Placement were pledged to RimAsia and subsequently, to the Company. In total, in the April 2009 and June 2009 Private Placements, the number of shares of Series D Stock issued was 1,293,251 (converted into 12,932,510 shares of Common Stock upon shareholder approval on October 29, 2009 following which there were no shares of Series D Stock outstanding) and the number of Series D Warrants issued was 12,932,512.

Convertible Redeemable Series C Preferred Stock

On October 30, 2009, pursuant to the terms of the Erye Merger Agreement, the Company issued 8,177,512 shares of Series C Convertible Preferred Stock ("Series C Preferred Stock") to RimAsia Capital Partners, L.P. ("RimAsia") in exchange for certain outstanding CBH securities. The holder of shares of Convertible Redeemable Series C Preferred Stock ("Series C Preferred Stock") was entitled to receive an annual dividend of 5% of the Agreed Stated Value, payable annually on the first day of January. Payment of the annual dividend was to be paid in cash or in kind as determined by the NeoStem Board of Directors. The total fair value of the Series C Preferred Stock was approximately $13,720,000. The value of the Series C Convertible Preferred Stock was allocated to the two economic elements of the Series C Convertible Preferred stock; the value of the beneficial conversion feature of the preferred stock to NeoStem Common Stock was $5,542,500 and the value of the preferred stock was $8,177,500. The Series C Convertible Preferred shareholder was not required to hold the preferred stock for any minimum period of time before exercising the conversion feature therefore the value of the beneficial conversion feature was recognized immediately as a dividend of $5,542,500.

On May 17, 2010, RimAsia at its option converted its 8,177,512 shares of Series C Preferred Stock into 9,086,124 shares of the Company's common stock at a conversion rate of 0.90 shares of Series C Preferred Stock for 1.0 shares of the Company's common stock. Following this conversion, there were no shares of Series C Preferred Stock outstanding and RimAsia will not be entitled to receive any dividends on such shares, to receive notices or to vote such shares or to exercise or to enjoy any other powers, preferences or rights in respect thereof; provided however that RimAsia was entitled to receive a cash payment of $153,500 which is equal to the dividends accrued but unpaid through from January 1, 2010 to May 17, 2010. This payment was made on May 25, 2010.

Convertible Redeemable Series E 7% Preferred Stock

On November 19, 2010, the Company sold 10,582,011 Preferred Offering Units consisting of (i) one share ("Preferred Share") of Series E 7% Senior Convertible Preferred Stock, par value $0.01 per share, of the Company, (ii) a warrant to purchase 0.25 of a share of Common Stock (an aggregate of 1,322,486 warrants) and (iii) 0.0155 of a share of Common Stock (an aggregate of 164,418 shares). Each Preferred Offering Unit was priced at $0.945 and total gross and net proceeds received by the Company were $10,000,000 and $8,876,700, respectively.

In the event of any liquidation, dissolution or winding up of the Company, either voluntary or involuntary, the holders of the Preferred Shares shall be entitled to receive, out of the assets of the Company available for distribution to shareholders, prior and in preference to any distribution of any assets of the Company to the holders of any other class or series of equity securities, the amount of $1.00 per share plus all accrued but unpaid dividends.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 8 — Preferred Stock – (continued)

Dividends on the Preferred Shares accrue at a rate of 7% per annum and are payable monthly in arrears.

Monthly dividend and principal payments begin on March 19, 2011 and continue on the 19th of each month thereafter with the final payment due on May 20, 2013. Payments can be made in cash or, upon notification to the holders, in shares of Company common stock, provided the conditions described below are satisfied or holders of Preferred Shares agree to waive the conditions for that payment period. If the conditions are not satisfied, the Company must make payments in cash. Payments which are made in stock will be made in shares which are freely tradable. The price of the shares will be calculated based on 92% of the average of the lowest 5 days' volume weighted average prices of the 20 trading days prior to the payment date.

The number of shares of Common Stock the Company can use to pay monthly dividends and principal payments are limited to no more than 15% multiplied by the total dollar trading volume (using the daily volume weighted average prices) of the Company's common stock for the 22 trading days prior to the notification date. In addition, as conditions to using the Company Common Stock for payment for principal and dividends, amongst other things, (i) all shares of common stock to be issued on the payment date must be eligible for resale by the holders without restriction, (ii) the Company's common stock may not be suspended from trading on the NYSE AMEX Market or other trading market, (iii) all shares of common stock to be issued on the payment date must be issued in full without violating any rules of the NYSE AMEX Market, (iv) certain events of default and trigger events have not occurred, (v) the Company has not provided the holders with non-public information, and (vi) the shares of common stock to be issued will be duly authorized, fully paid and non-assessable.

The Company may pre-pay the outstanding balance of the Preferred Shares in full or in part (in increments of no less than $1,000,000) at 115% of the then outstanding balance, reducing to 110% after November 19, 2011, with notice of not less than thirty days and adequate opportunity to convert. If the Company chooses to pre-pay, the outstanding balance must be paid in cash and the premium may be paid in cash or shares of Company common stock.

Upon issuance, the Preferred Shares were convertible at an initial conversion price of $2.0004. The conversion price is subject to certain weighted average adjustments upon the occurrence of specific events, including stock dividends, stock splits, combinations and reclassifications of the Company's common stock and if (with certain exceptions) the Company issues or sells any additional shares of common stock or common stock equivalents at a price per share less than the conversion price then in effect, or without consideration.

Each holder of Preferred Shares has the unilateral option and right to compel the Company to repurchase for cash any or all of such holder's Preferred Shares within three days of a written notice requiring such repurchase (provided that no written notice shall be required if any of the events described in clauses (v) and (vi) below occur and demand for repurchase shall be deemed automatically made upon the occurrence of any of those events), at a price per preferred share equal to 115% of the then outstanding balance, reducing to 110% after November 19, 2011, if any of the following events shall have occurred or are continuing:

(i) A Change in Control Transaction;

(ii) A "going private" transaction under SEC rules;

(iii) A tender offer by the Company under SEC Rule 13e-4;

(iv) the suspension from trading or the failure of the Company's common stock to be listed on a trading market for a period of five consecutive trading days or for more than an aggregate of 10 trading days in any 365-day period;

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 8 — Preferred Stock – (continued)

(v) the entry by a competent court of (i) a decree or order for relief pertaining to the Company or any of the Company's subsidiaries under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company or any of the Company's subsidiaries as bankrupt or insolvent or approving a petition seeking reorganization or (iii) appointing a custodian, receiver, trustee or other similar official for the Company or any of the Company's subsidiaries or of any substantial part of the Company's property, or ordering the liquidation of the Company's affairs, and the continuance of any such decree or order for a period of 60 consecutive days;

(vi) the commencement by the Company or any of the Company's subsidiaries of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by the Company to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the consent by the Company to the appointment of or taking possession by a custodian, receiver, trustee or other similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of the Company's inability to pay its debts generally as they become due;

(vii) following an Authorized Share Failure (as defined), the Company's failure to receive shareholder approval to approve the required increase in the number of shares of the Company's common stock within five days after the Meeting Outside Date (as defined); or

(viii) the Company's failure to deliver shares of the Company's common stock on any delivery date as provided by the agreement and such failure continues for two (2) trading days after the date that delivery of shares of common stock is due;

(ix) the Company's failure to pay any amounts when and as due pursuant to the Series E Preferred Stock Certificate of Designations ("Certificate of Designations") or any other document relating to the issuance of the Preferred Shares or the warrants issued to the Series E Preferred holders, if such failure continues for two (2) trading days after the date that such payment is due;

(x) the Company's breach of certain covenants contained in the Certificate of Designations and the stock purchase agreement;

(xi) the Company or any of its subsidiaries shall (A) default in any payment of any amount or amounts of principal of or interest on any indebtedness the aggregate principal amount of which indebtedness is in excess of $1,000,000 or (B) default in the observance or performance of any other agreement or condition relating to any such indebtedness, or any other event shall occur or condition exist, as a result of which the holder or holders or beneficiary or beneficiaries of such indebtedness or a trustee on their behalf have declared such indebtedness to be due prior to its stated maturity;

(xii) the effectiveness of the registration statement pertaining to the Preferred Shares or the ability to use the prospectus supplement and the prospectus lapses for any reason and continues for a period of 10 consecutive days or for more than an aggregate of 20 days in any 365-day period;

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 8 — Preferred Stock – (continued)

(xiii) the Company breaches any representation, warranty, covenant or other term or condition of the Certificate of Designations, the stock purchase agreement or the warrants issued with the preferred shares, except to the extent that such breach would not have a material adverse effect (as defined in the stock purchase agreement), and except in the case of a breach of a covenant which is curable, only if such breach remains uncured for a period of at least 10 calendar days (the events described in clauses (v), (vi), (viii), (ix), (x), (xi), (xii) and (xiii) are collectively referred to as the "Trigger Events" and each, as a "Trigger Event").

Upon issuance, each warrant had an initial exercise price of $2.0874, will become exercisable after six months and will expire three years after the initial exercise date. The exercise price and the number of shares of common stock purchasable upon the exercise of the warrants are subject to adjustment upon the occurrence of specific events, including stock dividends, stock splits, combinations and reclassifications of the Company's common stock. Additionally, the exercise price of the warrants is subject to certain weighted average adjustments if (with certain exceptions) the Company issues or sells any additional shares of common stock or common stock equivalents at a price per share less than the exercise price then in effect, or without consideration. Subject to certain exceptions, while the warrants are outstanding, if the daily volume weighted average price of a share of the Company's common stock for each of 20 trading days out of 30 consecutive trading days has remained at least 100% above the warrant exercise price, then the Company may, subject to certain conditions, require the holder to exercise the warrant in full upon not less than 10 business days prior written notice. If at any time after six months from the date of issuance, there is no effective registration statement relating to the warrant shares, the warrant may be exercised on a cashless basis.

An aggregate of $2,500,000 of the proceeds from the Preferred Offering was placed in escrow for a maximum of 2.5 years as security for the Company's obligations relative to the Preferred Shares, and is included in other assets.

The characteristics of the Series E Preferred Stock: cumulative dividends, mandatory redemption, no voting rights, and callable by the Company require that this instrument be treated as mezzanine equity. The Company bifurcated the fair value of the embedded conversion options and redemption options from the preferred stock since the conversion options and certain redemption options were determined to not be clearly and closely related to the preferred stock host. The Company recorded the fair value of the embedded conversion and redemption options as long-term derivative liabilities as the conversion price is not fixed and the forced redemption option contains substantial premiums over the stated dividend rate for the preferred stock. The Company also recorded the fair value of the warrants as a long-term derivative liability as the number of warrant shares and exercise price of the warrants is not fixed. The Series E Preferred Stock was discounted by the fair value of the derivatives liabilities. The fair value of the preferred stock (net of issuance costs and discounts), common stock, the embedded derivatives, and warrant derivative were $6,251,100, $228,500, $2,131,100, and $266,000, respectively, as of November 19, 2010, the date of issuance.

The Company will report changes in the fair value of the embedded derivatives and warrant derivative in earnings within other income (expense), net. The discount and issuance costs on the preferred stock will be amortized through May 20, 2013 using the effective interest method and will be reflected within interest expense. As of December 31, 2010, the Company recorded an increase in the fair value of the embedded derivatives and warrant derivative of $150,700 and $9,300, respectively and amortization of debt discount and issuance costs of $281,200.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity

Common Stock

The authorized common stock of the Company is 500 million shares, par value $0.001 per share.

On February 18, 2010, the Company completed a public offering of its common stock, selling 5,750,000 shares priced at $1.35 per share. The Company received approximately $6,821,600 in net proceeds from the offering, after underwriting discounts, commissions and expenses, of approximately $940,900.

Effective March 15, 2010, RimAsia exercised a warrant to purchase 1,000,000 shares of restricted Common Stock. This warrant was issued to RimAsia in a private placement completed by the Company in September 2008. The exercise price was $1.75 per share, resulting in proceeds to the Company of $1,750,000. In connection therewith, the Company modified certain terms of RimAsia's Series D Warrant to purchase 4,000,000 shares of Common Stock.

On May 17, 2010, RimAsia, the holder of 8,177,512 shares of Series C Preferred Stock issued by the Company in connection with the Erye Merger, at its option, converted its 8,177,512 shares of Series C Preferred Stock into 9,086,124 shares of the Company's common stock at a conversion rate of 0.90 shares of Series C Preferred Stock for 1.0 shares of the Company's common stock.

On May 19, 2010, the Company entered into a Common Stock Purchase Agreement with Commerce Court Small Cap Value Fund, Ltd., which provides that, subject to certain terms and conditions, Commerce Court is committed to purchase up to $20,000,000 worth of shares of the Company's common stock over a term of approximately 24 months. The Purchase Agreement provides that at the Company's discretion, it may present Commerce Court with draw down notices under this $20 million equity line of credit arrangement from time to time, to purchase the Company's Common Stock, provided certain price requirements are met and limited to 2.5% of the Company's market capitalization at the time of such draw down, which may be waived or modified. The per share purchase price for these shares will equal the daily volume weighted average price of the Company's common stock on each date during the draw down period on which shares are purchased, less a discount of 5.0%. The Purchase Agreement also provides that the Company in its sole discretion may grant Commerce Court the right to exercise one or more options to purchase additional shares of Common Stock during each draw down period at a price which would be based on a discount calculated in the same manner as it is calculated in the draw down notice. The issuance of shares of common stock to Commerce Court pursuant to the Purchase Agreement, and the sale of those shares from time to time by Commerce Court to the public, are covered by an effective registration statement on Form S-3 filed with the SEC.

On May 27, 2010, the Company presented Commerce Court with a Draw Down Notice. Pursuant to the Purchase Agreement, the shares were offered at a discount price to Commerce Court mutually agreed upon by the parties under the Purchase Agreement equal to 95.0% of the daily volume weighted average price of the common stock during the Pricing Period or a 5% discount. Pursuant to the Draw Down Notice, the Company also granted Commerce Court the right to exercise one or more options to purchase additional shares of common stock during the Pricing Period, based on the trading price of the common stock. The Company settled with Commerce Court on the purchase of 685,226 shares of common stock under the terms of the Draw Down Notice and the Purchase Agreement at an aggregate purchase price of $1,800,000, or approximately $2.63 per share, on June 7, 2010. The Company and Commerce Court agreed to waive the minimum threshold price of $3.00 per share set forth in the Purchase Agreement. The Company received net proceeds from the sale of these shares of approximately $1,744,000 after deducting its offering expenses.

On June 1, 2010, Fullbright Finance Limited exercised a warrant to purchase 400,000 shares of restricted Common Stock. This warrant was issued to Fullbright in a private placement of securities by the Company in November 2008. The exercise price was $1.75 per share, resulting in proceeds to the Company of $700,000.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

On June 25, 2010, the Company entered into definitive securities purchase agreements with investors in a registered direct public offering, pursuant to which such investors agreed to purchase, and the Company agreed to sell, an aggregate of 2,325,582 Units, consisting of an aggregate of 2,325,582 shares of common stock and warrants to purchase an aggregate of 581,394 shares of common stock. The offering closed on June 30, 2010 with gross proceeds of $5,000,000. Each Unit was priced at $2.15 and consisted of one share of common stock and a warrant which will allow the investor to purchase 0.25 shares of common stock at a per share price of $2.75. The warrants may be called by the Company in the event that the common stock trades over $4.50 per share for 10 consecutive trading days. Subject to certain ownership limitations, the warrants will be exercisable on the date of the closing and will expire 2 years thereafter. The number of shares of common stock issuable upon exercise of the warrants and the exercise price of the warrants are adjustable in the event of stock dividends, splits, recapitalizations, reclassifications, combinations or exchanges of shares, reorganizations, liquidations, consolidation, acquisition of the Company (whether through merger or acquisition of substantially all the assets or stock of the Company) or similar events. The issuance of the securities in this offering was registered on a registration statement on Form S-3 filed with the SEC. Rodman & Renshaw LLC acted as the Company's placement agent in this offering and received a total payment of $340,000 in fees and expenses and Placement Agent Warrants to purchase up to 93,023 shares of the Company's Common Stock at an exercise price of $2.6875 per share expiring May 10, 2015. The Placement Agent Warrants are not covered by the Form S-3. The net proceeds to the Company from such offering, after deducting the Placement Agent's fees and expenses, the Company's offering expenses, and excluding the proceeds, if any, from the exercise of the warrants issued in the offering were approximately $4,497,900.

On July 27, 2010, consistent with the Company's previously disclosed intention to provide support for The Stem for Life Foundation, a Pennsylvania nonprofit corporation classified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and as a public charity under Section 509(a)(1) and 170(b)(1)(A)(vi) of the Code (the "Foundation"), whose mission is to promote public awareness, fund research and development and subsidize stem cell collection and storage programs, the Company issued to the Foundation 150,000 shares of restricted common stock with a fair value of $298,500. The issuance of such securities was subject to the approval of the Board of Directors, Audit Committee and the NYSE Amex. On July 2, 2010, the Company also contributed $75,000 in cash to the Foundation. The Company's CEO and Chairman is President and a Trustee of the Foundation, its General Counsel is Secretary and a Trustee of the Foundation and its Chief Financial Officer is Treasurer of the Foundation.

On September 30, 2010, a warrant holder exercised a warrant to purchase 600,000 shares of Common Stock. The exercise price was $.78 per share, resulting in proceeds to the Company of $468,000.

On November 16, 2010, the Company entered into an Underwriting Agreement with Cowen and Company, LLC, relating to a public offering by the Company of 6,337,980 units, consisting of one share of the Company's common stock, and a warrant to purchase 0.50 of a share of Common Stock. The public offering price for each Underwritten Unit was $1.45 and the net proceeds were $8,138,500. Each Underwritten Warrant will have an exercise price of $1.85 per share, will be exercisable six months after issuance and will expire five years from the date of issuance.

On December 7, 2010, the Company entered into a settlement agreement with a business partner involved in the development of the Company's platform research organization in China, whereby the business partner relinquished rights to 407,626 shares of common stock. As a result of this settlement, the Company recorded other income of $656,300, which represented the fair market value of the shares on the day the shares were relinquished.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

Warrants

On March 15, 2010, the Company and RimAsia, an affiliate of the Company, made certain agreements with respect to outstanding warrants. RimAsia exercised its warrant to purchase 1,000,000 shares of the Company's common stock, exercisable at a per share exercise price of $1.75, which was issued to RimAsia in a private placement completed by the Company in September 2008 (the "September 2008 Warrant"). This exercise resulted in proceeds to the Company totaling $1,750,000. The condition for such exercise was that the Company would modify certain terms of RimAsia's warrant to purchase 4,000,000 shares of Common Stock, issued to RimAsia in a private placement completed by the Company in April 2009 (the "Series D Warrant"). The Series D Warrant was amended to provide for (i) a three (3) year extension of the Termination Date from September 1, 2013 to September 1, 2016, and (ii) an increase in the average closing price that triggers the Company's redemption option under the Series D Warrant from $3.50 to $5.00. The change in terms resulted in a charge to other expense totaling approximately $188,000.

The Company has issued common stock purchase warrants from time to time to investors in private placements and public offerings, and to certain vendors, underwriters, placement agents and consultants of the Company. A total of 21,843,507 shares of common stock are reserved for issuance upon exercise of outstanding warrants as of December 31, 2010 at prices ranging from $0.50 to $6.50 and expiring through April 2017.

During the years ended December 31, 2010, 2009, and 2008, the Company issued warrants for services as follows ($ in thousands, except share data):

	Number of Common Stock Purchase Warrants Issued			Value of Common Stock Purchase Warrants Issued			Common Stock Purchase Warrant Expense Recognized		
	Years Ended December 31,			Years Ended December 31,			Years Ended December 31,		
	2010	2009	2008	2010	2009	2008	2010	2009	2008
Warrants issued for investment banking services	—	25,000	120,000	$ —	$ 49.0	$ 142.9	$ —	$ 60.9	$ 130.9
Warrants issued for investor relations services	200,000	50,000	—	242.7	65.8	—	121.4	65.8	—
Warrants issued for consulting services	350,000	29,000	880,000	425.5	30.5	586.5	282.3	76.0	482.9
Warrants issued for legal services	77,000	—	—	104.0	—	—	71.2	—	—
	627,000	104,000	1,000,000	$ 772.2	$ 145.3	$ 729.4	$ 474.9	$ 202.7	$ 613.8

The weighted average estimated fair value of warrants issued for services in the years ended December 31, 2010, 2009 and 2008 was $1.23, $1.40, and $.73, respectively. The fair value of warrants at the date of grant was estimated using the Black-Scholes option pricing model. The expected volatility is based upon historical volatility of the Company's stock. The expected term is based upon the contractual term of the warrants.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

The range of assumptions made in calculating the fair values of warrants issued for services were as follows:

	Years Ended December 31,		
	2010	2009	2008
Expected term (in years)	3 to 5	5	5
Expected volatility	86% – 124%	168% – 214%	121% – 144%
Expected dividend yield	0%	0%	0%
Risk-free interest rate	.64% – 2.65%	1.90% – 2.16%	3.34% – 3.76%

Activity related to warrants outstanding for the years ended December 31, 2010, 2009, and 2008 was as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 31, 2007	1,987,938	$ 7.16		
Granted	3,385,709	1.70		
Exercised	—	—		
Expired	(51,314)	9.51		
Cancelled	—	—		
Balance at December 31, 2008	5,322,333	3.66		
Granted	14,639,703	2.94		
Exercised	—	—		
Expired	(123,234)	7.86		
Cancelled	—	—		
Balance at December 31, 2009	19,838,802	3.00		
Granted	5,792,896	1.99		
Exercised	(2,025,000)	1.46		
Expired	(1,613,191)	6.54		
Cancelled	(150,000)	2.78		
Balance at December 31, 2010	21,843,507	$ 2.62	3.9	$ 58,140

At December 31, 2010, the outstanding warrants by range of exercise prices were as follows:

	Warrants Outstanding			Warrants Exercisable		
Range of Exercise Prices	Shares Outstanding December 31, 2010	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price	Shares Exercisable December 31, 2010	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price
$0.50 to $1.01	99,000	2.9	$ 0.88	83,000	2.8	$ 0.95
$1.01 to $1.99	4,611,702	4.3	1.79	1,267,709	2.8	1.69
$1.99 to $2.53	14,524,998	4.2	2.46	13,202,512	4.3	2.49
$2.53 to $5.99	929,928	2.0	3.16	929,928	2.0	3.16
$5.99 to $6.50	1,677,879	1.7	6.13	1,677,879	1.7	6.13
	21,843,507	3.9	$ 2.62	17,161,028	3.8	$ 2.82

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

The total fair value of shares vested for warrants issued for services during the years ended December 31, 2010, 2009 and 2008, was approximately $450,800, $216,100, and $600,600, respectively. As of December 31, 2010, there was approximately $166,200 of total unrecognized service cost related to unvested warrants of which approximately $9,300 is related to warrants that vest over a weighted average life of 1.3 years. The remaining balance of unrecognized service cost of $156,900 is related to warrants that vest based on the accomplishment of business milestones as to which expense begins to be recognized when such milestones become probable of being achieved.

Options

The Company's 2003 Equity Participation Plan (the "2003 Equity Plan") permits the grant of share options and shares to its employees, directors, consultants and advisors for up to 2,500,000 shares of Common Stock as stock-based compensation. The 2009 Equity Compensation Plan (the "2009 Equity Plan") makes up to 13,750,000 shares of Common Stock of the Company (as of December 31, 2010) available for issuance to employees, consultants, advisors and directors of the Company and its subsidiaries pursuant to incentive or non-statutory stock options, restricted and unrestricted stock awards and stock appreciation rights.

All stock options under the 2003 Equity Plan and the 2009 Equity Plan are granted at the fair market value of the Common Stock at the grant date. Stock options vest either on the date of grant, ratably over a period determined at time of grant, or upon the accomplishment of specified business milestones, and generally expire 3, 5 or 10 years from the grant date depending on the status of the recipient as a consultant, advisor, employee or director of the Company.

The 2009 Equity Plan was originally adopted by the shareholders of the Company on May 8, 2009. On October 29, 2009, the shareholders of the Company approved an amendment to the 2009 Equity Plan to increase the number of shares of common stock available for issuance thereunder from 3,800,000 to 9,750,000. At the 2010 Annual Meeting of Shareholders of the Company held on June 2, 2010, the shareholders approved an amendment to increase this number to 13,750,000. At a Special Meeting of Shareholders of the Company held on January 18, 2011, the shareholders approved an amendment to increase this number to 17,750,000.

The 2003 Equity Plan and the 2009 Equity Plan are sometimes collectively referred to as the Company's "U.S. Equity Plan." The Company's 2009 Non-U.S. Based Equity Compensation Plan ("Non-U.S. Plan") makes up to 8,700,000 shares of Common Stock of the Company available for issuance. Persons eligible to receive restricted and unrestricted stock awards, options, stock appreciation rights or other awards under the Non-U.S. Plan are those service providers to the Company and its subsidiaries and affiliates providing services outside of the United States, including employees and consultants of the Company and its subsidiaries and affiliates, who, in the opinion of the Compensation Committee, are in a position to contribute to the Company's success. Options vest either on the date of grant, ratably over a period determined at time of grant, or upon the accomplishment of specified business milestones, and generally expire 3, 5 or 10 years from the grant date depending on the status of the recipient as a consultant, advisor, employee or director of the Company.

The Non-U.S. Plan was originally adopted by the shareholders of the Company on October 29, 2009. At the 2010 Annual Meeting of Shareholders of the Company held on June 2, 2010, the shareholders approved an amendment to increase the number of shares of common stock authorized for issuance thereunder from 4,700,000 to 8,700,000.

The Company's results include share-based compensation expense of approximately $6,324,500, $7,380,200, and $1,986,100 for the years ended December 31, 2010, 2009, 2008, respectively. Options vesting on the accomplishment of business milestones will not be recognized for compensation purposes until such milestones are deemed probable of accomplishment. At December 31, 2010 there were options to purchase

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

1,678,575 shares outstanding that will vest upon the accomplishment of business milestones and will be accounted for as an operating expense when such business milestones are deemed probable of accomplishment.

The weighted average estimated fair value of stock options granted in the years ended December 31, 2010, 2009 and 2008 were $1.59, $1.96, and $1.45, respectively. The fair value of options at the date of grant was estimated using the Black-Scholes option pricing model. The expected volatility is based upon historical volatility of the Company's stock. The expected term is based upon observation of actual time elapsed between date of grant and exercise of options for all employees.

The range of assumptions made in calculating the fair values of options were as follows:

	Years Ended December 31,		
	2010	2009	2008
Expected term (in years)	2 to 10	10	10
Expected volatility	86% – 122%	149% – 217%	100% – 181%
Expected dividend yield	0%	0 %	0 %
Risk-free interest rate	0.34% – 3.80%	2.98% – 3.81%	3.64% – 4.19%

Activity related to stock options outstanding under the U.S. Equity Plan was as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 31, 2007	1,113,800	$ 5.66		
Granted	928,000	1.52		
Exercised	(2,500)	0.75		
Expired	—	—		
Cancelled	(314,000)	2.82		
Balance at December 31, 2008	1,725,300	3.96		
Granted	6,727,274	1.85		
Exercised	—	—		
Expired	(2,000)	7.00		
Cancelled	(110,000)	1.79		
Balance at December 31, 2009	8,340,574	1.87		
Granted	1,955,000	1.85		
Exercised	(90,000)	1.56		
Expired	—	—		
Cancelled	(273,360)	1.86		
Balance at December 31, 2010	9,932,214	$ 1.87	7.5	$ 36,010

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

Range of Exercise Prices	Options Outstanding: Shares Outstanding December 31, 2010	Options Outstanding: Weighted Average Remaining Contractual Life (years)	Options Outstanding: Weighted Average Exercise Price	Options Exercisable: Shares Exercisable December 31, 2010	Options Exercisable: Weighted Average Remaining Contractual Life (years)	Options Exercisable: Weighted Average Exercise Price
$0.71 to $1.89	4,846,000	8.2	$ 1.68	2,633,501	8.2	$ 1.68
$1.89 to $1.96	3,063,664	5.9	1.91	2,463,423	5.8	1.91
$1.96 to $4.96	1,971,200	8.4	2.10	1,422,867	8.0	2.06
$4.96 to $7.01	27,250	4.6	5.60	27,250	4.6	5.60
$7.01 to $15.00	24,100	4.0	11.76	24,100	4.0	11.76
	9,932,214	7.5	$ 1.87	6,571,141	7.2	$ 1.90

Activity related to stock options outstanding under the Non U.S. Equity Plan was as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 31, 2008	—	$ —		
Granted	1,650,000	2.04		
Exercised	—	—		
Expired	—	—		
Cancelled	—	—		
Balance at December 31, 2009	1,650,000	2.04		
Granted	2,000,000	2.01		
Exercised	—	—		
Expired	—	—		
Cancelled	(550,000)	2.04		
Balance at December 31, 2010	3,100,000	$ 2.02	9.3	$ —

Range of Exercise Prices	Options Outstanding: Shares Outstanding December 31, 2010	Options Outstanding: Weighted Average Remaining Contractual Life (years)	Options Outstanding: Weighted Average Exercise Price	Options Exercisable: Shares Exercisable December 31, 2010	Options Exercisable: Weighted Average Remaining Contractual Life (years)	Options Exercisable: Weighted Average Exercise Price
$1.65 to $1.93	750,000	9.7	$ 1.60	—	—	$ —
$1.93 to $2.08	1,100,000	8.8	2.04	266,666	8.8	2.04
$2.08 to $2.22	650,000	9.4	2.16	150,000	9.4	2.16
$2.22 to $2.36	600,000	9.5	2.36	200,000	9.5	2.36
	3,100,000	9.3	$ 2.02	616,666	9.2	$ 2.17

The total fair value of shares vested during the years ended December 31, 2010, 2009 and 2008 was approximately $6,191,800, $4,788,600 and $1,329,900, respectively.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 9 — Shareholders' Equity – (continued)

The number of remaining shares authorized to be issued under the various equity plans are as follows:

	US Equity Plan	Non US Equity Plan
Shares Authorized for Issuance under 2003 Equity Plan	2,500,000	—
Shares Authorized for Issuance under 2009 Equity Plan	13,750,000	—
Shares Authorized for Issuance under Non US Equity Plan	—	8,700,000
	16,250,000	8,700,000
Outstanding Options – US Equity Plan	(9,932,214)	—
Exercised Options	(92,500)	—
Outstanding Options – Non US Equity Plan	—	(3,100,000)
Restricted stock or equity grants issued under Equity Plans	(2,164,555)	(885,000)
Total common shares remaining to be issued under the Option Plans	4,060,731	4,715,000

As of December 31, 2010, there was approximately $7,688,500 of total unrecognized compensation costs related to unvested stock option awards of which approximately $5,034,000 is related to stock options that vest over a weighted average life of 2.07 years. The remaining balance of unrecognized compensation costs of $2,654,500 is related to stock options that vest based on the accomplishment of business milestones which expense begins to be recognized when such milestones become probable of being achieved.

Note 10 — Income Taxes

Loss from operations before income taxes and noncontrolling interest is as follows (in thousands):

	Years Ended December 31,		
	2010	2009	2008
United States	$ (25,883.0)	$ (24,640.9)	$ (9,242.1)
Foreign	7,036.9	(1,267.2)	
	$ (18,846.1)	$ (25,908.1)	$ (9,242.1)

The provision for income taxes was as follows (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Current			
US Federal	$ —	$ —	$ —
State and local	—	—	—
Foreign	1,381.6	344.2	—
	$ 1,381.6	$ 344.2	$ —
Deferred			
US Federal	$ —	$ —	$ —
State and local	—	—	—
Foreign	(830.7)	(302.5)	—
	$ (830.7)	$ (302.5)	$ —
Total			
US Federal	$ —	$ —	$ —
State and local	—	—	—
Foreign	550.9	41.7	—
	$ 550.9	$ 41.7	$ —

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 10 — Income Taxes – (continued)

The provision for income taxes exceeds the amount of income tax benefit determined by applying the U.S. Federal statutory rate of 34% to income before income taxes as a result of the following:

	Years Ended December 31,		
	2010	2009	2008
U.S. Federal benefit at statutory rate	$ (6,407.7)	$ (8,808.8)	$ (3,142.3)
State and local benefit net of U.S. Federal tax	(2,509.4)	(2,587.3)	(970.4)
Permanent non deductible expenses for U.S. taxes	1,838.1	2,931.1	647.3
Foreign tax rate differential on current income	(1,841.7)	472.5	—
Reduction in deferred tax assets primarily related to deductibility of certain share-based compensation	2,938.6	—	—
True-up of prior year net operating loss	(413.6)	—	—
Writedown of net operating losses due to Section 382 limitations	1,932.6	7,010.0	—
Valuation allowance for deferred tax assets	5,014.0	1,024.2	3,465.4
Tax provision	$ 550.9	$ 41.7	$ —

Deferred income taxes at December 31, 2010 and 2009 consist of the following:

	December 31,	
	2010	2009
Deferred Tax Assets:		
Accumulated net operating losses (tax effected)	$ 17,236.0	$ 11,760.0
Deferred revenue	60.8	121.0
Contingent accounts payable	175.4	27.0
Share-based compensation	2,393.0	5,369.0
Damages for patent infringement	189.6	—
Write off of abandoned assets	169.7	—
Inventory reserve	17.1	—
Charitable contributions	176.0	11.0
Bad debt provision	65.8	13.0
Goodwill	164.0	(65.0)
Deferred tax assets prior to tax credit carryovers and net operating loss carryovers	20,647.4	17,236.0
Deferred Tax Liabilities:		
Accumulated depreciation	(80.0)	(29.0)
Intangible and indefinite lived assets	(5,857.4)	(5,946.5)
Lease rights	(85.1)	(131.5)
Land use rights	(735.5)	(718.0)
Deferred tax liabilities	(6,758.0)	(6,825.0)
	13,889.4	10,411.0
Valuation reserve	(20,081.0)	(17,207.0)
Net deferred tax liability	$(6,191.6)	$ (6,796.0)

The Tax Reform Act of 1986 enacted a complex set of rules limiting the utilization of net operating loss carryforwards ("NOL") to offset future taxable income following a corporate ownership change. The Company's ability to utilize its NOL carryforwards is limited following a change in ownership in excess of fifty percentage points during any three-year period.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 10 — Income Taxes – (continued)

Since the year 2000, the Company has had several changes in ownership which has resulted in a limitation on the Company's ability to apply net operating losses to future taxable income. As of December 31, 2010 the Company has lost $21,973,200, or $7,470,900 in tax benefits, of net operating losses applicable to Federal income taxes which expired due to these limitations. At December 31, 2010, the Company had net operating loss carryforwards of approximately $39,590,500 applicable to future Federal income taxes. The tax loss carryforwards are subject to annual limitations and expire at various dates through 2030. The Company has recorded a full valuation allowance against its net deferred tax asset because it is more likely than not that such deferred tax assets will not be realized. The change in valuation allowance for 2010 is $2,874,000.

At the present time U.S. income and foreign withholding taxes have not been recognized on the excess of the amount for financial reporting over the tax basis of investments in foreign subsidiaries which are essentially permanent in duration. This amount becomes taxable upon a repatriation of assets from the subsidiary or a sale or liquidation of the subsidiary. The amount of such temporary differences totaled $6,626,600. Determination of the amount of any unrecognized deferred income tax liability on this difference is not practical.

Note 11 — Segment Information

The Company's financial information broken down by reportable segment was as follows (in thousands):

	Years Ended December 31,		
	2010	2009	2008
Revenues			
Pharmaceutical Manufacturing – China	$ 69,584.3	$ 11,386.7	$ —
Cell Therapy – United States	181.1	178.4	83.5
Regenerative Medicine – China	55.9	—	—
	$ 69,821.3	$ 11,565.1	$ 83.5
Income (loss) from operations			
Pharmaceutical Manufacturing – China	$ 8,475.9	$ 487.3	$ —
Cell Therapy – United States	(9,690.4)	(5,875.2)	(2,832.4)
Regenerative Medicine – China	(1,427.1)	(1,753.5)	—
Corporate office	(16,236.7)	(18,727.5)	(6,401.1)
	$ (18,878.3)	$ (25,868.9)	$ (9,233.5)
Total assets			
Pharmaceutical Manufacturing – China	$ 125,133.7	$ 104,899.5	$ —
Cell Therapy – United States	1,241.2	2,033.0	1,361.5
Regenerative Medicine – China	5,032.9	2,019.0	—
Corporate office	11,616.9	2,124.8	462.8
	$ 143,024.7	$ 111,076.3	$ 1,824.3

Note 12 — Related Party Transactions

On April 30, 2009, the Company entered into a License and Referral Agreement with Promethean Corporation, now Ceregenex Corporation ("Ceregenex"), through its subsidiary Ceres Living, Inc. ("Ceres") to use certain Company marks and publications in connection with certain sales and marketing activities relating to Ceregenix's nutritional supplement known as AIO Premium Cellular (the "Product"); and in connection with the license, Ceres will pay to the Company or the Stem for Life Foundation as reviewed and approved by the Board of Directors of the Company, specified fees for each unit of the Product sold; and Ceres shall engage in a referral service with respect to the Company's adult stem cell collection and storage

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 12 — Related Party Transactions – (continued)

activities. Ceres will receive a specified fee from the Company for each client referred who completes and pays for a stem cell collection. The term of the agreement is three years with each party having the right to renew annually, thereafter. The former CEO of Ceregenex is in an exclusive relationship with the CEO of the Company. The Company has earned $15,354 and $6,320 in royalties in connection with this agreement during the twelve months ended December 31, 2010 and 2009, respectively. The royalty payments were not material in 2009. Additionally Ceregenex has been responsible for referral of certain clients for the Company's stem cell collection business and receives a commission of 10% for such referrals. Through December 31, 2010 these commissions were not significant.

At December 31, 2010, Erye owed EET, the 49% shareholder of Erye, $8,301,400. Included in the amounts owed to EET are:

- Dividends paid and loaned back to Erye amounting to $7,965,300 and accrued interest of $571,300, the interest rate on this loan is 5.31%. Erye made an interest payment of approximately $198,500 in February 2010. The loan agreement does not define a fixed repayment date or schedule of payments but does call for repayment after construction of the new manufacturing facility is completed.
- Non interest bearing advances to EET of $636,000; and
- A non interest bearing loan from EET of $400,800 due 2011.

Note 13 — Commitments and Contingencies

On May 26, 2006, the Company entered into an employment agreement with Dr. Robin L. Smith, pursuant to which agreement, as amended to date, Dr. Smith serves as the Chief Executive Officer of the Company. Effective as of September 27, 2009, Dr. Smith's annual base salary was $332,750, and is increased by 10% annually after that date. On July 29, 2009, the Company amended the terms of its employment agreement with Dr. Smith by means of a letter agreement to extend the term of Dr. Smith's employment to December 31, 2011 and subject to the consummation of the Erye Merger with CBH (which Erye Merger was consummated on October 30, 2009), award Dr. Smith a $275,000 cash bonus for 2009 and comparable minimum annual bonuses for 2010 and 2011. The Company maintains key-man life insurance on Dr. Smith in the amount of $3,000,000. As of October 29, 2009, the Compensation Committee approved the reimbursement to Dr. Smith of premiums, up to $4,000 annually, for disability insurance covering Dr. Smith. The Company has also agreed to pay membership and annual fees for a club in New York of Dr. Smith's choice for business entertaining and meetings, a car allowance equal to $1,000 per month and reimbursement for life insurance premiums up to $1,200 per month.

Per Dr. Smith's January 26, 2007 letter agreement with the Company, upon termination of Dr. Smith's employment by the Company without cause or by Dr. Smith with good reason, the Company shall pay to Dr. Smith her base salary at the time of termination for the two year period following such termination. Dr. Smith's September 27, 2007 letter agreement provides that such payment of severance can be made instead in 12 equal monthly installments beginning the date of termination. In addition, per Dr. Smith's May 26, 2006 employment agreement, upon termination of Dr. Smith's employment by the Company without cause or by Dr. Smith for good reason, Dr. Smith is entitled to: (i) a pro-rata bonus based on the annual bonus received for the prior year; (ii) COBRA payments for a one year period; and (iii) have all options that would have vested during the 12-month period following the date of termination, become fully vested and, together with all other fully vested options, remain exercisable for a maximum of 48 months (but in no event longer than the original term of exercise.) Upon termination of Dr. Smith's employment by the Company for cause or by Dr. Smith without good reason, Dr. Smith is entitled to: (i) the payment of all amounts due for services rendered under the agreement up until the termination date; and (ii) have all vested options remain exercisable for a period of ninety days (all stock options which have not vested shall be forfeited.) Upon termination for death or disability, Dr. Smith (or her estate) is entitled to: (i) the payment of all amounts due for services

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 13 — Commitments and Contingencies – (continued)

rendered under the agreement until the termination date; (ii) family COBRA payments for the applicable term; and (iii) have all vested options remain exercisable for a maximum of 48 months (but in no event longer than the original term of exercise).

Per Dr. Smith's May 26, 2006 employment agreement, upon a change in control of the Company, options held by Dr. Smith shall be governed by the terms of applicable agreements and equity compensation plans, but in any event at least 75% of Dr. Smith's then unvested options shall become immediately vested and exercisable upon a change in control. Further, in the event Dr. Smith voluntarily terminates her employment without good reason following a change in control, Dr. Smith shall be entitled to: (i) the payment of base salary for one year; (ii) a pro-rata bonus based on the annual bonus received for the prior year; (iii) COBRA payments for a one year period; and (iv) have all options which would have vested during the 12-month period following the date of termination, become fully vested and, together with all other fully vested options, remain exercisable for a maximum of 48 months (but in no event longer than the original term of exercise).

On January 26, 2007, the Company entered into an employment agreement with Catherine M. Vaczy pursuant to which agreement, as amended to date, Ms. Vaczy continues to serve as the Company's Vice President and General Counsel.

Ms. Vaczy's January 26, 2007 employment agreement, as amended on January 9, 2008 and August 29, 2008, or the Original Agreement, expired by its terms on December 31, 2008. However, effective July 8, 2009, the Company entered into another letter agreement, or the Extension, with Ms. Vaczy pursuant to which the Original Agreement was extended, subject to certain different and additional terms. The Extension provides that Ms. Vaczy's base salary during the one-year term will be $182,500. The Extension additionally provides for (i) a 25,000 share stock award upon execution under the 2009 Plan where the Company also pays the associated payroll taxes; and (ii) a $5,000 cash bonus upon each of two milestone objectives established by the Board of Directors (one of which was met in the fourth quarter of 2009 and the other in the first quarter of 2010). Pursuant to the Original Agreement, as extended and otherwise amended to date, Ms. Vaczy was also entitled to payment of certain perquisites and/or reimbursement of certain expenses incurred by her in connection with the performance of her duties and obligations under the letter agreement (including a car allowance equal to $1,000 per month), and to participate in any incentive and employee benefit plans or programs which may be offered by the Company and in all other plans in which the Company executives participate.

As of October 29, 2009, the Compensation Committee of the Board (i) awarded Ms. Vaczy a $50,000 cash bonus, 50% of which was payable in 2009 and the remaining 50% payable upon the achievement of a business milestone (which was achieved in February 2010), (ii) increased Ms. Vaczy's salary from $182,500 to $191,000 effective as of November 1, 2009, and (iii) approved the payment of dues to a private club of Ms. Vaczy's choosing for business entertaining and meetings (not to exceed $6,000 annually).

In the event Ms. Vaczy's employment is terminated prior to the end of the term, for any reason, earned but unpaid cash compensation and unreimbursed expenses due as of the date of such termination would be payable in full. In addition, in the event Ms. Vaczy's employment is terminated prior to the end of the term for any reason other than by the Company with cause or Ms. Vaczy without good reason, Ms. Vaczy or her executor of her last will or the duly authorized administrator of her estate, as applicable, would be entitled to receive certain specified severance payments, paid in accordance with the Company's standard payroll practices for executives. In no event would such payments exceed the remaining salary payments in the term. Any severance payments set forth in the Original Agreement to which Ms. Vaczy may become entitled shall be based on Ms. Vaczy's then salary for a three month and not an annual period. In the event her employment is terminated prior to the end of the term by the Company without cause or by Ms. Vaczy for good reason, all options granted by the Company will immediately vest and become exercisable in accordance with their terms. Any options provided for in the Extension, as well as other options granted or to be granted to Ms. Vaczy, shall remain exercisable despite any termination of employment for a period of not less than two years from the date of termination of employment.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 13 — Commitments and Contingencies – (continued)

On July 7, 2010, pursuant to a letter agreement (the "Employment Agreement Extension") entered into with Catherine M. Vaczy, Esq., the Company's Vice President and General Counsel, the Company extended Ms. Vaczy's employment agreement dated January 26, 2007, as amended on January 9, 2008 and August 29, 2008 and reinstated and extended on July 8, 2009 for a one year term (as so amended and extended, the "Original Employment Agreement"). The Employment Agreement Extension was effective as of July 7, 2010 (the "Effective Date") and continues through December 31, 2011 (as extended, the "Term"). The Employment Agreement Extension provides that during the Term, Ms. Vaczy shall receive (i) a base salary of $211,000 per annum which will be increased by ten percent (10%) on the one year anniversary of the Effective Date; (ii) a bonus of $50,000, half of which was payable upon the Effective Date and half of which was payable upon achievement of a business milestone in January 2011; (iii) a minimum bonus of $60,000 during the second year of the Term; (iv) an option (the "Option") on the Effective Date under the Company's 2009 Plan to purchase 350,000 shares of the Company's common stock, which shall vest and become exercisable as to 100,000 shares on the one year anniversary of the Effective Date, 50,000 shares on December 31, 2011, and as to the remaining 200,000 shares upon the achievement of specified business milestones (of which 150,000 vested in January 2011), the per share exercise price of the Option is equal to the closing price of the common stock on the Effective Date and the Option is subject to all the terms and conditions of the 2009 Plan; (v) the costs of personal stem cell collection; and (vi) business club dues not to exceed $5,000 annually. Except as set forth in the Employment Agreement Extension, the terms of the Original Employment Agreement remain unchanged.

Pursuant to the terms of the Director Compensation Plan adopted on November 4, 2009, as amended, each non-employee director of the Company, including directors who are employees of partially owned joint ventures, are entitled to quarterly cash compensation equal to $15,000, payable in arrears. Based on the current Board structure, this will equal approximately $360,000 annually.

As of October 2, 2009, the Company entered into indemnification agreements with its Chief Executive Officer, Chief Financial Officer, General Counsel, certain other employees and each of its directors pursuant to which the Company has agreed to indemnify such party to the full extent permitted by law, subject to certain exceptions, if such party becomes subject to an action because such party is the Company's director, officer, employee, agent or fiduciary.

The Company entered into an agreement for the lease of executive office space from SLG Graybar Sublease LLC at Suite 450, 420 Lexington Avenue, New York, NY 10170 with a lease term effective April 1, 2009 through June 30, 2013. This serves as the Company's corporate headquarters. The base monthly rent, which includes storage space, is currently approximately $21,500 per month, scheduled to increase to approximately $22,000 in July 2011. Pursuant to this lease, the Company is obligated to pay on a monthly basis fixed annual rent and certain items as additional rent including utility payments. The security deposit for this property was approximately $157,100.

In September 2009, the Company entered into an agreement for the lease of space from Rivertech Associates II, LLC, c/o The Abbey Group at 840 Memorial Drive, Cambridge, Massachusetts with a lease term effective September 1, 2009 through August 31, 2012. The space is being used for general office, research and development, and laboratory space (inclusive of an adult stem cell collection center). The base rent under this lease is currently $29,737 per month, scheduled to increase to $30,750 per month in September 2011. In addition, the Company is responsible for certain costs and charges specified in the lease, including utilities, operating expenses and real estate taxes. The security deposit was $84,141. The Company is assessing its need for the Cambridge facility going forward given the acquisition of PCT with its Allendale, NJ and Mountain View, CA facilities.

In May 2009, Neo Bio-Technology, one of the Company's two VIEs in China, entered into leases (assigned to NeoStem (China) in February 2010) with Beijing Zhong-guan-cun Life Science Park Development Corp., Ltd. pursuant to which NeoStem (China) is leasing laboratory, office and storage space in

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 13 — Commitments and Contingencies – (continued)

Beijing for the aggregate monthly amount of approximately $23,000. Lease payments are due quarterly in advance, and upon entering into the lease a three month security deposit was also paid. The term of the leases is for approximately three years. The Beijing Facility is located at the Life Science Innovation Center, Life Science Park, Zhongguancum, Beijing.

NeoBiotechnology has been leasing office space in Qingdao since August 2009. The current lease is effective through September 2011 at a monthly rent of approximately $1,300, payable as to half the total lease amount by September 2010 and as to the remaining half in March 2011. It is expected that NeoBiotechnology will move to Tianjin to take advantage of tax and other concessions that are being made available.

In November 2007, the Company entered into an acquisition agreement with UTEK Corporation ("UTEK") and Stem Cell Technologies, Inc., a wholly owned subsidiary of UTEK ("SCTI"), pursuant to which the Company acquired all the issued and outstanding common stock of SCTI in a stock-for-stock exchange. SCTI contains an exclusive, worldwide license to a technology developed by researchers at the University of Louisville to identify and isolate rare stem cells from adult human bone marrow, called very small embryonic like stem cells. Concurrent with the SCTI acquisition, NeoStem entered into a sponsored research agreement ("SRA") with the University of Louisville under which NeoStem has been supporting further research in the laboratory of Mariusz Ratajczak, M.D., Ph.D. a co-inventor of the VSEL™ Technology and head of the Stem Cell Biology Program at the James Brown Cancer Center at the University of Louisville. The SRA, which has been periodically amended, called for payments in 2008 of $50,000, 2009 of $65,337, and 2010 of $86,068, all of which has been paid and recorded as research and development expense. An additional $95,128 is payable in 2011 until December 31, 2011, the end of the term.

Under a License Agreement entered into with the University of Louisville Research Foundation ("ULRF") in November 2007, SCTI agreed to engage in a diligent program to develop the VSEL™ Technology. Certain license fees and royalties are to be paid to ULRF from SCTI, and SCTI is responsible for all payments for patent filings and related applications. Portions of the license may be converted to a non-exclusive license if SCTI does not diligently develop the VSEL™ Technology or terminated entirely if SCTI chooses to not pay for the filing and maintenance of any patents thereunder. Under the License Agreement, which has an initial term of 20 years, the Company has paid to date approximately $117,000, which has been recorded as research and development expense, consisting of various up-front fees, including $22,000 in connection with its May 2010 amendment, and is required to pay under the license certain other future fees including: (i) a specified non-refundable annual license maintenance fee upon issuance of the licensed patent in the United States; (ii) a specified royalty on net sales; (iii) specified milestone payments; and (iv) specified payments in the event of sublicensing. The License Agreement also contains certain provisions relating to "stacking," permitting SCTI to pay royalties to ULRF at a reduced rate in the event it is required to also pay royalties to third parties exceeding a specified threshold for other technology in furtherance of the exercise of its patent rights or the manufacture of products using the VSEL™ Technology.

In connection with the issuance to investors and service providers of many of the shares of the Company's common stock and warrants to purchase common stock previously disclosed and described herein, the Company granted the holders registration rights providing for the registration of such shares of common stock and shares of common stock underlying warrants on a registration statement to be filed with the Securities and Exchange Commission so as to permit the resale of those shares. Certain of the registration rights agreements provided for penalties for failure to file or failure to obtain an effective registration statement. With respect to satisfying its obligations to the holders of these registration rights, the Company is in various positions. The Company filed a registration statement as required for some of the holders, but to date, the Company has not had such registration statement declared effective. As to some holders, the Company has not yet satisfied its obligation to file. Certain holders with outstanding registration rights have previously waived their registration rights or were subject to lock-up agreements. No holder has yet asserted any claim against the Company with respect to a failure to satisfy any registration obligations. Were someone

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 13 — Commitments and Contingencies – (continued)

to assert a claim against the Company for breach of registration obligations, the Company believes it has several defenses that would result in relieving it from some or any liability, although no assurances can be given. The Company also notes that damage claims may be limited, as (i) most, if not all, shares of Common Stock as to which registration rights attached are currently salable under Rule 144 of the Securities Act or are otherwise currently subject to other restrictions on sale and (ii) during much of the relevant periods the warrants with registration rights generally have been out of the money, were subject to lock-up agreements and/or the underlying shares of Common Stock were otherwise subject to restrictions on resale. Accordingly, were holders to assert claims against the Company based on breach of the Company's obligation to register, the Company believes that the Company's maximum exposure from non-related parties would not be material.

Xiangbei Welman Pharmaceutical Co., Ltd. v Suzhou Erye Pharmaceutical Co., Ltd. and Hunan Weichu Pharmacy Co., Ltd. involves a patent infringement dispute with respect to a particular antibiotics complex manufactured by Erye (the "Product"). The Changsha Intermediate People's Court in Hunan Province, PRC in the foregoing case rendered a judgment on May 13, 2010 against Erye as follows: (i) awarding plaintiff Xiangbei Welman damages and costs of approximately 5 million RMB (approximately $750,000) against Erye which was fully accrued for at December 31, 2010; and (ii) enjoining Erye from manufacturing, marketing and selling the Product. The Product represented less than 3% and 3%, respectively, of Erye's sales in 2009 and 2010, respectively. Erye has appealed the court judgment, and is also engaged in settlement negotiations. On March 21, 2011, Changsha Intermediate Court issued a civil decision suspending the execution of the Preliminary Injunction. Therefore, Erye is currently free to produce, sell or offer to sell the product.

A related but separate lawsuit entitled *Xiangbei Welman Pharmaceutical Co., Ltd. v Suzhou Erye Pharmaceutical Co., Ltd. and Hunan Weichu Pharmacy Co., Ltd.*, involves a copyright infringement dispute with respect to package inserts of the same Product. The Changsha Intermediate People's Court in Hunan Province, PRC rendered a decision on August 3, 2010 against Erye, dismissing its appeal from a lower court's judgment made by the People's Court of Yuelu District, Changsha City, which (i) enjoins Erye from copying and using the package inserts for the Product and selling the drugs with the aforesaid package inserts; and (ii) awarding Welman economic losses of approximately 50,000 RMB (approximately $7,500) against Erye. This decision is final.

At October 31, 2009, Erye had a statutory reserve of $1,126,300. The laws and regulations of the PRC require that before a foreign invested enterprise can legally distribute profits, it must first satisfy all tax liabilities, provide for losses in previous years, and make allocations, in proportions determined at the discretion of the board of directors, after the statutory reserves. To fund its statutory reserve requirement, Erye is required to set aside a certain percentage of their accumulated after-tax profit each year, if any, to fund certain mandated reserve funds of at least 10% each year until its reserves have reached at least 50% of its registered capital, The statutory reserves include the surplus reserve fund and the common welfare fund. The amount of the statutory reserve at December 31, 2010 and December 31, 2009 was determined to be $2,234,600 and $1,126,300, respectively and no further allocations were required.

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 13 — Commitments and Contingencies – (continued)

The Company leases office and laboratory facilities and certain equipment under certain noncancelable operating leases that expire from time to time through 2015. A summary of future minimum rental payments required under operating leases that have initial or remaining terms in excess of one year as of December 31, 2010 are as follows (in thousands):

Years Ending December 31,	Operating Leases
2011	$ 1,239.9
2012	885.6
2013	317.7
2014	37.6
2015	20.2
Thereafter	72.0
Total minumum lease payments	$ 2,573.0

Expense incurred under operating leases was approximately $889,200, $398,300, and $226,100, for the years ended December 2010, 2009, and 2008, respectively.

Note 14 — Subsequent Events

PCT Merger

On January 19, 2011 (the "Closing Date"), NBS Acquisition Company LLC ("Subco"), a newly formed wholly-owned subsidiary of NeoStem, merged (the "PCT Merger") with and into Progenitor Cell Therapy, LLC, a Delaware limited liability company ("PCT"), with PCT as the surviving entity, in accordance with the terms of the Agreement and Plan of Merger, dated September 23, 2010 (the "PCT Merger Agreement"), among NeoStem, PCT and Subco. As a result of the consummation of the PCT Merger, NeoStem acquired all of the membership interests of PCT, and PCT is now a wholly-owned subsidiary of NeoStem.

Pursuant to the terms of the PCT Merger Agreement, all of the membership interests of PCT outstanding immediately prior to the effective time of the PCT Merger (the "Effective Time") were converted into the right to receive, in the aggregate, (i) 10,600,000 shares of the common stock, par value $0.001 per share, of NeoStem (the "NeoStem Common Stock") (reflecting certain final price adjustments agreed to at the closing) and (ii) warrants to purchase an aggregate 3,000,000 shares of NeoStem Common Stock as follows:

(i) common stock purchase warrants to purchase one million (1,000,000) shares of NeoStem Common Stock, exercisable over a seven year period at an exercise price of $7.00 per share (the "$7.00 Warrants"), and which will vest only if a specified business milestone (described in the PCT Merger Agreement) is accomplished within three (3) years of the Closing Date of the PCT Merger; and

(ii) common stock purchase warrants to purchase one million (1,000,000) shares of NeoStem Common Stock exercisable over a seven year term at an exercise price of $3.00 per share (the "$3.00 Warrants"); and

(iii) common stock purchase warrants to purchase one million (1,000,000) shares of NeoStem Common Stock exercisable over a seven year period at an exercise price of $5.00 per share (the "$5.00 Warrants" and, collectively with the $7.00 Warrants and the $3.00 Warrants, the "Warrants").

The Warrants are redeemable in certain circumstances. Transfer of the shares issuable upon exercise of the Warrants is restricted until the one year anniversary of the Closing Date.

In accordance with the PCT Merger Agreement, NeoStem has deposited into an escrow account with the escrow agent (who is initially NeoStem's transfer agent), 10,600,000 shares of NeoStem Common Stock for

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 14 — Subsequent Events – (continued)

eventual distribution to the former members of PCT (subject to downward adjustment to satisfy any indemnification claims of NeoStem, all as described in the PCT Merger Agreement).

The issuance of NeoStem securities in the PCT Merger was approved at a special meeting of shareholders of NeoStem held on January 18, 2011 (the "NeoStem Special Meeting"), on which date the PCT Merger was also approved at a special meeting of members of PCT.

The description of the PCT Merger contained in this Note 14 does not purport to be complete and is qualified in its entirety by reference to the PCT Merger Agreement, which is attached to NeoStem's Joint Proxy Statement/Prospectus dated December 16, 2010 and filed with the Securities and Exchange Commission on December 17, 2010 (the "Joint Proxy Statement/Prospectus"), the Warrant Agreement between NeoStem and Continental Stock Transfer & Trust Company, and the forms of $3.00 Global Warrant, $5.00 Global Warrant and $7.00 Global Warrant attached thereto, which is filed as Exhibit 4.1 to the Company's Current Report on Form 8-K dated January 18, 2011 (the "Form 8-K") and the escrow agreement, which is filed as Exhibit 10.4 to the Form 8-K, respectively.

Amendment to the 2009 Plan

At the NeoStem Special Meeting held on January 18, 2011, the shareholders of NeoStem duly approved an amendment to the NeoStem, Inc. 2009 Equity Compensation Plan (the "2009 Plan") to increase the number of shares of NeoStem Common Stock authorized for issuance thereunder by 4,000,000 shares (that is, from 13,750,000 shares to 17,750,000 shares), and NeoStem thereupon effected such amendment to the 2009 Plan. Persons eligible to receive restricted and unrestricted stock awards, options, stock appreciation rights or other awards under the 2009 Plan are those employees, consultants and directors of NeoStem and its subsidiaries who, in the opinion of the Compensation Committee of NeoStem's Board of Directors, are in a position to contribute to NeoStem's success.

Financing

On March 3, 2011, the Company consummated a private placement pursuant to which five persons and entities acquired an aggregate of 2,343,750 shares of Common Stock for an aggregate consideration of $3,000,000 (purchase price $1.28 per share). The investors included Steven S. Myers (one of the Company's directors) (who purchased 390,625 shares) and Dr. Andrew L. Pecora (the Chief Medical Officer of the Company's subsidiary PCT) (who purchased 78,125 shares). On April 5, 2011, we consummated a private placement pursuant to which nine persons and entities acquired an aggregate of 1,244,375 shares of Common Stock for an aggregate consideration of $1,592,800 (purchase price $1.28 per share).

Compensation Matters

On April 4, 2011, the Company entered into an amendment of its May 26, 2006 employment agreement with Dr. Robin L. Smith, pursuant to which, as previously amended (the "Agreement"), Dr. Smith serves as Chairman of the Board and Chief Executive Officer of the Company. Pursuant to the amendment, (i) the term of the Agreement was extended from December 31, 2011 to December 31, 2012; (ii) Dr. Smith will receive cash bonuses on October 1, 2011 and 2012 in the minimum amount of 110% of the prior year's bonus; (iii) a failure to renew the Agreement at the end of the term regardless of reason shall be treated as a termination by the Company without cause; (iv) the Company shall pay Dr. Smith her base salary and COBRA premiums (a) for one year in the event of a termination of the agreement by Dr. Smith for other than good reason and (b) during any period during which she is bound by non-competition, non-solicitation or similar covenants with the Company (such payments shall not be made during the time Dr. Smith is also receiving payments under (iii) or (iv)(a)); (v) Dr. Smith was granted an option to purchase 1,500,000 shares of Common Stock at a per share exercise price equal to the closing price of the Common Stock on the date of the amendment, vesting as to 500,000 shares on each of the date of grant, December 31, 2011 and December 31, 2012; (vi) all other unvested options held by Dr. Smith were immediately vested; (vii) any vested options previously or hereafter

NEOSTEM, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

Note 14 — Subsequent Events – (continued)

granted to Dr. Smith during the remainder of the term shall remain exercisable following termination of employment for the full option term until the expiration date; (viii) the Company agreed that, with the exception of the period of time during which Dr. Smith is a Company affiliate and for 90 days thereafter (during which time any shares owned by or issued to Dr. Smith will bear the Company's standard affiliate legend), the Company will not place legends on shares on Common Stock owned by Dr. Smith restricting the transfer of such shares so long as such shares are sold under an effective registration statement, pursuant to Rule 144 or are eligible for sale under Rule 144 without volume limitations; and (ix) if Dr. Smith ceases to be employed by the Company and for so long as she continues to own shares of Common Stock the sale of which would require that the current public information requirement of Rule 144 be met, the Company will use its reasonable best efforts to timely meet those requirements or obtain appropriate extensions or otherwise make available such information as is required. Except as set forth in the amendment, the Agreement remains unchanged.

On April 4, 2011, the Compensation Committee of the Board of Directors issued options to purchase an aggregate of up to approximately 2,550,000 shares of Common Stock to Company employees, officers, advisors and consultants in a company-wide grant. An aggregate of 1,250,000 of such options were issued to executive officers. The per share exercise price was the closing price on the date of grant.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES.

(a) Disclosure Controls and Procedures

Disclosure controls and procedures are the Company's controls and other procedures that are designed to ensure that information required to be disclosed in the reports that the Company files or submits under the Securities Exchange Act of 1934, as amended (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports that the Company files under the Exchange Act is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Due to the inherent limitations of control systems, not all misstatements may be detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Controls and procedures can only provide reasonable, not absolute, assurance that the above objectives have been met.

As of the end of the Company's fourth fiscal quarter ended December 31, 2010 covered by this report, the Company carried out an evaluation, with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the Company's disclosure controls and procedures pursuant to Rule 13a-15 of the Exchange Act. Based on that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that, because of the material weakness in internal control over financial reporting described below, the Company's disclosure controls and procedures were not effective, at the reasonable assurance level, in ensuring that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms and is accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(b) Management's Annual Report on Internal Control over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer along with the Company's Chief Financial Officer, the Company conducted an evaluation of the effectiveness of internal control over financial reporting based on the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on the evaluation under the framework in Internal Control — Integrated Framework and the material weakness described below, management concluded that the Company's internal control over financial reporting was not effective as of December 31, 2010.

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

directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis.

The following material weakness has been identified by management in connection with its assessment as of December 31, 2010. The Company has determined that it had a material weakness in its accounting for share-based payment arrangements as a result of errors identified with respect to the Company's accounting for awards to employees and non-employees. Such errors were the result of ineffective controls primarily related to the application of accounting principles generally accepted in the United States. With respect to both employee and non-employee awards, the Company did not timely evaluate the impact of modifications to certain awards and the effect such modifications had, if any, on recognized compensation expense. With respect to non-employee awards, the Company was not consistently subjecting such awards to re-measurement at each reporting period consistent with the guidance in ASC 505-50, *Equity-Based Payments to Non-Employees.* With respect to awards to employees, the expected life used in valuing such awards previously was based on the contractual term of the options rather than through the use of the "simplified" method, as prescribed by the SEC under Staff Accounting Bulletin No. 110, which the Company has determined to be more appropriate given its limited historical experience with respect to option exercises. In addition, certain employee awards that contain performance conditions were not appropriately evaluated and accounted for in determining whether or not the underlying performance conditions were probable of being achieved. Expense associated with certain awards was initially recognized on a graded vesting basis rather than a straight-line basis consistent with the Company's accounting policy.

The Company has taken steps during 2010 to remediate this weakness, including (1) the adoption of the "simplified" method for estimating the expected term of share-based awards issued to employees; (2) undertaking a complete review of all share-based payment transactions with non-employees to ensure that the appropriate re-measurement considerations were taken into account and were reflected in the financial statements appropriately; (3) the organization of an internal management committee which meets at least quarterly and consists of senior members of the accounting and legal departments, as well as the CEO, to review share-based awards with performance conditions to assess the probability of the performance conditions being achieved; and (4) the implementation of a new share-based management system which will integrate the administration and accounting for the Company's share-based payment arrangements, which is expected to be fully implemented in the second quarter of 2011. The adjustments that were recorded to correct the Company's share-based compensation charges for the weaknesses noted above were not material to its financial position or results of operations for any period during 2010 and 2009.

As of December 31, 2009, management had concluded that the Company's internal control over financial reporting was not effective due to the material weaknesses previously identified by China Biopharmaceuticals Holdings, Inc. ("CBH"), which was acquired by the Company on October 30, 2009. As a result of the merger with CBH, the Company acquired CBH's 51% ownership interest in Suzhou Erye Pharmaceuticals Company Ltd. ("Erye"), a Sino-foreign joint venture with limited liability organized under the laws of the People's Republic of China (the "Erye Merger"). Prior to the Erye Merger, in its assessment of its internal control over financial reporting as of December 31, 2008, CBH identified in substance the material weaknesses set forth below. As of September 30, 2009, CBH reported that such material weaknesses had not been remediated and continued to exist. Because the acquisition was completed in the fourth quarter of 2009, the Company had not yet had sufficient time to remediate the material weaknesses previously identified by CBH and in its assessment of internal control over financial reporting as of December 31, 2009, the Company was unable to conclude that the above material weaknesses previously reported by CBH had been fully remediated. Since

that time, management developed a remediation plan to strengthen the Company's internal control over financial reporting. The following plans were implemented during calendar year 2010 to sufficiently remediate the material weaknesses as of December 31, 2010:

1. Insufficient U.S. GAAP qualified accounting and finance personnel.

As the US GAAP closing process related to non-routine transactions and estimates, CBH did not have sufficient US GAAP qualified accounting and finance personnel necessary to close its books at its subsidiaries in China. CBH's subsidiaries in China did not maintain books and records in accordance with US GAAP and had to make adjusting entries to prepare and report financial statements in accordance with US GAAP. Because the accounting personnel were not familiar with US GAAP, non-routine transactions and estimates were not properly accounted for under US GAAP. This material weakness resulted in adjustments to several significant accounts and disclosures and contributed to other material weaknesses described below.

Remediation Plan

- Management has contracted with a third party service provider experienced with both Chinese accounting practices and US GAAP. The contractor assists the CFO in analyzing the Erye financial statements and in performing adjustments to convert the Erye financial statements consistent with US GAAP requirements.
- A standard financial reporting package has been developed that requires the basic financial statements, key financial analysis and supporting information needed to transform Erye's financial information into US GAAP financial statements.
- The CFO and Vice President of Finance (or functional equivalent) are CPAs with extensive experience in US GAAP financial reporting. The CFO and Vice President of Finance (or functional equivalent) review the Erye financial statements and process all US GAAP adjustments centrally.
- Accounting policies and practices at Erye have been reviewed and several new accounting processes were developed that strengthened local accounting practices. The processes were written to ensure Erye's accounting adheres to US GAAP and are monitored by our third party service provider. The accounting policies include:
  a) Revenue recognition
  b) Expense recognition
  c) Inventory pricing/valuation
  d) Bad debt reserves
  e) Abandonment of fixed assets

2. Lack of Internal Audit System.

CBH did not have an internal audit department and therefore was unable to effectively prevent and detect control lapses and errors in the accounting of certain key areas like revenue recognition, purchase approvals, inter-company transactions, cash receipt and cash disbursement authorizations, inventory safeguard and proper accumulation for cost of products, in accordance with the appropriate costing method used by CBH.

Remediation Plan

- Management has considered the need for an internal audit function and believes the size of the organization does not justify a full time internal audit resource. Although a full time internal audit function is not warranted, management has contracted with a third party service provider to perform an assessment of internal control at Erye. The service provider will continue to provide internal control assessment services annually and will be available to perform internal audits as deemed necessary by management.

3. Financial Statement Closing Process.

CBH's controls over the financial statement close process related to account reconciliation and analyses, including bank accounts, certain long-lived assets and accrued liabilities, were not effective. As a result, a large volume of adjustments were necessary to completely and accurately present the financial statements in accordance with US GAAP.

Remediation Plan

- Upon the closing of the Erye Merger, the NeoStem Corporate Accounting staff took responsibility for consolidations and external reporting requirements that CBH and the Erye accounting staff had previously been responsible for. The NeoStem Corporate Accounting staff has sufficient experience and training to ensure that the Erye financial statements are prepared and published in accordance with US GAAP.
- Erye maintains books and records on a basis that is consistent with the tax laws in China, not on the basis of US GAAP. Prior to the Erye Merger, the transformation of these financial records from Chinese tax basis to US GAAP was accomplished by maintaining a worksheet of adjustments that were applied to the Erye trial balance. When the Erye Merger was completed, a general ledger was established to maintain the adjustments needed to transform Erye's financial information into US GAAP financial statements.
- A standard financial reporting package has been developed that requires the basic financial statements, key financial analysis and supporting information needed to transform Erye's financial information into US GAAP financial statements.
- Management has contracted with a third party service provider experienced with both Chinese accounting practices and US GAAP. The contractor assists the CFO in analyzing the Erye financial statements and in performing adjustments to convert the Erye financial statements consistent with US GAAP requirements.
- The CFO and Vice President of Finance (or functional equivalent) are CPAs with extensive experience in US GAAP financial reporting. The CFO and Vice President of Finance (or functional equivalent) review the Erye financial statements and process all US GAAP adjustments centrally.

In addition, the Company believes that the oversight provided by its audit committee, which, unlike CBH's audit committee, is comprised of three independent and financially sophisticated members, at least one of whom qualifies as an "audit committee financial expert" as defined in applicable SEC rules, have supported and furthered the remediation steps set forth above.

In its assessment of internal control over financial reporting as of December 31, 2010, the Company has concluded that the above material weaknesses previously reported by CBH have been fully remediated.

(c) Attestation Report of Registered Public Accounting Firm

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to an exemption for smaller reporting companies under Section 989G of the Dodd-FrankWall Street Reform and Consumer Protection Act.

(d) Changes in Internal Control over Financial Reporting

There have been no changes in the Company's internal controls over financial reporting, as such term is defined in Exchange Act Rule 13a-15, that occurred during the Company's last fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting, except as described above in (b). The Company regularly reviews its system of internal controls over financial reporting and makes changes to its processes and systems to improve controls and increase efficiency, while ensuring that the Company maintains an effective internal control environment. Changes include such activities as implementing new, more efficient systems, consolidating

activities, and migrating processes, as well as utilizing the services of third party consultants to ensure compliance, which the Company has done as a result of the acquisition of Erye.

ITEM 9B. OTHER INFORMATION.

For information with respect to certain recent events involving an amendment to our Chief Executive Officer's employment agreement, issuances of stock options and issuances of equity in unregistered private transactions, see Note 14 — Subsequent Events — in our notes to our audited financial statements and Part II, Item 5.(a), Recent Sales of Unregistered Securities.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

The information required by this Item is incorporated into this Annual Report on Form 10-K by reference to the definitive Proxy Statement for our 2011 Annual Meeting of Stockholders, to be filed not later than May 2, 2011 (120 days after the close of our fiscal year ended December 31, 2010).

ITEM 11. EXECUTIVE COMPENSATION.

The information required by this Item is incorporated into this Annual Report on Form 10-K by reference to the definitive Proxy Statement for our 2011 Annual Meeting of Shareholders, to be filed not later than May 2, 2011 (120 days after the close of our fiscal year ended December 31, 2010).

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

The information required by this Item is incorporated into this Annual Report on Form 10-K by reference to the definitive Proxy Statement for our 2011 Annual Meeting of Shareholders, to be filed not later than May 2, 2011 (120 days after the close of our fiscal year ended December 31, 2010).

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

The information required by this Item is incorporated into this Annual Report on Form 10-K by reference to the definitive Proxy Statement for our 2011 Annual Meeting of Shareholders, to be filed not later than May 2, 2011 (120 days after the close of our fiscal year ended December 31, 2010).

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information required by this Item is incorporated into this Annual Report on Form 10-K by reference to the definitive Proxy Statement for our 2011 Annual Meeting of Shareholders, to be filed not later than May 2, 2011 (120 days after the close of our fiscal year ended December 31, 2010).

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

The following documents are being filed as part of this Report:

(a)(1) FINANCIAL STATEMENTS:

Reference is made to the Index to Financial Statements and Financial Statement Schedule on Page 86.

(a)(2) FINANCIAL STATEMENT SCHEDULE:

Reference is made to the Index to Financial Statements and Financial Statement Schedule on Page 86.

All other schedules have been omitted because the required information is not present or is not present in amounts sufficient to require submission of the schedule, or because the information required is included in the Financial Statements or Notes thereto.

(a)(3) EXHIBITS:

Exhibit	Description	Reference
2.1	Agreement and Plan of Merger, dated as of September 23, 2010, by and among NeoStem, Inc., NBS Acquisition Company LLC, and Progenitor Cell Therapy, LLC[1]	2.1
2.2	Agreement and Plan of Merger, dated as of November 2, 2008, by and among NeoStem, Inc., China Biopharmaceuticals Holdings, Inc., China Biopharmaceuticals Corp., and CBH Acquisition LLC, as amended by Amendment No. 1 dated as of July 1, 2009 and Amendment No. 2 dated as of August 27, 2009[2]	Annex A
3.1	Amended and Restated Certificate of Incorporation, as amended (as certified March 25, 2011)†	3.1
3.2	Amended and Restated By-Laws dated August 31, 2006†	3.2
4.1	Form of Underwriters' Warrant dated August 14, 2007[3]	10.2
4.2	Form of Underwriter Warrant Clarification Agreement among NeoStem, Inc. and certain members of its Underwriting Group[4]	10.4
4.3	Form of Class A Warrant Agreement and Certificate from August 2007 [5]	4(b)
4.4	Form of Warrant Clarification Agreement between NeoStem, Inc. and Continental Stock Transfer and Trust Company[4]	10.3
4.5	Restated Warrant Agreement dated August 14, 2007[3]	10.1
4.6	Form of Warrant to Purchase Shares of Common Stock of Phase III Medical, Inc from June 2006[6]	10.3
4.7	Form of Phase III Medical, Inc. Warrant to Purchase Shares of Common Stock from July/August 2006[7]	10.3
4.8	Form of Redeemable Warrant to Purchase Shares of Common Stock of NeoStem, Inc. from January/February 2007[8]	10.2
4.9	Form of Non-Redeemable Warrant to Purchase Shares of Common Stock of NeoStem, Inc. from January/February 2007[8]	10.3
4.10	Form of Redeemable Warrant to Purchase Shares of Common Stock of NeoStem, Inc. from May 2008[9]	10.1
4.11	Form of Redeemable Warrant to Purchase Shares of Common Stock of NeoStem, Inc. issued to RimAsia Capital Partners L.P. in September 2008[10]	10.2
4.12	Letter Agreement dated December 18, 2008 between NeoStem, Inc. and RimAsia Capital Partners, L.P.[11]	4.1

Exhibit	Description	Reference
4.13	Form of Warrant to Purchase Shares of Common Stock of NeoStem, Inc. from October 2008[11]	4.2
4.14	Form of Redeemable Warrant to Purchase Shares of Common Stock of NeoStem, Inc. from November 2008[11]	4.3
4.15	Specimen Certificate for Common Stock[12]	4.1
4.16	Form of Warrant issued in connection with April and July 2009 private placements[13]	4.2
4.17	Form of Class E Common Stock Purchase Warrant[2]	Annex J
4.18	Form of Common Stock Purchase Warrant from June 2010[14]	4.1
4.19	Form of Placement Agent Warrant from June 2010[14]	4.2
4.20	Amended and Restated Warrant, dated March 15, 2010, issued to RimAsia Capital Partners, L.P.[16]	4.1
4.21	Form of Warrant from the November 2010 Common Stock Offering[17]	4.1
4.22	Form of Warrant from the November 2010 Preferred Stock Offering[17]	4.2
4.23	Warrant Agreement, dated as of January 19, 2011, between NeoStem, Inc. and Continental Stock Transfer & Trust Company, with the forms of $3.00 Warrant, $5.00 Warrant and $7.00 Warrant attached thereto[18]	4.1
10.1	License Agreement between Stem Cell Technologies, Inc. and the University of Louisville Research Foundation, Inc.[19]	10.2
10.2	Amendment No. 1 to Exclusive License Agreement between Stem Cell Technologies, Inc. and the University of Louisville Research Foundation, Inc.[20]	10.2
10.3	Amendment No. 2 to Exclusive License Agreement between University of Louisville Research Foundation, Inc. and Stem Cell Technologies, Inc.[15]	10.1
10.4	Sponsored Research Agreement between NeoStem, Inc. and the University of Louisville Research Foundation, Inc.[19]	10.3
10.5	Amendment No. 1 to Sponsored Research Agreement between NeoStem, Inc. and the University of Louisville Research Foundation, Inc.[20]	10.1
10.6	Stem Cell Collection Services Agreement dated December 15, 2006 between NeoStem and HemaCare Corporation[21]	10.1
10.7	Consigned Management and Technology Service Agreement dated June 1, 2009 among Qingdao Niao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Qingdao Niao Bio-Technology Ltd.[22]	10.1
10.8	Equity Pledge Agreement dated June 1, 2009 among Qingdao Niao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Qingdao Niao Bio-Technology Ltd.[22]	10.2
10.9	Exclusive Purchase Option Agreement dated June 1, 2009 among Qingdao Niao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Qingdao Niao Bio-Technology Ltd.[22]	10.3
10.10	Loan Agreement dated June 1, 2009 between NeoStem (China), Inc. and The Shareholder of Qingdao Niao Bio-Technology Ltd.[22]	10.4
10.11	Consigned Management and Technology Service Agreement dated June 1, 2009 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.[22]	10.5
10.12	Equity Pledge Agreement dated June 1, 2009 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.[22]	10.6

Exhibit	Description	Reference
10.13	Exclusive Purchase Option Agreement dated June 1, 2009 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.(22)	10.7
10.14	Loan Agreement dated June 1, 2009 between NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.(22)	10.8
10.15	Equity Pledge Agreement dated August 30, 2010 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.(23)	10(d)
10.16	Exclusive Purchase Option Agreement dated June 21, 2010 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.(23)	10(e)
10.17	Consigned Management and Technology Service Agreement dated June 21, 2010 among Beijing Ruijieao Bio-Technology Ltd., NeoStem (China), Inc. and The Shareholder of Beijing Ruijieao Bio-Technology Ltd.(23)	10(f)
10.18	Loan Transfer Agreement dated June 21, 2010 among NeoStem (China), Inc., the Shareholder of Beijing Ruijieao Bio-Technology Ltd. and Jianhua Sui (23)	10(g)
10.19	October 2009 English translation of Joint Venture Contract of Suzhou Erye Pharmaceutical Co., Ltd.(24)	10(www)
10.20	English Translation of Amendment Agreement to Joint Venture Contract of Suzhou Erye Pharmaceutical Co., Ltd. dated May 21, 2010 approved August 16, 2010 (23)	10(c)
10.21	Network Agreement, dated June 15, 2009, between NeoStem, Inc. and Enhance BioMedical Holdings Limited(2)	10.1
10.22	Funding Agreement made as of July 1, 2009 by and between NeoStem, Inc., China Biopharmaceuticals Holdings, Inc., China Biopharmaceuticals Corp., and RimAsia Capital Partners L.P.(25)	10.2
10.23	Agreement among Progenitor Cell Therapy, LLC, NeoStem, Inc. and NeoStem (China), Inc. dated December 31, 2009(26)	10.1
10.24	Confidentiality Agreement dated as of April 30, 2010 between NeoStem, Inc. and Enhance BioMedical Holdings Limited(15)	10.3
10.25	Consulting Agreement, dated as of May 11, 2010 between NeoStem, Inc. and RimAsia Capital Partners, LP(15)	10.4
10.26	Form of Subscription Agreement from May 2008 among NeoStem, Inc. and certain investors listed therein(9)	10.1
10.27	Form of Subscription Agreement between NeoStem, Inc. and RimAsia Capital Partners, L.P. dated September 2, 2008(10)	10.1
10.28	Form of Subscription Agreement from October 2008 between NeoStem, Inc. and an investor listed therein(11)	10.1
10.29	Form of Subscription Agreement from November 2008 between NeoStem, Inc. and an investor listed therein(11)	10.2
10.30	Form of Subscription Agreement from the April 2009 private placement (13)	4.3
10.31	Underwriting Agreement, dated as of February 11, 2010, between NeoStem, Inc. and Roth Capital Partners, LLC(27)	1.1
10.32	Common Stock Purchase Agreement dated as of May 19, 2010 by and between NeoStem, Inc. and Commerce Court Small Cap Value Fund, Ltd.(28)	10.1
10.33	Placement Agent Agreement, dated June 24, 2010 between NeoStem, Inc. and Rodman & Renshaw(14)	1.1

Exhibit	Description	Reference
10.34	Securities Purchase Agreement, dated as of June 25, 2010 between NeoStem, Inc. and certain purchasers[14]	10.1
10.35	Underwriting Agreement, dated November 16, 2010, by and between NeoStem, Inc. and Cowen and Company, LLC[17]	1.1
10.36	Placement Agent Agreement, dated November 16, 2010, by and between NeoStem, Inc. and Cowen and Company, LLC (as representative for the placement agents) [17]	1.2
10.37	Securities Purchase Agreement, dated November 16, 2010, by and among NeoStem, Inc., JGB Management Inc. and certain Purchasers [17]	10.1
10.38	Escrow Agreement by and among NeoStem, Inc., JGB Management Inc., and Wells Fargo Bank, National Association[17]	10.2
10.39	Escrow Agreement, dated as of January 19, 2011, among NeoStem, Inc., Progenitor Cell Therapy, LLC, Andrew Pecora as PCT Representative and Continental Stock Transfer & Trust Company, as Escrow Agent[18]	10.4
10.40	Form of Lock Up and Voting Agreement (NeoStem) dated November 2, 2008 by and between NeoStem, Inc., China BioPharmaceutical Holdings, Inc. and the individuals listed therein[11]	10.3
10.41	Form of Lock Up and Voting Agreement (China BioPharmaceutical Holdings, Inc.) dated November 2, 2008 by and between NeoStem, Inc., China BioPharmaceutical Holdings, Inc. and the individuals listed therein [11]	10.4
10.42	Amendment No. 1 dated June 29, 2009 to Lock Up and Voting Agreement (NeoStem) dated November 2, 2008 by and between NeoStem, Inc., China BioPharmaceutical Holdings, Inc. and the individuals listed therein. [29]	10.3
10.43	Joinders dated June 29, 2009 to Lock Up and Voting Agreement (NeoStem) dated November 2, 2008 by and between NeoStem, Inc., China BioPharmaceutical Holdings, Inc. and the individuals listed therein. [29]	10.4
10.44	Form of Voting and Lock Up Agreement August/September 2010 by and between NeoStem, Inc. and the persons listed therein, with related Form of Amendment No. 1 to Voting and Lock-Up Agreement October 2010[23]	10(h)
10.45	Lease Modification Agreement dated April 13, 2009 between NeoStem, Inc. and SLG Graybar Sublease LLC and Original Agreement of Lease dated as of June 14, 2006, with related Consent and Assignment and Assumption Documents[29]	10.1
10.46	Commercial Lease dated as of September 1, 2009 between NeoStem, Inc. and Rivertech Associates II, LLC, c/o The Abbey Group[30]	10(www)
10.47	English translations of Supplemental Lease Agreement (Assignment) dated as of February 20, 2010 among NeoStem (China), Inc., Qingdao Niao Bio-Technology Company and Beijing Zhongguancun Life Science Park Development Co., Ltd. and related House Lease Agreement dated May 12, 2009 between Qingdao Niao Bio-Technology Company and Beijing Zhongguancun Life Science Park Development Co., Ltd. [15]	10.2
10.48	Lease dated September 1, 2005 between Vanni Business Park, LLC and Progenitor Cell Therapy, LLC, as amended by First Amendment of Lease effective as of July 1, 2006†	10.48
10.49	Bond Agreement dated as of October 1, 2007 by and among the New Jersey Economic Development Authority, PCT Allendale, LLC and Commerce Bank/North†	10.49

Exhibit	Description	Reference
10.50	Note dated October 31, 2007, made by PCT Allendale, LLC in favor of the New Jersey Economic Development Authority†	10.50
10.51	Mortgage and Security Agreement from PCT Allendale, LLC to New Jersey Economic Development Authority and Commerce Bank/North, dated October 31, 2007†	10.51
10.52	Mortgage Loan Note dated November 30, 2010, made by PCT Allendale, LLC in favor of TD Bank, N.A.†	10.52
10.53	Mortgage, Security Agreement and Fixture Filing made as of the 30th day of November, 2010, between PCT Allendale, LLC and TD Bank, N.A.†	10.53
10.54	NeoStem, Inc. 2003 Equity Participation Plan, as amended+ (31)	10.2
10.55	Form of Stock Option Agreement+ (32)	10.2
10.56	Form of Option Agreement dated July 20, 2005+ (33)	10.5
10.57	NeoStem, Inc. 2009 Equity Compensation Plan, as amended+ (18)	10.3
10.58	Form of Stock Option Grant Agreement under NeoStem, Inc. 2009 Equity Compensation Plan+(15)	10(g)
10.59	NeoStem, Inc. 2009 Non-U.S. Based Equity Compensation Plan, as amended+ †	10.59
10.60	Form of Grant Agreement under NeoStem, Inc. 2009 Non-U.S. Based Equity Compensation Plan+(15)	10(h)
10.61	Employment Agreement between Phase III Medical, Inc. and Dr. Robin L. Smith, dated May 26, 2006+(6)	10.4
10.62	January 26, 2007 Amendment to Employment Agreement of Dr. Robin L. Smith+ (34)	10.1
10.63	September 27, 2007 Amendment to Employment Agreement of Dr. Robin L. Smith+ (35)	10.1
10.64	Letter agreement dated January 9, 2008 with Dr. Robin L. Smith+ (36)	10.1
10.65	Amendment dated July 29, 2009 to Employment Agreement dated May 26, 2006 between NeoStem, Inc. and Dr. Robin L. Smith+(37)	10.1
10.66	Amendment dated April 4, 2011 to Employment Agreement dated May 26, 2006 between NeoStem, Inc. and Dr. Robin L. Smith+†	10.66
10.67	Employment Agreement between the Company and Larry A. May dated January 19, 2006+(38)	10.1
10.68	Letter Agreement between Phase III Medical, Inc. and Larry A. May effective as of June 2, 2006+(6)	10.7
10.69	January 26, 2007 Amendment to Employment Agreement of Larry A. May+ (34)	10.3
10.70	Letter Agreement, dated April 20, 2005, between Phase III Medical, Inc. and Catherine M. Vaczy+(39)	10.3
10.71	Letter Agreement dated August 12, 2005 with Catherine M. Vaczy+ (33)	10.7
10.72	Letter Agreement dated December 22, 2005 between Phase III Medical, Inc. and Catherine M. Vaczy+(40)	10(y)
10.73	Letter Agreement dated January 30, 2006 between Phase III Medical, Inc. and Catherine M. Vaczy+(40)	10(cc)
10.74	Letter Agreement between Phase III Medical, Inc. and Catherine M. Vaczy effective as of June 2, 2006+(6)	10.6
10.75	January 26, 2007 Employment Agreement with Catherine M. Vaczy+ (34)	10.4
10.76	Letter agreement dated January 9, 2008 with Catherine M. Vaczy+ (36)	10.2

Exhibit	Description	Reference
10.77	Letter Agreement dated July 8, 2009 between NeoStem, Inc. and Catherine M. Vaczy, Esq.+(41)	10.2
10.78	Letter Agreement dated July 7, 2010 between NeoStem, Inc. and Catherine M. Vaczy, Esq.+(23)	10(a)
10.79	Employment Agreement dated July 6, 2009 between NeoStem, Inc. and Alan Harris, M.D., Ph.D.+(41)	10.1
10.80	Employment Agreement dated August 17, 2009 between NeoStem, Inc. and Anthony Salerno+(42)	10(vvv)
10.81	Amendment No. 1 dated June 9, 2010 to Employment Agreement dated August 17, 2009 by and between NeoStem, Inc. and Anthony M. Salerno+(43)	10.1
10.82	Letter Agreement, dated June 9, 2010 between NeoStem, Inc. and Madam Zhang Jian+ (43)	10.2
10.83	Employment Agreement dated September 1, 2010 between NeoStem (China), Inc. and Ian Zhang+(23)	10(b)
10.84	Employment Agreement, dated as of September 23, 2010 and effective on January 19, 2011, by and between Progenitor Cell Therapy, LLC, NeoStem, Inc. and Andrew L. Pecora+(18)	10.1
10.85	Employment Agreement, dated as of September 23, 2010 and effective on January 19, 2011, by and between Progenitor Cell Therapy, LLC, NeoStem, Inc. and Robert A. Preti+(18)	10.2
10.86	Employment Agreement, dated as of February 25, 2011 and effective on March 4, 2011, by and between NeoStem, Inc. and Jason Kolbert+ †	10.86
10.87	Consulting Agreement, effective March 8, 2011, by and between NeoStem, Inc. and Acute Care Partners+†	10.87
10.88	Separation Agreement and General Release made as of September 29, 2009, by and between Mark Weinreb and NeoStem, Inc.+(2)	10(xxx)
10.89	Form of Indemnification Agreement for directors, officers and certain other employees (2)	10.2
14.1	Code of Ethics for Senior Financial Officers†	14.1
21.1	Subsidiaries of NeoStem, Inc.†	21.1
23.1	Consent of Deloitte & Touche LLP†	23.1
23.2	Consent of Holtz Rubenstein Reminick LLP†	23.2
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†	31.1
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†	31.2
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†	32.1
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†	32.2

+ Management contract or compensatory plan, contract or arrangement required to be filed as an exhibit to this Form 10-K pursuant to Item 15(b) of Form 10-K.

† Filed herewith.

(1) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated September 23, 2010, which exhibit is incorporated here by reference.

(2) Filed with the SEC as an exhibit, numbered as indicated above, to Pre-Effective Amendment No. 4 to our Registration Statement on Form S-4, File No. 333-160578, which exhibit is incorporated here by reference.

(3) Filed with the SEC as an exhibit, numbered as indicated above, to our quarterly report on Form 10-QSB for the quarter ended September 30, 2007, which exhibit is incorporated here by reference.

(4) Filed with the SEC as an exhibit, numbered as indicated above, to our quarterly report on Form 10-Q for the quarter ended September 30, 2008, which exhibit is incorporated here by reference.

(5) Filed with the SEC as an exhibit, numbered as indicated above, to Pre-Effective Amendment No. 3 to our Registration Statement on Form SB-2/A, File No. 333-142923, which exhibit is incorporated here by reference.

(6) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated June 2, 2006, which exhibit is incorporated here by reference.

(7) Filed with the SEC as an exhibit, numbered as indicated above, to our Registration Statement on Form S-1, File No. 333-137045, which exhibit is incorporated here by reference.

(8) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated January 26, 2007, which exhibit is incorporated here by reference.

(9) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated May 20, 2008, which exhibit is incorporated here by reference.

(10) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated August 28, 2008, which exhibit is incorporated here by reference.

(11) Filed with the SEC as an exhibit, numbered as indicated above, to our annual report on Form 10-K for the year ended December 31, 2008, which exhibit is incorporated here by reference.

(12) Filed with the SEC as an exhibit, numbered as indicated above, to our Registration Statement on Form S-3, File No. 333-145988, which exhibit is incorporated here by reference.

(13) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated April 13, 2009, which exhibit is incorporated here by reference.

(14) Filed with the SEC on June 28, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated June 25, 2010, which exhibit is incorporated here by reference.

(15) Filed with the SEC on August 16, 2010, as an exhibit, numbered as indicated above, to our quarterly report on Form 10-Q for the quarterly period ended June 30, 2010, which exhibit is incorporated here by reference.

(16) Filed with the SEC on March 18, 2010 as an exhibit, numbered as indicated above, to our current report on Form 8-K dated March 15, 2010, which exhibit is incorporated here by reference.

(17) Filed with the SEC on November 16, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated November 16, 2010, which exhibit is incorporated here by reference.

(18) Filed with the SEC on January 24, 2011, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated January 18, 2011, which exhibit is incorporated here by reference.

(19) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated November 13, 2007, which exhibit is incorporated here by reference. Certain portions of Exhibits 10.1 and 10.4 (Exhibits 10.2 and 10.3 to the current report, respectively)were omitted based upon a request for confidential treatment, and the omitted portions were filed separately with the SEC on a confidential basis.

(20) Filed with the SEC as an exhibit, numbered as indicated above, to our quarterly report on Form 10-Q for the quarter ended March 31, 2009, which exhibit is incorporated here by reference.

(21) Filed with the SEC as an exhibit, numbered as indicated above, to our annual report on Form 10-K for the year ended December 31, 2006, which exhibit is incorporated here by reference.

(22) Filed as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated July 2, 2009, which exhibit is incorporated here by reference.

(23) Filed with the SEC on November 12, 2010 as an exhibit, numbered as indicated above, to our quarterly report on Form 10-Q for the quarterly period ended September 30, 2010, which exhibit is incorporated here by reference.

(24) Filed with the SEC on March 31, 2010, as an exhibit, numbered as indicated above, to our annual report on Form 10-K for the fiscal year ended December 31, 2009, which exhibit is incorporated here by reference.

(25) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated July 1, 2009, which exhibit is incorporated here by reference.

(26) Filed with the SEC on January 7, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated December 31, 2009 (subject to confidential treatment as indicated therein).

(27) Filed with the SEC on February 12, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated February 11, 2010, which exhibit is incorporated here by reference.

(28) Filed with the SEC on May 19, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated May 19, 2010, which exhibit is incorporated here by reference.

(29) Filed with the SEC as an exhibit, numbered as indicated above, to our Registration Statement on Form S-4, File No. 333-160578, which exhibit is incorporated here by reference.

(30) Filed with the SEC as an exhibit, numbered as indicated above, to Pre-Effective Amendment No. 3 to our Registration Statement on Form S-4, File No. 333-160578, which exhibit is incorporated here by reference.

(31) Filed with the SEC as an exhibit, numbered as indicated above, to Pre-Effective Amendment No. 1 to our Registration Statement on Form S-1, File No. 333-137045, which exhibit is incorporated here by reference.

(32) Filed with the SEC as an exhibit, numbered as indicated above, to our annual report on Form 10-K for the year ended December 31, 2003, which exhibit is incorporated here by reference.

(33) Filed with the SEC as an exhibit, numbered as indicated above, to our quarterly report on Form 10-Q for the quarter ended June 30, 2005, which exhibit is incorporated here by reference.

(34) Filed with the SEC as an exhibit, numbered as indicated above, to our second current report on Form 8-K, dated January 26, 2007, which exhibit is incorporated here by reference.

(35) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated September 27, 2007, which exhibit is incorporated here by reference.

(36) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated January 9, 2008, which exhibit is incorporated here by reference.

(37) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K dated July 29, 2009, which exhibit is incorporated here by reference.

(38) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated January 19, 2006, which exhibit is incorporated here by reference.

(39) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated April 20, 2005, which exhibit is incorporated here by reference.

(40) Filed with the SEC as an exhibit, numbered as indicated above, to our annual report on Form 10-K for the year ended December 31, 2005, which exhibit is incorporated here by reference.

(41) Filed with the SEC as an exhibit, numbered as indicated above, to our current report on Form 8-K, dated July 6, 2009, which exhibit is incorporated here by reference.

(42) Filed with the SEC as an exhibit, numbered as indicated above, to Pre-Effective Amendment No. 2 to our Registration Statement on S-4, File No. 333-160578, which exhibit is incorporated here by reference.

(43) Filed with the SEC on June 11, 2010, as an exhibit, numbered as indicated above, to our current report on Form 8-K dated June 9, 2010, which exhibit is incorporated here by reference.

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, in the City of New York, State of New York, on April 5, 2011.

NEOSTEM, INC.

By /s/ Robin L. Smith, M.D.
Name: Robin L. Smith, M.D.
Title: Chief Executive Officer

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.

Signature	Title	Date
/s/ Robin L. Smith, M.D. Robin L. Smith, M.D.	Director, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	April 5, 2011
/s/ Larry A. May Larry A. May	Chief Financial Officer (Principal Financial Officer and Accounting Officer)	April 5, 2011
/s/ Richard Berman Richard Berman	Director	April 5, 2011
/s/ Steven S. Myers Steven S. Myers	Director	April 5, 2011
/s/ Drew Bernstein Drew Bernstein	Director	April 5, 2011
/s/ Eric Wei Eric Wei	Director	April 5, 2011
/s/ Edward C. Geehr, M.D. Edward C. Geehr, M.D.	Director	April 5, 2011
/s/ Shi Mingsheng Shi Mingsheng	Director	April 5, 2011

Delaware

The first State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "NEOSTEM, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "PHASE III MEDICAL INC." TO "NEOSTEM, INC. ", FILED THE TWENTY-NINTH DAY OF AUGUST, A.D. 2006, AT 5:49 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE EIGHTH DAY OF AUGUST, A.D. 2007, AT 11:08 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE NINTH DAY OF AUGUST, A.D. 2007, AT 10 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE FIFTEENTH DAY OF APRIL, A.D. 2009, AT 5:05 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF OCTOBER, A.D. 2009, AT 8:01 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF OCTOBER, A.D. 2009, AT 8:02 O'CLOCK A.M.

/s/ Jeffrey W. Bullock
Jeffrey W. Bullock, Secretary of State

0899444 8100X

AUTHENTICATION: 8650602

110343404

DATE: 03-25-11

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

The first State

CERTIFICATE OF DESIGNATION, FILED THE THIRTIETH DAY OF OCTOBER, A.D. 2009, AT 8:03 O'CLOCK A.M.

CERTIFICATE OF CORRECTION, FILED THE NINTH DAY OF DECEMBER, A.D. 2009, AT 2:24 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTEENTH DAY OF NOVEMBER, A.D. 2010, AT 10:30 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTEENTH DAY OF NOVEMBER, A.D. 2010, AT 10:31 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTEENTH DAY OF NOVEMBER, A.D. 2010, AT 10:32 O'CLOCK A.M.

/s/ Jeffrey W. Bullock

Jeffrey W. Bullock, Secretary of State

0899444 8100X ***AUTHENTICATION: 8650602***

110343404 ***DATE: 03-25-11***

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:49 PM 08/29/2006
FILED 05:49 PM 08/29/2006
SRV 060805812 - 0899444 FILE

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

PHASE III MEDICAL INC.

Phase III Medical Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is Phase III Medical Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 18, 1980, under the name of Fidelity Medical Services, Inc. The name of the Corporation was changed to Phase III Medical Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of Delaware on July 24, 2003. The name of the Corporation is being changed to NeoStem, Inc. in connection with the filing of this Amended and Restated Certificate of Incorporation.

2. This Amended and Restated Certificate of Incorporation of Phase III Medical Inc., in the form attached hereto as Exhibit A, has been duly adopted by the directors and the stockholders of the Corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

3. The Amended and Restated Certificate of Incorporation so adopted reads in its entirety as set forth in Exhibit A attached hereto and is incorporated herein by reference.

4. This Amended and Restated Certificate of Incorporation shall be effective on the date of filing with the Secretary of State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed by its CEO on this 29th day of August, 2006.

Phase III Medical Inc.

By: /s/ Robin L. Smith
Robin L. Smith
Chief Executive Officer

EXHIBIT A

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

NEOSTEM, INC.

FIRST: The name of the corporation is NeoStem, Inc. (hereinafter sometimes referred to as the "Corporation").

SECOND: The registered office of the Corporation is located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business and the objects and purposes to be transacted, promoted and carried on are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To purchase, take, own, hold, deal in, mortgage or otherwise lien and to lease, sell, exchange, convey, transfer or in any manner whatever dispose of real property, within or without the State of Delaware.

To manufacture, purchase or otherwise acquire and to hold, own, mortgage or otherwise lien, pledge, lease, sell, assign, exchange, transfer or in any manner dispose of, and to invest, deal and trade in and with goods, wares, merchandise and personal property of any and every class and description, within or without the State of Delaware.

To acquire the good will, rights and property and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation; to pay for the same in cash, the stock of this company, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

To guarantee, purchase or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock, bonds or other evidences of indebtedness created by other corporations and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extend as a natural person might or could do.

To purchase or otherwise acquire, apply for, register, hold, use, sell or in any manner dispose of and to grant licenses or other rights in and in any manner deal with patents, inventions, improvements, processes, formulas, trademarks, trade names, rights and licenses secured under letters patent, copyrights or otherwise.

To enter into, make and perform contracts of every kind for any lawful purpose, with any person, firm, association or corporation, town, city, county, body politic, state, territory, government or colony or dependency thereof.

To borrow money for any of the purposes of the corporation and to draw, make, accept, endorse, discount, execute, issue, sell, pledge or otherwise dispose of promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable, transferable or non-transferable instruments and evidences of indebtedness and to secure the payment thereof and the interest thereon by mortgage or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation at the time owned or thereafter acquired.

To purchase, hold, sell and transfer the shares of its capital stock.

To have one or more offices and to conduct any or all of its operations and business and to promote its object, within or without the State of Delaware, without restriction as to place or amount.

To carry on any other business in connection therewith.

To do any or all of the things herein set forth as principal, agent, contractor, trustee or otherwise, alone or in company with others.

The objects and purposes specified herein shall be regarded as independent objects and purposes and, except where otherwise expressed, shall be in no way limited or restricted by reference to or inference from the terms of any other clause or paragraph of this certificate of incorporation.

FOURTH:

A. The total number of shares of stock which the Corporation shall have authority to issue is 505,000,000 shares, of which 500,000,000 shares are designated as common stock, having a par value of $.001 per share ("Common Stock") and 5,000,000 shares are designated as preferred stock, $.01 par value per share ("Preferred Stock").

B. Preferred Stock. The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof of the Preferred Stock are as follows:

The Board of Directors is authorized, subject to limitations prescribed by law and the provisions of this Article FOURTH, to provide for the issuance of the Preferred Stock in series and by filing a Certificate pursuant to the Delaware General Corporation Law to establish the number of shares to be included in each such series. The Preferred Stock may be issued either as a class without series, or as so determined from time to time by the Board of Directors, either in whole or in part in one or more series, each series to be appropriately designated by a distinguishing number, letter or title prior to the issue of any shares thereof. Whenever the term "Preferred Stock" is used in this Article FOURTH, it shall be deemed to mean and include Preferred Stock issued as a class without series, or one or more series thereof, or both, unless the context shall otherwise require. There is hereby expressly granted to the Board of Directors of the Corporation authority, subject to the limitations provided by law, to fix the voting power, the designations, and the relative preferences, powers, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the shares of each series of said Preferred Stock and the variations in the relative powers, rights, preferences and limitations as between series, and to increase the number of shares constituting each series, and to decrease such number of shares (but not to less than the number of outstanding shares of the series), in the resolution or resolutions adopted by the Board of Directors providing for the issue of said Preferred stock.

The authority of the Board of Directors of the corporation with respect to each series shall include, but shall not be limited to, the authority to determine the following:

1. The designation of the series;

2. The number of shares initially constituting such series;

3. The increase, and the decrease to a number not less than the number of the outstanding shares of such series, of the number of shares constituting such series theretofore fixed;

4. The rate or rates and the times and conditions under which dividends on the shares of such series shall be paid, and, (i) if such dividends are payable in preference to, or in relation to, the dividends payable on any other class or classes of stock, the terms and conditions of such payment, and (ii) if such dividends shall be cumulative, the date or dates from and after which they shall accumulate;

5. Whether or not the shares of such series shall be redeemable, and, if such shares shall be redeemable, the terms and conditions of such redemption, including, but not limited to, the date or dates upon or after which such shares shall be redeemable and the amount per share which shall be payable upon such redemption, which amount may vary under conditions and at different redemption dates;

6. The amount payable on the shares of such series in the event of the dissolution of, or upon any distribution of the assets of, the Corporation;

7. Whether or not the shares of such series may be convertible into, or exchangeable for, shares of any other class or series and the price or prices and the rates of exchange and the terms of any adjustments to be made in connection with such conversion or exchange;

8. Whether or not the shares of such series shall have voting rights in addition to the voting rights provided by law, and, if such shares shall have such voting rights, the terms and conditions thereof, including but not limited to, the right of the holders of such shares to vote as a separate class either alone or with the holders of shares of one or more other series of Preferred Stock and the right to have more or less than one vote per share;

9. Whether or not a purchase fund shall be provided for the shares of such series, and, if such a purchase fund shall be provided, the terms and conditions thereof;

10. "Whether or not a sinking fund shall be provided for the redemption of the shares of such series and if such a sinking fund shall be provided, the terms and conditions thereof; and

11. Any other powers, preferences and relative, participating, optional, or other special rights, and qualifications, limitations or restrictions thereof, as shall not be inconsistent with the provisions of this Article FOURTH or the limitations provided by law.

C. Common Stock. The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof of the Common Stock are as follows:

1. Subject to the rights of the Preferred stockholders, the holders of the Common Stock shall be entitled to receive such dividends as may be declared thereon by the Board of Directors of the Corporation in its discretion, from time to time, out of any funds or assets of the Corporation lawfully available for the payment of such dividends.

2. In the event of any liquidation, dissolution or winding up of the Corporation, or any reduction of its capital, resulting in a distribution of its assets to its stockholders, whether voluntary or involuntary, then, after there shall have been paid or set apart for the holders of the Preferred Stock the full preferential amounts to which they are entitled, the holders of the Common Stock shall be entitled to receive as a class, pro rata, the remaining assets of the Corporation available for distribution to its stockholders.

3. For any and all purposes of this Certificate of Incorporation, neither the merger or consolidation of the Corporation into or with any other corporation, nor the merger or consolidation of any other corporation into or with the Corporation, nor a sale, transfer or lease of all or substantially all of the assets of the Corporation, or any other transaction or series of transactions having the effect of a reorganization shall be deemed to be a liquidation, dissolution or winding-up of the Corporation.

4. Except as otherwise expressly provided by, law or in a resolution of the Board of Directors providing voting rights to the holders of the Preferred Stock, the holders of the Common Stock shall possess exclusive voting power for the election of directors and for all other purposes and each holder thereof shall be entitled to one vote for each share thereof.

D. The Corporation is hereby reducing the number of shares of Common Stock issued and outstanding by means of a reverse stock split. Effective at 9:00 a.m. (the "Effective Time") on August 31, 2006 (the "Effective Date"), each ten (10) shares of authorized Common Stock issued and outstanding or held in the treasury of the Corporation immediately prior to the Effective Time shall automatically be reclassified and changed into one (1) validly issued, fully paid and nonassessable share of Common Stock (a "New Share"). Each holder of record of shares of Common Stock so reclassified and changed shall at the Effective Time automatically become the record owner of the number of New Shares as shall result from such reclassification and change. Each such record holder shall be entitled to receive, upon the surrender of the certificate or certificates representing the shares of Common Stock so reclassified and changed at the office of the transfer agent of the Corporation in such form and accompanied by such documents, if any, as may be prescribed by the transfer agent of the Corporation, a new certificate or certificates representing the number of New Shares of which he or she is the record owner after giving effect to the provisions of this Article FOURTH. The Corporation shall not issue fractional New Shares. Stockholders entitled to receive fractional New Shares shall, in lieu thereof, be rounded up to the next whole share of Common Stock held by such holder immediately prior to the Effective Time which have not been classified into a whole New Share.

FIFTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any Court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such a manner as the Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if made, be binding upon all of the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

SIXTH: The corporation shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, upon a plea of nolo contendere or equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was lawful.

SEVENTH: The Board of Directors shall have the power to make, alter or repeal the By-laws.

EIGHTH: The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation.

NINTH: The personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director is hereby eliminated, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under section 174 of Title 8 of the Delaware Code, or (iv) for any transaction from which the director derived an improper personal benefit. This article shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date this Article first became effective.

TENTH: The Series B Convertible Redeemable Preferred Stock, shall be designated the following relative rights, preferences and limitations as follows:

Section 1. Designation and Amount; Rank

There is hereby established a series of preferred stock which is designated "Series B Convertible Redeemable Preferred Stock" (referred to herein as "Series B Convertible Redeemable Preferred Stock"). The number of shares which will constitute such series shall be Eight Hundred Twenty-Five Thousand (825,000). The Series B Convertible Redeemable Preferred Stock shall rank pari passu with the Common Stock with respect to the payment of dividends and to the distribution of assets upon liquidation, dissolution or winding up.

Section 2. Dividends.

So long as any shares of the Series B Convertible Redeemable Preferred Stock are outstanding, no dividend shall be declared or paid or set aside for payment or other distribution declared or made upon the Common Stock or upon any other stock ranking junior to, or on a parity with, the Series B Convertible Redeemable Preferred Stock as to dividends or upon liquidation, dissolution or winding up, unless, in the case of Preferred Stock, the same dividend is declared, paid or set aside for payment on all outstanding shares of the Series B Convertible Redeemable Preferred Stock or in the case of Common Stock, ten times such dividend per share is declared, paid or set aside for payment on each outstanding share of the Series B Preferred Stock.

Section 3. General, Class and Series Voting Rights.

Except as otherwise provided by law, each share of the Series B Convertible Redeemable Preferred Stock shall have the same voting rights as ten (10) shares of Common Stock and the holders of the Series B Convertible Redeemable Preferred Stock and the Common Stock shall vote together as one class on all matters.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series B Convertible Redeemable Preferred Stock shall have been converted into Common Stock or shall have been redeemed or sufficient funds shall have been deposited in trust to effect such redemption.

Section 4. Redemption.

(A) The shares of Series B Convertible Redeemable Preferred Stock are not redeemable prior to March 31, 2000. At any time on or after such date through June 30, 2000, the shares of Series B Convertible Redeemable Preferred Stock are redeemable, in whole or in part, at the option of the "Special Director" of the corporation, at the redemption price per share of $.10, if the "Trigger Conditions" have not been met.

(B) For purposes of this paragraph, the "Trigger Condition" shall mean that:

(a) the closing bid prices of the Common Stock of the corporation as reported by Nasdaq (or otherwise as set forth below) is greater than $2.00 per share during a period of any ten (10) consecutive trading days and

(b) either

(i) the corporation's net revenues for any fiscal quarter through the fiscal quarter ended March 31, 2000 are $1 million or more (as computed by the corporation's regular independent public accountants); or

(ii) the corporation has received net receipts of not less than $2.5 million from the sale of its Common Stock from the date hereof through March 31, 2000.

For the purpose of any computation under the foregoing paragraph, the closing price per share of Common Stock on any date shall be the reported last sale price, regular way, or, in case no such reported sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange at such time, on the principal national securities exchange on which the Common Stock is listed or admitted to trading, or, if not listed or admitted to trading on any national securities exchange, on the Nasdaq National Market or, if the Common Stock is not quoted on the Nasdaq National Market, the average of the closing bid prices on such day in the over-the-counter market as reported by Nasdaq or, if bid prices for the Common Stock on each such day shall not have been reported through Nasdaq, the average of the bid prices for such date as furnished by any New York Stock Exchange member firm regularly making a market in the Common Stock selected from time to time by the Board of Directors of the corporation for such purpose or, if no such quotations are available, the fair market value of the Common Stock as determined by a New York Stock

Exchange member firm regularly making a market in the Common Stock selected from time to time by the Board of Directors of the corporation for such purpose.

(C) For purposes of this paragraph, the "Special Director" mean James Fyfe or his successor as director of the corporation if such successor has been approved by Fyfe. So long as any shares of the Class B Preferred Stock are outstanding, through June 30, 2000, the corporation shall nominate to the Board of Directors Fyfe or, if Fyfe so determines, Fyfe's designee.

(D) In the event the corporation shall elect to redeem the shares of Series B Convertible Redeemable Preferred Stock following the Trigger Condition, the corporation shall give notice to the holders of record of shares of the Series B Convertible Redeemable Preferred Stock being so redeemed, not less than 30 nor more than 60 days prior to such redemption, by first class mail, postage prepaid, at their addresses as shown on the stock registry books of the corporation, that said shares are being redeemed, provided that without limiting the obligation of the corporation hereunder to give the notice provided in this Section 5(D), the failure of the corporation to give such notice shall not invalidate any corporate action by the corporation. Each such notice shall state: (i) the redemption date; (ii) that all of the shares of Series B Convertible Redeemable Preferred Stock are to be redeemed; (iii) that the redemption price is $.10 per share; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (v) that such holder does not have the right to convert such shares into Common Stock.

(E) Notice having been mailed as aforesaid, from and after the applicable redemption date (unless default shall be made by the corporation in providing money for the payment of the redemption price), said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the corporation (except the right to receive from the corporation the redemption price) shall cease. Upon surrender of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the corporation shall so require and the notice shall so state), such shares shall be redeemed by the corporation at the redemption price aforesaid.

(F) Any shares of Series B Convertible Redeemable Preferred Stock which shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated as part of a particular series by the Board of Directors of the corporation.

Section 5. Conversion.

(A) The holder of any share of Series B Convertible Redeemable Preferred Stock shall have the right, at such holder's option (but not if such share is called for redemption), exercisable on or after September 30, 2000, to convert such share into ten (10) fully paid and non-assessable shares of Common Stock (the "Conversion Rate"). The Conversion Rate shall be subject to adjustment as set forth below.

(B) In order to exercise the conversion privilege, the holder of shares of Series B Convertible Redeemable Preferred Stock shall surrender the certificates representing such shares, accompanied by transfer instruments satisfactory to the corporation and sufficient to transfer the Series B Convertible Redeemable Preferred Stock being converted to the corporation free of any adverse interest, at any of the offices or agencies maintained for such purpose by the corporation ("Conversion Agent") and shall give written notice to the corporation at such Conversion Agent that the holder elects to convert such shares. Such notice shall also state the names, together with addresses, in which the certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. As promptly as practicable after the surrender of such shares of Series B Convertible Redeemable Preferred Stock as aforesaid, the corporation shall issue and shall deliver at such Conversion Agent to such holder, or on his written order, a certificate for the number of full shares of Common Stock issuable upon the conversion of such shares in accordance with the provisions hereof. Balance certificates will be issued for the remaining shares of Series B Convertible Redeemable Preferred Stock in any case in which fewer than all of the shares of Series B Convertible Redeemable Preferred Stock represented by a certificate are converted. Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which shares of Series B Convertible Redeemable Preferred Stock shall have been so surrendered and such notice received by the corporation as aforesaid, and the persons in whose names any certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holders of record of the Common Stock represented thereby at such time, unless the stock transfer books of the corporation shall be closed on the date on which shares of Series B Convertible Redeemable Preferred Stock are so surrendered for conversion, in which event such conversion shall be deemed to have been effected immediately prior to the close of business on the next succeeding day on which such stock transfer books are open, and such persons shall be deemed to have become such holders of record of the Common Stock at the close of business on such later day. In either circumstance, such conversion shall be at the Conversion Rate in effect on the date upon which such share shall have been surrendered and such notice received by the corporation.

(C) In the case of any share of Series B Convertible Redeemable Preferred Stock which is converted after any record date with respect to the payment of a dividend on the Series B Convertible Redeemable Preferred Stock and on or prior to the Dividend Payment Date related to such record date, the dividend due on such Dividend Payment Date shall be payable on such Dividend Payment Date to the holder of record of such share as of such preceding record date notwithstanding such conversion.

(D) No fractional shares or scrip representing fractions of shares of Common Stock shall be issued upon conversion of any shares of Series B Preferred Stock. Instead of any fractional interest in a share of Common Stock which would otherwise be deliverable upon the conversion of a share of Series B Convertible Redeemable Preferred Stock, the corporation shall pay to the holder of such share of Series B Convertible Redeemable Preferred Stock an amount in cash (computed to the nearest cent, with one-half cent being rounded upward) equal to such fraction multiplied by the reported closing price (as defined above) of the Common Stock at the close of business on the day on which such share or shares of Series B Convertible Redeemable Preferred Stock are surrendered for conversion in the manner set forth above, or if such date is not a trading date, on the next succeeding trading date. If more than one certificate representing shares of Series B Convertible Redeemable Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B Convertible Redeemable Preferred Stock represented by such certificates, or the specified portions thereof to be converted, so surrendered.

(E) The Conversion Rate shall be adjusted from time to time as follows:

(i) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock and the Series B Convertible Redeemable Preferred Stock is not similarly subdivided, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock and the Series B Convertible Redeemable Preferred Stock is not similarly subdivided, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately decreased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(ii) Whenever the Conversion Rate is adjusted as herein provided, (x) the corporation shall promptly file with any Conversion Agent a certificate of a firm of independent public accountants setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment, and the manner of computing the same, which certificate shall be conclusive evidence of the correctness of such adjustment, and (y) a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall forthwith be given by the corporation to any Conversion Agent and mailed by the corporation to each holder of shares of Series B Convertible Redeemable Preferred Stock at their last address as the same appears on the books of the corporation.

(F) In case of any consolidation of the corporation with, or merger of the corporation into, any other entity (other than a merger or consolidation in which the corporation is the continuing corporation) or any sale or conveyance to another corporation of the property of the corporation as an entirety or substantially as an entirety, or in the case of a statutory exchange of securities with another corporation, or any reclassification of shares, the Conversion Rate shall not be adjusted but each holder of a share of Series B Convertible Redeemable Preferred Stock then outstanding shall have the right thereafter to convert such share only into the kind and amount of securities, cash and other property which such holder would have owned or have been entitled to receive immediately after such consolidation, merger, sale, conveyance, exchange or reclassification had such share of Series B Convertible Redeemable Preferred Stock been converted immediately prior to such consolidation, merger, sale, conveyance, exchange or reclassification. Provision shall be made in any such consolidation, merger, sale, conveyance, exchange or reclassification for adjustments in the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section (E). The above provisions shall similarly apply to successive consolidations, mergers, sales, conveyances, exchange or reclassification.

For purposes of this Section 5, "Common Stock" includes any stock of any class of the corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation and which is not subject to redemption by the corporation. However, subject to the provisions of paragraph (F) above, shares issuable on conversion of shares of Series B Convertible Redeemable Preferred Stock shall include only shares of the class designated as Common Stock of the corporation on the date of the initial issuance of Series B Convertible Redeemable Preferred Stock by the corporation, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation and which are not subject to redemption by the corporation.

In case:

(i) the corporation shall declare a stocks split, stock dividend (or any other distribution) on its Common Stock that would cause an adjustment to the Conversion Rate of the Series B Convertible Redeemable Preferred Stock pursuant to the terms of subparagraph (i) of Paragraph (E) above; or

(ii) of any reclassification of the Common Stock of the corporation (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation, merger or share exchange to which the corporation is a party and for which approval of any stockholders of the corporation is required, or of the sale or conveyance, of the property of the corporation as an entirety or substantially as an entirety; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding up of the corporation;

then the corporation shall cause to be filed with any Conversion Agent, and shall cause to be mailed to all holders of shares of Series B Convertible Redeemable Preferred Stock at each such holder's last address as the same appears on the books of the corporation, at least 20 days (or 10 days in any case specified in clause (i) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, conveyance, dissolution, liquidation or winding up. Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings described in clauses (i) through (iii) above.

The corporation will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on conversions of shares of Series B Convertible Redeemable Preferred Stock pursuant hereto; provided, however, that the corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of the shares of Series B Convertible Redeemable Preferred Stock to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the corporation the amount of any such tax or has established, to the satisfaction of the corporation, that such tax has been paid.

The corporation covenants that all shares of Common Stock which may be delivered upon conversions of shares of Series B Convertible Redeemable Preferred Stock will upon delivery be duly and validly issued and fully paid and non-assessable, free of all liens and charges and not subject to any pre-emptive rights. The corporation further covenants that, if necessary, it shall reduce the par value of the Common Stock so that all shares of Common Stock delivered upon conversion of shares of Series B Convertible Redeemable Preferred Stock are fully paid and non-assessable.

The corporation covenants that it will at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued shares of Common Stock or its issued shares of Common; Stock held in its treasury, or both, for the purpose of effecting conversions of shares of Series B Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all outstanding shares of Series B Convertible Redeemable Preferred Stock not theretofore converted. For purposes of this reservation of Common Stock, the number of shares of Common Stock which shall be deliverable upon the conversion of all outstanding shares of Series B Convertible Redeemable Preferred Stock shall be computed as if at the time of computation all outstanding shares of Series B Convertible Redeemable Preferred Stock were held by a single holder. The issuance of shares of Common Stock upon conversion of shares of Series B Convertible Redeemable Preferred Stock is authorized in all respects.

Section 6. Liquidation.

In the event of any voluntary or involuntary dissolution, liquidation or winding up of the corporation (for the purposes of this Section 6, a "Liquidation"), after any distribution of assets is made to the holders of any other class or series of stock that ranks prior to the Series B Convertible Redeemable Preferred Stock in respect of distributions upon the Liquidation of the corporation, the holder of each share of Series B Convertible Redeemable Preferred Stock then outstanding shall be entitled to be paid out of the assets of the corporation available for distribution to its stockholders, an amount on a pari passu basis equal to ten times the amount per share distributed to the holders of the Common Stock.

The voluntary sale, conveyance, lease, exchange or transfer of the property of the corporation as an entirety or substantially as an entirety, or the merger or consolidation of the corporation into or with any other corporation, or the merger of any other corporation into the corporation, or any purchase or redemption of some or all of the shares of any class or series of stock of the corporation, shall not be deemed to be a Liquidation of the corporation for the purposes of the Section 6 (unless in connection therewith the Liquidation of the corporation is specifically approved).

The holder of any shares of Series B Convertible Redeemable Preferred Stock shall not be entitled to receive any payment owed for such shares under this Section 6 until such holder shall cause to be delivered to the corporation (i) the certificate or certificates representing such shares of Series B Convertible Redeemable Preferred Stock and (ii) transfer instrument or instruments satisfactory to the corporation and sufficient to transfer such shares of Series B Convertible Redeemable Preferred Stock to the corporation free of any adverse interest. As in the case of the redemption price, no interest shall accrue on any payment upon Liquidation after the due date thereof.

After payment of the full amount of the liquidating distribution to which they are entitled, the holders of shares of the Series B Convertible Redeemable Preferred Stock will not be entitled to any further participation in any distribution of assets by the corporation.

Section 7. Payments.

The corporation may provide funds for any payment of the redemption price for any shares of Series B Convertible Redeemable Preferred Stock or any amount distributable with respect to any Series B Convertible Redeemable Preferred Stock under Section 6 hereof by depositing such funds with a bank or trust company selected by the corporation having a net worth of at least $50,000,000 and organized under the laws of the United States or any state thereof, in trust for the benefit of the holder of such shares of Series B Convertible Redeemable Preferred Stock under arrangements providing irrevocably for payment upon satisfaction of any conditions to such payment by the holder of such shares of Series B Convertible Redeemable Preferred Stock which shall reasonably be required by the corporation. The corporation shall be entitled to make any deposit of funds contemplated by this section 7 under arrangements designated to permit such funds to generate interest or other income for the corporation, and the corporation shall be entitled to receive all interest and other income earned by any funds while they shall be deposited as contemplated by this section 7, provided that the corporation shall maintain on deposit funds sufficient to satisfy all payments which the deposit arrangement shall have been established to satisfy if the conditions precedent to the disbursement of any funds deposited by the corporation pursuant to this Section 7 shall not have been satisfied within two years after the establishment of the trust for such funds, then (i) such funds shall be returned to the corporation upon its request; (ii) after such return, such funds shall be free of any trust which shall have been impressed upon them; (iii) the person entitled to the payment for which been originally intended shall have the right to look only to the corporation for such payment, subject to applicable escheat laws; and (iv) the trustee which shall have held such funds shall be relieved of any responsibility for such of such funds to the corporation.

Any payment which may be owed for the payment of the redemption price for any shares of Series B Convertible Redeemable Preferred Stock pursuant to Section 4 or the payment of any amount distributable with respect to the shares of Series B Convertible Redeemable Preferred Stock under Section 6 shall be deemed to have been "paid or properly provided for" upon the earlier to occur of: (i) the date upon which funds sufficient to make such payment shall be deposited in a manner contemplated by the preceding paragraph or (ii) the date upon which a check payable to the person entitled to receive such payment shall be delivered to such person or mailed to such person at the address of such person then appearing on the books of the corporation.

Section 8. Status of Reacquired Shares.

Shares of Series B Convertible Redeemable Preferred Stock issued and reacquired by the corporation shall have the status of authorized and unissued shares of Preferred Stock, undesignated as to series, subject to later issuance.

Section 9. Preemptive Rights.

Holders of shares of Series B Convertible Redeemable Preferred Stock are not entitled to any preemptive or subscription rights in respect of any securities of the corporation.

Section 10. Legal Holidays.

In any case where any Dividend Payment Date, redemption date or the last date on which a holder of Series B Convertible Redeemable Preferred Stock has the right to convert such holder's shares of Series B Convertible Redeemable Preferred Stock shall not be a Business Day (as defined below), then (notwithstanding any other provision of this Certificate of Designation of the Series B Preferred Stock) payment of a dividend due or a redemption price or conversion of the shares of Series B Convertible Redeemable Preferred Stock need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Dividend Payment Date or redemption date or the last day for conversion, provided that, for purposes of computing such payment, no interest shall accrue for the period from and after such Dividend Payment Date or redemption date, as the case may be. As used in this Section 10, "Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the City of New York or the State of New Jersey are authorized or obligated by law or executive order to close.

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:09 AM 08/08/2007
FILED 11:08 AM 08/08/2007
SRV 070900970 - 0899444 FILE

CERTIFICATE OF AMENDMENT

OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NEOSTEM, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, NeoStem, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is NeoStem, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 18, 1980, under the name of Fidelity Medical Services, Inc. The name of the Corporation was changed to Corniche Group Incorporated by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of Delaware on September 28, 1995. The name of the Corporation was changed to Phase III Medical Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of Delaware on July 24, 2003. The name of the Corporation was changed to NeoStem, Inc. by filing an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware on August 29, 2006.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

Article FOURTH is hereby amended by adding a Section E which reads as follows:

"1. Effective upon the filing of this Certificate of Amendment of the Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that each ten (10) shares of issued Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued and, in lieu thereof, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the reclassification shall be entitled to be rounded up to the next whole share of Common Stock.

2. Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive a whole share in lieu of a fractional share of Common Stock), provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (including the right to receive a whole share in lieu of a fractional share of Common Stock)."

3. This Certificate of Amendment shall be effective August 9, 2007 at 10:00 a.m.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its President on this 8th day of August, 2007:

By: /s/ Robin L. Smith
Name: Robin L. Smith
Title: President

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:19 PM 04/15/2009
FILED 05:05 PM 04/15/2009
SRV 090366790 - 0899444 FILE

CERTIFICATE OF DESIGNATION
of
SERIES D CONVERTIBLE REDEEMABLE PREFERRED STOCK
of
NEOSTEM, INC.
(Pursuant to Section 151(g) of the
Delaware General Corporation Law)

It is hereby certified that:

1. The name of the corporation is NeoStem, Inc. (hereinafter called the " Corporation").

2. The Certificate of Incorporation of the Corporation, as amended (the " Certificate of Incorporation") authorizes the issuance of 5,000,000 shares of Preferred Stock, par value $.01 per share, and expressly vests in the Board of Directors of the Corporation the authority to issue any or all of said shares in one or more series and by resolution to fix the designation and number of shares of the class and series acted upon, the full or limited voting powers or the denial of voting powers, and the relative rights, preferences and limitations and other distinguishing characteristics of each such class and series to be issued.

3. Pursuant to such authority, the following resolutions were duly adopted by the Board of Directors of the Corporation as required by Subsection 151(g) of the Delaware General Corporation Law on March 13, 2009 and March 29, 2009 creating a series of Series D Convertible Redeemable Preferred Stock.

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation in accordance with the provisions of the Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock, par value $.01 per share, of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof (in addition to the provisions set forth in the Certificate of Incorporation, which are applicable to the Preferred Stock of all series) as follows:

ARTICLE THIRTEENTH
SERIES D CONVERTIBLE REDEEMABLE PREFERRED STOCK,
PAR VALUE $.01 PER SHARE

Section 1. Designation and Amount; Rank

There is hereby established a series of preferred stock which is designated "Series D Convertible Redeemable Preferred Stock" (referred to herein as " Series D Preferred Stock"). The number of shares which will constitute such series shall be one million six hundred thousand (1,600,000). The Series D Preferred Stock shall rank senior to all of the Corporation's capital stock with respect to the payment of dividends and to the distribution of assets upon liquidation, dissolution or winding up.

Section 2. Dividends.

From and after the date of the issuance of any shares of Series D Preferred Stock, dividends at the rate per annum of $1.25 per share shall accrue on such shares of Series D Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock) (the " Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this Section 2 or Section 6, such Accruing Dividends shall be payable in cash on April 9th of each year beginning on April 9, 2010 provided that such shares of Series D Preferred Stock remain issued and outstanding on each such date. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series D Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Preferred Stock in an amount at least equal to the greater of (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series D Preferred Stock and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series D Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series D Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series D Preferred Stock determined by (1) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the Series D Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series D Preferred Stock pursuant to this Section 2 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series D Preferred Stock dividend. The " Series D Original Issue Price" shall mean $32.50 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Preferred Stock.

Section 3. General, Class and Series Voting Rights.

Except as otherwise provided by law, each share of the Series D Preferred Stock shall not have any voting rights.

Section 4. Redemption.

(A) If by October 31, 2009 the affirmative vote of the number of holders of the Corporation's stock required pursuant to the Amended and Restated By-Laws of the Corporation and subject to the rules of the NYSE Amex to convert the shares of Series D Preferred Stock into Common Stock pursuant to Section 5(A) has not been achieved, the Company shall automatically redeem all shares of Series D Preferred Stock at the redemption price per share of $12.50 plus the Accruing Dividends as of such date.

(B) In the event of a redemption of the shares of Series D Preferred Stock, the Corporation shall give notice to the holders of record of shares of the Series D Preferred Stock being so redeemed by first class mail, postage prepaid, at their addresses as shown on the stock registry books of the Corporation, that said shares have been redeemed, provided that without limiting the obligation of the Corporation hereunder to give the notice provided in this Section 4(B), the failure of the Corporation to give such notice shall not invalidate any corporate action by the Corporation. Each such notice shall state: (i) the redemption date; (ii) that all of the shares of Series D Preferred Stock have been redeemed; (iii) that the redemption price is $12.50 plus the Accruing Dividends as of such date per share; and (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(C) Notice having been mailed as aforesaid, from and after the redemption date, said shares shall no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. Upon surrender of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the redemption price aforesaid.

(D) Any shares of Series D Preferred Stock which shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated as part of a particular series by the Board of Directors of the Corporation.

Section 5. Conversion.

(A) Upon the affirmative vote of the number of holders of the Corporation's stock required pursuant to the Amended and Restated By-Laws of the Corporation and subject to the rules of the NYSE Amex (such date, the "Conversion Date"), each share of Series D Preferred Stock shall automatically convert into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) the Series D Original Issue Price by (ii) $1.25 (the "Conversion Rate"). The Conversion Rate shall be subject to adjustment as provided below.

(B) Each holder of shares of Series D Preferred Stock shall surrender the certificates representing such shares, accompanied by transfer instruments satisfactory to the Corporation and sufficient to transfer the Series D Preferred Stock being converted to the Corporation free of any adverse interest, at any of the offices or agencies maintained for such purpose by the Corporation (" Conversion Agent"), together with a written notice to the Corporation at such Conversion Agent stating the names, together with addresses, in which the certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. As promptly as practicable after the surrender of such shares of Series D Preferred Stock as aforesaid, the Corporation shall issue and shall deliver at such Conversion Agent to such holder a certificate for the number of full shares of Common Stock issuable upon the conversion of such shares in accordance with the provisions hereof. Each conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and the persons in whose names any certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holders of record of the Common Stock represented thereby at such time. Any such conversion shall be at the Conversion Rate in effect on the Conversion Date.

(C) In the case of any share of Series D Preferred Stock which is converted after any record date with respect to the payment of a dividend on the Series D Preferred Stock and on or prior to the Dividend Payment Date related to such record date, the dividend due on such Dividend Payment Date shall be payable on such Dividend Payment Date to the holder of record of such share as of such preceding record date notwithstanding such conversion.

(D) No fractional shares or scrip representing fractions of shares of Common Stock shall be issued upon conversion of any shares of Series D Preferred Stock. Instead of any fractional interest in a share of Common Stock which would otherwise be deliverable upon the conversion of a share of Series D Preferred Stock, the Corporation shall round the number of shares of Common Stock down to the nearest whole share. If more than one certificate representing shares of Series D Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series D Preferred Stock represented by such certificates, or the specified portions thereof to be converted, so surrendered.

(E) The Conversion Rate shall be adjusted from time to time as follows:

(i) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock and the Series D Preferred Stock is not similarly subdivided, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock and the Series D Preferred Stock is not similarly subdivided, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately decreased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(ii) Whenever the Conversion Rate is adjusted as herein provided, (x) the Corporation shall promptly file with any Conversion Agent a certificate of a firm of independent public accountants setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment, and the manner of computing the same, which certificate shall be conclusive evidence of the correctness of such adjustment, and (y) a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate shall forthwith be given by the Corporation to any Conversion Agent and mailed by the Corporation to each holder of shares of Series D Preferred Stock at their last address as the same appears on the books of the Corporation.

(F) In case of any consolidation of the Corporation with, or merger of the Corporation into, any other entity (other than a merger or consolidation in which the Corporation is the continuing Corporation) or any sale or conveyance to another Corporation of the property of the Corporation as an entirety or substantially as an entirety, or in the case of a statutory exchange of securities with another Corporation, or any reclassification of shares, the Conversion Rate shall not be adjusted but each holder of a share of Series D Preferred Stock then outstanding shall have the right thereafter to convert such share only into the kind and amount of securities, cash and other property which such holder would have owned or have been entitled to receive immediately after such consolidation, merger, sale, conveyance, exchange or reclassification had such share of Series D Preferred Stock been converted immediately prior to such consolidation, merger, sale, conveyance, exchange or reclassification. Provision shall be made in any such consolidation, merger, sale, conveyance, exchange or reclassification for adjustments in the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section (E). The above provisions shall similarly apply to successive consolidations, mergers, sales, conveyances, exchange or reclassification.

For purposes of this Section 5, “Common Stock” includes any stock of any class of the Corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which is not subject to redemption by the Corporation. However, subject to the provisions of paragraph (F) above, shares issuable on conversion of shares of Series D Preferred Stock shall include only shares of the class designated as Common Stock of the Corporation on the date of the initial issuance of Series D Preferred Stock by the Corporation, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation.

In case:

(i) the Corporation shall declare a stocks split, stock dividend (or any other distribution) on its Common Stock that would cause an adjustment to the Conversion Rate of the Series D Preferred Stock pursuant to the terms of subparagraph (i) of Paragraph (E) above; or

(ii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation, merger or share exchange to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or of the sale or conveyance, of the property of the Corporation as an entirety or substantially as an entirety; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed with any Conversion Agent, and shall cause to be mailed to all holders of shares of Series D Preferred Stock at each such holder's last address as the same appears on the books of the Corporation, at least 20 days (or 10 days in any case specified in clause (i) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, safe, conveyance, dissolution, liquidation or winding up. Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings described in clauses (i) through (iii) above.

The Corporation will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on conversions of shares of Series D Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of the shares of Series D Preferred Stock to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

The Corporation covenants that all shares of Common Stock which may be delivered upon conversions of shares of Series D Preferred Stock will upon delivery be duly and validly issued and fully paid and non-assessable, free of all liens and charges and not subject to any pre-emptive rights. The Corporation further covenants that, if necessary, it shall reduce the par value of the Common Stock so that all shares of Common Stock delivered upon conversion of shares of Series D Preferred Stock are fully paid and non-assessable.

The Corporation covenants that it will at all times reserve and keep available, free from pre-emptive rights, out of its authorized but unissued shares of Common Stock or its issued shares of Common; Stock held in its treasury, or both, for the purpose of effecting conversions of shares of Series D Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all outstanding shares of Series D Preferred Stock not theretofore converted. For purposes of this reservation of Common Stock, the number of shares of Common Stock which shall be deliverable upon the conversion of all outstanding shares of Series D Preferred Stock shall be computed as if at the time of computation all outstanding shares of Series D Preferred Stock were held by a single holder. The issuance of shares of Common Stock upon conversion of shares of Series D Preferred Stock is authorized in all respects.

Section 6. Liquidation.

In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation (for the purposes of this Section 6, a "Liquidation"), prior to any distribution of assets to the holders of the Series B Preferred Stock and any other class or series of stock of the Corporation, the holder of each share of Series D Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders an amount per share equal to $12.50 plus the Accruing Dividends (the " Series D Preference"). Following the payment of the Series D Preference and the payment of any distributions required to be made to the holders of the Series B Preferred Stock in respect of distributions upon the Liquidation of the Corporation, the holder of each share of Series D Preferred Stock then outstanding shall be entitled to be paid out of the remaining assets of the Corporation available for distribution an amount on a pari passu basis equal to ten (10) times the amount per share distributed to the holders of the Common Stock.

The voluntary sale, conveyance, lease, exchange or transfer of the property of the Corporation as an entirety or substantially as an entirety, or the merger or consolidation of the Corporation into or with any other Corporation, or the merger of any other Corporation into the Corporation, or any purchase or redemption of some or all of the shares of any class or series of stock of the Corporation, shall not be deemed to be a Liquidation of the Corporation for the purposes of the Section 6 (unless in connection therewith the Liquidation of the Corporation is specifically approved).

The holder of any shares of Series D Preferred Stock shall not be entitled to receive any payment owed for such shares under this Section 6 until such holder shall cause to be delivered to the Corporation (i) the certificate or certificates representing such shares of Series D Preferred Stock and (ii) transfer instrument or instruments satisfactory to the Corporation and sufficient to transfer such shares of Series D Preferred Stock to the Corporation free of any adverse interest. As in the case of the redemption price, no interest shall accrue on any payment upon Liquidation after the due date thereof.

After payment of the full amount of the liquidating distribution to which they are entitled, the holders of shares of the Series D Preferred Stock will not be entitled to any further participation in any distribution of assets by the Corporation.

Section 7. Status of Reacquired Shares.

Shares of Series D Preferred Stock issued and reacquired by the Corporation shall have the status of authorized and unissued shares of Preferred Stock, undesignated as to series, subject to later issuance.

Section 8. Preemptive Rights.

Holders of shares of Series D Preferred Stock are not entitled to any preemptive or subscription rights in respect of any securities of the Corporation.

Section 9. Legal Holidays.

In any case where any Dividend Payment Date, redemption dale or the last date on which a holder of Series D Preferred Stock has the right to convert such holder's shares of Series D Preferred Stock shall not be a Business Day (as defined below), then (notwithstanding any other provision of this Certificate of Designation of the Series D Preferred Stock) payment of a dividend due or a redemption price or conversion of the shares of Series D Preferred Stock need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Dividend Payment Date or the last day for conversion, provided that, for purposes of computing such payment, no interest shall accrue for the period from and after such Dividend Payment Date or redemption date, as the case may be. As used in this Section 9, " Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in the City of New York or the State of New Jersey are authorized or obligated by law or executive order to close.

FURTHER RESOLVED, that the statements contained in the foregoing resolutions creating and designating the said Series D issue of Preferred Stock and fixing the number, voting rights, powers, preferences and relative, optional, participating, and other special rights and the qualifications, limitations, restrictions, and other distinguishing characteristics thereof shall, upon the effective date of said series, be deemed to be included in and be a part of the Certificate of incorporation of the Corporation pursuant to the provisions of Sections 104 and 151 of the General Corporation Law of the State of Delaware.

FURTHER RESOLVED, that the effective time and date of the series herein certified shall be April 9, 2009.

IN WITNESS WHEREOF, NEOSTEM, INC. has caused this certificate to be signed by its President, this 9th day of April 2009.

NEOSTEM, INC.

By: /s/ Robin Smith
Name: Robin Smith
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:01 AM 10/30/2009
FILED 08:01 AM 10/30/2009
SRV 090977299 - 0899444 FILE

CERTIFICATE OF AMENDMENT

OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NEOSTEM, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, NeoStem, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is NeoStem, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 18, 1980, under the name of Fidelity Medical Services, Inc. The name of the Corporation was changed to Corniche Group Incorporated by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on September 28, 1995. The name of the Corporation was changed to Phase III Medical Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on July 24, 2003. The name of the Corporation was changed to NeoStem, Inc. by filing an Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware on August 29, 2006.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

Section A of Article FOURTH is hereby deleted in its entirety and the following language is hereby inserted in its stead.

"A. The total number of shares of stock which the Corporation shall have authority to issue is 520,000,000 shares, of which 500,000,000 shares are designated as common stock, having a par value of $0.001 per share ("Common Stock") and 20,000,000 share are designated as preferred stock, $0.01 par value per share ("Preferred Stock")."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its Chief Executive Officer on this 29 th day of October, 2009

NEOSTEM, INC.

By: /s/ Robin L. Smith
Name: Robin L. Smith
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:01 AM 10/30/2009
FILED 08:02 AM 10/30/2009
SRV 090977300 - 0899444 FILE

CERTIFICATE OF AMENDMENT

OF

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NEOSTEM, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, NeoStem, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is NeoStem, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was September 18, 1980, under the name of Fidelity Medical Services, Inc. The name of the Corporation was changed to Corniche Group Incorporated by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on September 28, 1995. The name of the Corporation was changed to Phase III Medical Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on July 24, 2003. The name of the Corporation was changed to NeoStem, Inc. by filing an Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware on August 29, 2006.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

The following text is hereby added to the Corporation's Amended and Restated Certificate of Incorporation as Article ELEVENTH:

"ELEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and its Directors and stockholders:

"A. The number of Directors constituting the Corporations' Board of Directors shall be determined by the Board of Directors, from time to time. The Directors constituting the Corporation's Board of Directors, other than those who may be elected by the holders of any classes or series of stock having a preference over the Common Stock as to dividends or upon liquidation, shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as shall be determined by the Board of Directors consistent with the terms of this Article ELEVENTH. The Board shall have the authority to assign members of the board already in office to such classes at the time the amendment becomes effective. One class shall be assigned a term expiring at the annual meeting of stockholders to be held in 2010, another class shall be assigned a term expiring at the annual meeting of stockholders to be held in 2011, and another class shall be assigned a term expiring at the annual meeting of stockholders to be held in 2012, with each class to hold office until its successor is elected and qualified. At each annual meeting of the stockholders of the Corporation commencing with the election in 2010, the successors of the class of Directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

"B. Except as otherwise fixed by or pursuant to provisions hereof relating to the rights of the holders of any class or series of stock having a preference over Common Stock as to dividends or upon liquidation to elect additional Directors under specified circumstances, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining Director. Any Director appointed by the Board of Directors in accordance with the preceding sentence shall hold office and shall be elected for the remainder of the full term of the class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been elected and qualified."

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its Chief Executive Officer on this 29th day of October, 2009.

NEOSTEM, INC.

By: /s/ Robin L. Smith
Name: Robin L. Smith
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:01 AM 10/30/2009
FILED 08:03 AM 10/30/2009
SRV 090977301 – 0899444 FILE

CERTIFICATE OF DESIGNATIONS

of

SERIES C CONVERTIBLE PREFERRED STOCK

of

NEOSTEM, INC.

Pursuant to Section 151(g) of the
General Corporation Law of the State of Delaware

NEOSTEM, INC., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify that, pursuant to the authority conferred on the Board of Directors of the Corporation by the Certificate of Incorporation, as amended and restated to date (the "Certificate of Incorporation"), of the Corporation and in accordance with Section 151(g) of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation adopted the following resolution establishing a series of 8,177,512 shares of Preferred Stock of the Corporation designated as "Series C Convertible Preferred Stock:"

RESOLVED, that pursuant to the authority conferred on the Board of Directors of this Corporation by the Certificate of Incorporation, a series of Preferred Stock, par value $0.01 per share, of the Corporation is hereby established and created, and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

1. **Designation and Amount.** The shares of such series created hereby shall be designated as Series C Convertible Preferred Stock (the "Series C Preferred Stock") and the authorized number of shares constituting such series shall be 8,177,512. The agreed stated value of each of the Series C Preferred Stock shall be $1.00 per share (the "Agreed Stated Value"). The Series C Preferred Stock shall, with respect to dividend rights, have the entitlements set forth herein and shall, with respect to rights on liquidation, dissolution and winding up of the affairs of the Corporation, rank senior to all classes of Common Stock of the Corporation and, subject to the rights of any series of Preferred Stock outstanding or that may from time to time come into existence providing that the Series C Preferred Stock shall rank junior or senior thereto, other equity securities of the Corporation. Such number of shares may be decreased by resolution of the Board of Directors of the Corporation; provided, however, that no decrease shall reduce the number of shares of Series C Preferred Stock to less than the number of shares then issued and outstanding.

2. **Dividends and Distributions.**

(a) *Amount.* The holders of shares of Series C Preferred Stock shall be entitled to receive an annual dividend of 5% of the Agreed Stated Value (the "Annual Dividend"), payable annually on the first day of January (the "Annual Dividend Payment Date"). Payment of the Annual Dividend may be either in cash or in kind as determined by the Board of Director. In the event that the Annual Dividend Payment Date shall fall due on a Saturday, Sunday or legal holiday in the State of Delaware, the dividend due on such date shall be paid on the next day thereafter that is not a Saturday, Sunday or legal holiday in the State of Delaware. The Annual Dividend shall be cumulative and shall begin to accrue on outstanding shares of Series C Preferred Stock from and after _____, 2009 (the "Series C Issuance Date") on a daily basis computed on the basis of a 365-day year and compounded annually whether or not the Corporation shall have assets legally available therefore.

(b) *Limitation on Other Dividends.* So long as any shares of Series C Preferred Stock shall be outstanding, no dividend shall be declared or paid or set apart for payment on any Junior Stock, unless there shall also have been declared and paid or set apart for payment on the shares of Series C Preferred Stock, all accrued and unpaid Annual Dividends. In the event that full cumulative dividends on the shares of Series C Preferred Stock have not been declared and paid or set apart for payment when due, the Corporation shall not declare or pay or set apart for payment any dividends or make any other distributions on or make payment on account of the purchase, redemption or other retirement of any Junior Stock, until full cumulative dividends on the shares of Series C Preferred Stock shall have been paid or declared and set apart for payment; provided, however, that the foregoing shall not apply to (i) any dividend payable solely in shares of any class or series of Junior Stock or (ii) the purchase, redemption or conversion of shares of any Junior Stock, in exchange solely for shares of Junior Stock.

(c) *Timing.* Accrued but unpaid Annual Dividends shall cumulate as of each Annual Dividend Payment Date on which they first become payable whether or not the Corporation shall have assets legally available for the payment thereof, and shall be payable as provided in this Section 2.1 and/or as further provided herein.

(d) *Waiver.* To the fullest extent permitted by law and notwithstanding anything contained herein to the contrary, the holders of the outstanding shares of Series C Preferred Stock may waive any Annual Dividend that such holders shall be entitled to receive under this Section 2 by the affirmative vote or written consent of the holders of at least a majority of the shares of Series C Preferred Stock then outstanding.

(e) *Form of Payment.* Dividends shall be payable at the option of the Corporation either in cash or in kind in shares of Series C Preferred Stock or in kind in shares of Common Stock. Any payment in shares of Series C Preferred Stock shall be based on the Agreed Stated Value. Any payment in kind in shares of Common Stock shall be made at the Market Value on the dividend payment date. "Market Value," on a given date, shall mean the average of the closing sales price of a share of the Company's Common Stock on the American Stock Exchange, or on its principal securities exchange or trading market if other than the American Stock Exchange, on each trading day (excluding each day on which there is no closing price) for a period of ten (10) consecutive trading days (excluding each day on which there is no closing price) immediately prior to such date.

(f) *Junior Stock.* "Junior Stock" shall mean (i) the Corporation's common stock ("Common Stock"), and (ii) each other class or series of the Corporation's capital stock, whether common, preferred or otherwise, the terms of which do not provide that shares of such class or series shall rank senior to or on a parity with shares of the Series C Preferred Stock as to distributions of dividends and distributions upon the liquidation, winding-up and dissolution of the Corporation.

3. **Liquidation Preference.**

(a) In the event of a (i) liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, (ii) a sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation of all or substantially all the assets of the Corporation for cash or (iii) voluntary or involuntary bankruptcy of the Corporation (subparagraphs (i), (ii) and (iii) being collectively referred to as a "Liquidation Event"), after payment or provision for payment of debts and other liabilities of the Corporation, the holders of the Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether such assets are capital, surplus, or earnings, before and in preference to any payment or declaration and setting apart for payment of any amount shall be made in respect of any Junior Stock, an amount equal to $1.125 per share plus an amount equal to all accrued dividends unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon. In the case of property or in the event that any such securities are restricted, the value of such property or securities shall be determined by agreement between the Corporation and the holders of a majority of the shares of Series C Preferred Stock then outstanding. If upon any Liquidation Event, whether voluntary or involuntary, the assets to be distributed to the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such stockholders of the full preferential amounts aforesaid, then all of the assets of the Corporation to be distributed shall be so distributed ratably to the holders of the Series C Preferred Stock on the basis of the number of shares of Series C Preferred Stock held. All shares of Series C Preferred Stock shall rank as to payment upon the occurrence of any Liquidation Event senior to the Common Stock as provided herein and, unless the terms of such other series shall provide otherwise, senior to all other series of the Corporation's preferred stock.

(b) The holder of any shares of Series C Preferred Stock shall not be entitled to receive any payment owed for such shares under this Section 3 until such holder shall cause to be delivered to the Corporation (i) the certificate or certificates representing such shares of Series C Preferred Stock (or a lost stock affidavit and indemnity agreement in form reasonably acceptable to the Corporation with respect to such shares) and (ii) transfer instrument or instruments satisfactory to the Corporation and sufficient to transfer such shares of Series C Preferred Stock to the Corporation free of any adverse interest. No interest shall accrue on any payment upon a Liquidation Event after the due date thereof. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of shares of the Series C Preferred Stock will not be entitled to any further participation in any distribution of assets by the Corporation.

(c) Upon the completion of the distribution required by subparagraph (a) of this Section 3 and subject to any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of the Common Stock, pro rata based on the number of shares held by each such holder.

4. **Conversion Rights.**

(a) *Conversion, Per Share Conversion Price.* Each share of the Series C Preferred Stock shall be convertible, at the option of the holder thereof upon exercise in accordance with Section 4(b), without the payment of additional consideration, into such number of fully paid and nonassessable shares of the Corporation's Common Stock equal to the quotient obtained by dividing the Agreed Stated Value plus all accrued dividends unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, by $0.90 (the "Conversion Price") (as such amount may be adjusted from time to time pursuant to this Certificate of Designations, the "Per Share Conversion Price").

(b) *Conversion Procedures.* The optional conversion of shares of Series C Preferred Stock in accordance with Section 4(a) may be effected by a holder of record thereof by making written demand for such conversion (a "Conversion Demand") upon the Corporation at its principal executive offices setting forth therein: (i) the number of shares to be converted; (ii) the certificate or certificates representing such shares; and (iii) the proposed date of such conversion, which shall be a business day not less than five (5) nor more than thirty (30) days after the date of such Conversion Demand (the "Conversion Date"). Within five days of receipt of the Conversion Demand, the Corporation shall give written notice (a "Conversion Notice") to such holder setting forth therein: (i) the address of the place or places at which the certificate or certificates representing the shares so to be converted are to be surrendered; and (ii) whether the certificate or certificates to be surrendered are required to be indorsed for transfer or accompanied by a duly executed stock power or other appropriate instrument of assignment and, if so, the form of such endorsement or power or other instrument of assignment, including a medallion seal. The Conversion Notice shall be sent by first class mail, postage prepaid, to such holder at such holder's address as may be set forth in the Conversion Demand. On or before the Conversion Date, the holder of Series C Preferred Stock to be converted shall surrender the certificate or certificates representing such shares, duly indorsed for transfer accompanied by a duly executed stock power or other instrument of assignment, including a medallion seal if the Conversion Notice so provides, to the Corporation at any place set forth in such notice or, if no such place is so set forth, at the principal executive offices of the Corporation. As soon as practicable after the Conversion Date and the surrender of the certificate or certificates representing such shares, the Corporation shall issue and deliver to such holder, or its nominee, a certificate or certificates for the number of whole shares of Common Stock issuable upon such conversion in accordance with the provisions hereof. Upon surrender of certificates of Series C Preferred Stock to be converted in part, the Corporation shall issue a balance certificate representing the number of full shares of Series C Preferred Stock not so converted.

(c) *Effect of Conversion.* All outstanding shares of Series C Preferred Stock to be converted pursuant to the Conversion Notice shall, on the Conversion Date, be converted into Common Stock for all purposes, notwithstanding the failure of the holder thereof to surrender any certificate representing such shares on or prior to such date. On and after the Conversion Date, (i) no such share of Series C Preferred Stock shall be deemed to be outstanding or be transferable on the books of the Corporation or the stock transfer agent, if any, for the Series C Preferred Stock, and (ii) the holder of such shares, as such, shall not be entitled to receive any dividends or other distributions (other than any accrued dividends unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon), to receive notices or to vote such shares or to exercise or to enjoy any other powers, preferences or rights in respect thereof, other than the right, upon surrender of the certificate or certificates representing such shares, to receive a certificate or certificates for the number of shares of Common Stock into which such shares shall have been converted. On the Conversion Date, all such shares of Series C Preferred Stock shall be retired and canceled and shall not be reissued.

(d) *Adjustments to Conversion Price.*

(A) The Conversion Price shall be adjusted from time to time as follows:

(i) In case the Corporation shall pay or make a dividend or other distribution on any class of capital stock of the Corporation in Common Stock, the Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately prior to any Common Stock dividend or distribution and the denominator shall be the sum of such number of shares of Common Stock outstanding immediately prior to any Common Stock dividend or distribution plus the total number of shares constituting such Common Stock dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (i), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation.

(ii) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock and the Series C Preferred Stock is not similarly subdivided, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock and the Series C Preferred Stock is not similarly combined, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iii) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% of such price; provided, however, that any adjustments which by reason of this subparagraph (iii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(iv) Whenever the Conversion Price is adjusted as herein provided, (x) the Corporation shall promptly file with any Conversion Agent a certificate of a firm of independent public accountants setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, and the manner of computing the same, which certificate shall be conclusive evidence of the correctness of such adjustment, and (y) a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price shall forthwith be given by the Corporation to any Conversion Agent and mailed by the Corporation to each holder of shares of Series C Preferred Stock at their last address as the same appears on the books of the Corporation.

(B) In case of any consolidation of the Corporation with, or merger of the Corporation into, any other entity (other than a merger or consolidation in which the Corporation is the continuing corporation) or any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, or in the case of a statutory exchange of securities with another corporation, or any reclassification of shares, the Conversion Price shall not be adjusted but each holder of a share of Series C Preferred Stock then outstanding shall have the right thereafter to convert such share only into the kind and amount of securities, cash and other property which such holder would have owned or have been entitled to receive immediately after such consolidation, merger, sale, conveyance, exchange or reclassification had such share of Series C Preferred Stock been converted immediately prior to such consolidation, merger, sale, conveyance, exchange or reclassification. Provision shall be made in any such consolidation, merger, sale, conveyance, exchange or reclassification for adjustments in the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section (A). The above provisions shall similarly apply to successive consolidations, mergers, sales, conveyances, exchange or reclassification.

For purposes of this Section 4, "Common Stock" includes any stock of any class of the Corporation which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which is not subject to redemption by the Corporation. However, subject to the provisions of paragraph (B) above, shares issuable on conversion of shares of Series C Preferred Stock shall include only shares of the class designated as Common Stock of the Corporation on the date of the initial issuance of Series C Preferred Stock by the Corporation, or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation

In case;

(i) the Corporation shall declare a stock split, stock dividend (or any other distribution) on its Common Stock that would cause an adjustment to the Conversion Price of the Series C Preferred Stock pursuant to the terms of subparagraph (i) of Paragraph (A) above; or

(ii) the Corporation shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any other rights; or

(iii) of any reclassification of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation, merger or share exchange to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or of the sale or conveyance, of the property of the Corporation as an entirety or substantially as an entirety; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed with any Conversion Agent, and shall cause to be mailed to all holders of shares of Series C Preferred Stock at each such holder's last address as the same appears on the books of the Corporation, at least 20 days (or 10 days in any case specified in clause (i) or (ii) above) prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, conveyance, dissolution, liquidation or winding up. Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings described in clauses (i) through (iv) above.

(C) All shares of Series C Preferred Stock converted as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices, to vote and to further accrual of dividends, if any, shall immediately cease and terminate upon such conversion (except only the right of the holder, thereof to receive shares of the Common Stock and cash in lieu of actual shares in exchange therefor pursuant to the term hereof).

5. **Mandatory Conversion.**

(a) *Trigger Events.* Beginning any time after the Series C Issuance Date, if the closing price of the sale of shares of Common Stock on the NYSE Amex (or the Corporation's principal securities exchange, if other than the NYSE Amex) exceed $2.50 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), for a period of twenty (20) out of thirty (30) consecutive trading days, and if the dollar value of the trading volume of the Common Stock for each day during such twenty (20) out of thirty (30) consecutive trading days equals or exceeds $250,000, the Corporation may require the holders of Series C Preferred Stock to convert the Preferred Stock to Common Stock, on ten (10) days notice (the "Mandatory Conversion Time"), based on the Conversion Price.

(b) *Procedural Requirements.* All holders of record of shares of Series C Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series C Preferred Stock pursuant to this Section 5. Upon receipt of such notice, each holder of shares of Series C Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, including medallion seal, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to Section 5, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Section 5(b). As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series C Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Section 11 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series C Preferred Stock converted. Such converted Series C Preferred Stock shall be retired and canceled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series C Preferred Stock accordingly.

6. **Redemption.**

(a) *Optional Redemption.* Prior to the seventh anniversary of the Series C Issuance Date, the Corporation may at any time it may lawfully do so, at the option of the Board of Directors and after giving the holders of shares Series C Preferred Stock written notice of Directors and after giving the holders of shares of Series C Preferred Stock written notice thereof containing the redemption date (which date shall not be less than 20 days from the date of such notice) (the "Redemption Date") and offering the holders of the shares of Series C Preferred Stock at least such 20 days to convert all such shares into shares of Common Stock pursuant to Section 4, redeem in whole, but not in part, all the shares of Series C Preferred Stock then outstanding by paying in cash, for each share, an amount equal to the sum of (i) the Original Series C Issue Price and (ii) all accrued but unpaid Annual Dividends on such share (such sum, as adjusted for any stock splits, dividends combinations, subdivisions, recapitalizations, reclassifications or the like, the "Optional Redemption Price").

(b) *Mandatory Redemption.* At any time following the seventh anniversary of the Series C Issuance Date, within sixty (60) days after the receipt by the Corporation of the written request of the holders of not less than a majority of the shares of Series C Preferred Stock then outstanding, the Corporation shall redeem all of the shares of Series C Preferred Stock (or, if less, the maximum amount it may lawfully redeem) by paying in cash, for each share, an amount equal to the sum of (i) the Original Series C Issue Price, and (ii) all accrued but unpaid Annual Dividends on such share (such sum, as adjusted for any stock splits, dividends combinations, subdivisions, recapitalizations, reclassifications or the like, the "Mandatory Redemption Price").

7. **Voting Rights**. Holders of shares of Series C Preferred Stock shall not be entitled to vote, as a separate class or otherwise on any matter, and their consent shall not be required for any corporate action, except as otherwise required by law or as expressly provided in this Certificate of Designations or the Certificate of Incorporation.

8. **Amendments**. For so long as any shares of Series C Preferred Stock remain outstanding, consent of the holders of at least a majority of the then outstanding shares of the Series C Preferred Stock voting together as a class shall be required for any amendment to this Certificate of Designations or any waivers of the rights of the holders of shares of Series C Preferred Stock or under any other agreement to which all of the holders of shares of Series C Preferred Stock are a party.

9. **Restrictions on Transfer**. Each certificate representing shares of Series C Preferred Stock and each certificate representing shares of Common Stock issuable upon conversion of any shares of Series C Preferred Stock shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SHARES REPRESENTED BY THIS CERTIFICATE AND ANY SHARES ACQUIRED UPON THE CONVERSION OF THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SUCH ACT, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW."

10. **Reservation of Shares**. The Corporation shall at all times reserve and keep available, out of its authorized and un-issued shares of Common Stock, solely for the purpose of effecting the conversion of the Series C Preferred Stock, including shares of Series C Preferred Stock issued as payment of dividends, such number of shares of its Common Stock as shall be sufficient to effect the conversion of all shares of Series C Preferred Stock from time to time outstanding.

11. **Fractional Shares**. No fractional shares of Common Stock shall be issued upon conversion of the Series C Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation, or it may round to the nearest number of whole shares, in the Board's sole discretion. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series C Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

12. **Severability of Provisions.** Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

13. **Status of Reacquired Shares.** Shares of Series C Preferred Stock issued and reacquired by the Corporation (including, without limitation, shares of Series C Preferred Stock which have been converted into Common Stock) shall have the status of authorized and unissued shares of Preferred Stock, undesignated as to series, subject to later issuance.

14. **Preemptive Rights.** Holders of shares of Series C Preferred Stock are not entitled to any preemptive or subscription rights in respect to any securities of the Corporation.

FURTHER RESOLVED, that the statements contained in the foregoing resolutions creating and designating the said Series C issue of Preferred Stock and fixing the number, voting tights, powers, preferences and relative, optional, participating, and other special rights and the qualifications, limitations, restrictions, and other distinguishing characteristics thereof shall, upon the effective date of said series, be deemed to be included in and be a part of the Certificate of Incorporation of the Corporation pursuant to the provisions of Sections 104 and 151 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, NeoStem Inc. has caused this Certificate to be signed on its behalf by its Chief Executive Officer, this 29 th day of October, 2009.

NEOSTEM, INC.

By: /s/ Robin L. Smith
Name: Robin L. Smith
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:26 PM 12/09/2009
FILED 02:24 PM 12/09/2009
SRV 091083008 - 0899444 FILE

STATE OF DELAWARE
CERTIFICATE OF CORRECTION

Neostem, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware.

DOES HEREBY CERTIFY:

1. The name of the corporation is Neostem, Inc.
2. That a Certificate of Designation of Series C Convertible Preferred Stock
(Title of Certificate Being Corrected)
was filed by the Secretary of State of Delaware on October 30, 2009 and that said Certificate requires correction as permitted by Section 103 of the General Corporation Law of the State of Delaware.
3. The inaccuracy or defect of said Certificate is: (must be specific)
in Article 2 Dividends and Distributions section (a) Amount on page 2 there is a date missing in the paragraph.
4. Article 2(a) of the Certificate is corrected to read as follows:
Please see Rider 1 attached hereto.

IN WITNESS WHEREOF, said corporation has caused this Certificate of Correction this 12 day of November, A.D. 2009.

By: /s/ Catherine M. Vaczy
Authorized Officer
Name: Catherine M. Vaczy
Print or Type
Title: Vice President and General Counsel

Rider 1 to Certificate of Correction.

Article 2. Dividends and Distributions

(a) *Amount.* The holders of shares of Series C Preferred Stock shall be entitled to receive an annual dividend of 5% of the Agreed Stated Value (the "Annual Dividend"), payable annually on the first day of January (the "Annual Dividend Payment Date"). Payment of the Annual Dividend may be either in cash or in kind as determined by the Board of Director. In the event that the Annual Dividend Payment Date shall fall due on a Saturday, Sunday or legal holiday in the State of Delaware, the dividend due on such date shall be paid on the next day thereafter that is not a Saturday, Sunday or legal holiday in the State of Delaware. The Annual Dividend shall be cumulative and shall begin to accrue on outstanding shares of Series C Preferred Stock from and after October 30, 2009 (the "Series C Issuance Date") on a daily basis computed on the basis of a 365-day year and compounded annually whether or not the Corporation shall have assets legally available therefore.

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:30 AM 11/18/2010
FILED 10:30 AM 11/18/2010
SRV 101100631 - 0899444 FILE

CERTIFICATE OF ELIMINATION

OF THE

SERIES C CONVERTIBLE PREFERRED STOCK

OF

NEOSTEM, INC.

Pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, it is hereby certified that:

1. The name of the corporation is NeoStem, Inc. (hereinafter referred to as the "Corporation").

2. The designation of the series of shares of stock of the Corporation to which this certificate relates is "Series C Convertible Preferred Stock."

3. Pursuant to Section 151 of the General Corporation Law of the State of Delaware and authority granted in the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), the Board of Directors of the Corporation previously designated 8,177,512 shares of preferred stock as Series C Convertible Preferred Stock, par value $0.01 per share (the "Series C Convertible Preferred Stock"), and established the voting powers, designations, preferences, and the relative, participating, optional, or other rights, and the qualifications, limitations, and restrictions of such series as set forth in the Certificate of Designations of Series C Convertible Preferred Stock of NeoStem, Inc. (the "Series C Certificate of Designations"), with respect to such Series C Convertible Preferred Stock, which Series C Certificate of Designations has been heretofore filed with the Secretary of State of the State of Delaware. None of the authorized shares of Series C Convertible Preferred Stock are outstanding and none will be issued subject to the Series C Certificate of Designations.

4. The Board of Directors of the Corporation has duly adopted the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that none of the authorized shares of Series C Convertible Preferred Stock are outstanding, and that none will be issued subject to the Series C Certificate of Designations, and

FURTHER RESOLVED, that pursuant to the authority conferred on the Board of Directors by the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors hereby eliminates the Series C Convertible Preferred Stock, and

FURTHER RESOLVED, that the appropriate officers of the Corporation, or any one or more of them, are hereby authorized, in the name and on behalf of the Corporation, pursuant to Section 151(g) of the General Corporation Law of the State of Delaware, to execute and file a Certificate of Elimination of the Series C Convertible Preferred Stock of NeoStem, Inc. with the Secretary of State of the State of Delaware, which shall have the effect when filed with the Secretary of State of the State of Delaware of eliminating from the Certificate of Incorporation all matters set forth in the Series C Certificate of Designations with respect to such Series C Convertible Preferred Stock, and

FURTHER RESOLVED, that in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation is hereby amended to eliminate all references to the Series C Convertible Preferred Stock, and the shares that were designated to such series hereby are returned to the status of authorized but unissued shares of the preferred stock of the Corporation, without designation as to series.

Signed on November 18, 2010

NEOSTEM, INC.

By: /s/ Robin Smith
Name: Robin Smith
Title: CEO

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:30 AM 11/18/2010
FILED 10:31 AM 11/18/2010
SRV 101100633 - 0899444 FILE

CERTIFICATE OF ELIMINATION

OF THE

SERIES D CONVERTIBLE REDEEMABLE PREFERRED STOCK

OF

NEOSTEM, INC.

Pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, it is hereby certified that:

1. The name of the corporation is NeoStem, Inc. (hereinafter sometimes referred to as the "Corporation").

2. The designation of the series of shares of stock of the Corporation to which this certificate relates is "Series D Convertible Redeemable Preferred Stock."

3. Pursuant to Section 151 of the General Corporation Law of the Stale of Delaware and authority granted in the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), the Board of Directors of the Corporation previously designated 1,600,000 shares of preferred stock as Series D Convertible Redeemable Preferred Stock, par value $0.01 per share (the "Series D Convertible Redeemable Preferred Stock"), and established the voting powers, designations, preferences, and the relative, participating, optional, or other rights, and the qualifications, limitations, and restrictions of such series as set forth in the Certificate of Designation of Series D Convertible Redeemable Preferred Stock of NeoStem, Inc. (the "Series D Certificate of Designations"), with respect to such Series D Convertible Redeemable Preferred Stock, which Series D Certificate of Designations has been heretofore filed with the Secretary of State of the State of Delaware. None of the authorized shares of Series D Convertible Redeemable Preferred Stock are outstanding and none will be issued subject to the Series D Certificate of Designations.

4. The Board of Directors of the Corporation has duly adopted the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that none of the authorized shares of Series D Convertible Redeemable Preferred Stock are outstanding, and that none will be issued subject to the Series D Certificate of Designations, and

FURTHER RESOLVED, that pursuant to the authority conferred on the Board of Directors by the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors hereby eliminates the Series D Convertible Redeemable Preferred Stock, and

FURTHER RESOLVED, that the appropriate officers of the Corporation, or any one or more of them, are hereby authorized, in the name and on behalf of the Corporation, pursuant to Section 151(g) of the General Corporation Law of the State of Delaware, to execute and file a Certificate of Elimination of the Series D Convertible Redeemable Preferred Stock of NeoStem, Inc. with the Secretary of State of the State of Delaware, which shall have the effect when filed with the Secretary of State of the State of Delaware of eliminating from the Certificate of Incorporation all matters set forth in the Series D Certificate of Designations with respect to such Series D Convertible Redeemable Preferred Stock, and

FURTHER RESOLVED, that in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation is hereby amended to eliminate all references to the Series D Convertible Redeemable Preferred Stock, and the shares that were designated to such series hereby are returned to the status of authorized but unissued shares of the preferred stock of the Corporation, without designation as to series.

Signed on November 18, 2010

NEOSTEM, INC.

By: /s/ Robin Smith
Name: Robin Smith
Title: CEO

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:30 AM 11/18/2010
FILED 10:31 AM 11/18/2010
SRV 101100633 - 0899444 FILE

CERTIFICATE OF DESIGNATIONS OF THE POWERS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF PREFERRED STOCK AND QUALIFICATIONS, LIMITATIONS AND RESTRICTIONS THEREOF
of
SERIES E 7% SENIOR CONVERTIBLE PREFERRED STOCK
for
NEOSTEM, INC.

NEOSTEM, INC., a Delaware corporation (the "Corporation"), pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, does hereby make this Certificate of Designations and does hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation, the Board of Directors duly adopted the following resolutions, which resolutions remain in full force and effect as of the date hereof:

RESOLVED, that, pursuant to Article Fourth of the Certificate of incorporation of the Corporation, the Board of Directors hereby authorizes the issuance of, and fixes the designation and preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of a series of Preferred Stock consisting of 10,582,011 shares, par value $0.01 per share, to be designated "Series E 7% Senior Convertible Preferred Stock" (the "Preferred Shares").

RESOLVED, that each of the Preferred Shares shall rank equally in all respects and shall be subject to the following terms and provisions:

1. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

(a) "Bloomberg" means Bloomberg Financial Markets.

(b) "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

(c) "Common Stock" means the common stock, par value $0,001 per share, of the Corporation.

(d) "Common Shares" means fully paid, validly issued and non-assessable shares of Common Stock.

(e) "Dollar Volume Limitation" means fifteen percent (15%) of the aggregate dollar trading volume of the Common Stock on the NYSE Amex Equities (or other applicable Trading Market) over the twenty-two (22) consecutive Trading Day period ending on the Trading Day immediately preceding the date of the Mandatory Redemption Notice (as defined below) or Optional Redemption Notice (as defined below), as applicable. For the purposes of this section the term "dollar trading volume" for any Trading Day shall be determined by multiplying the Daily VWAP by the volume as reported on Bloomberg for such Trading Day.

(f) "Daily VWAP" means, for any date, (i) the daily volume weighted average price of the Common Stock for such date on the NYSE Amex Equities as reported by Bloomberg (based on a Trading Day from 9:30 a.m. New York City Time to 3:59 p.m. New York City Time); (ii) if the Common Stock is not then listed on the NYSE Amex Equities, the daily volume weighted average price of the Common Stock for such date on such other Trading Market where the Common Stock is then listed as reported by Bloomberg (based on a Trading Day from 9:30 a.m. New York City Time to 3:59 p.m. New York City Time); (iii) if the foregoing do not apply, the volume weighted average price of the Common Stock in the over-the-counter market on the electronic bulletin board for the Common Stock as reported by Bloomberg, or, if no volume weighted average price is reported for such security by Bloomberg, the highest bid as reported on the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.) at the close of trading; or (iv) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Required Holders and reasonably acceptable to the Corporation.

(g) "Equity Conditions" means each of the following: (i) on each day during the Equity Conditions Measuring Period, all Common Shares to be issued on the applicable Mandatory Redemption Date (or such other date on or event for which the Equity Conditions are required to be satisfied) shall be eligible for resale by the Holder without restriction and without need for additional registration under any applicable federal or state securities laws, and the Corporation shall have no knowledge of any fact that would cause any Common Shares not to be so eligible for resale by the Holder without restriction and without need for additional registration under any applicable federal or state securities laws; (ii) on each day during the Equity Conditions Measuring Period, the Common Shares arc designated for listing on a Trading Market and shall not have been suspended from trading on such Trading Market nor shall delisting or suspension by such exchange or market have been threatened or pending in writing by such exchange nor shall there be any Securities and Exchange Commission ("SEC") or judicial stop trade order or trading suspension stop order; (iii) any Common Shares to be issued in connection with the applicable Mandatory Redemption Date (or such other date on or event for which the Equity Conditions are required to be satisfied) may be issued in full without violating the rules or regulations of the Trading Market or any applicable laws; (iv) on each day during the Equity Conditions Measuring Period, there shall not have occurred and be continuing, unless waived by the Holder, either (A) a Trigger Event (as defined below) or (B) an event that with the passage of time or giving of notice would constitute a Trigger Event; (v) on each day during the Equity Conditions Measuring Period, the Corporation has not provided any Holder with any non-public information in breach of Section 3.8 of the Purchase Agreement; (vi) on each day during the Equity Conditions Measuring Period, neither the Registration Statement (as defined in the Purchase Agreement) nor the Prospectus (as defined in the Purchase Agreement) nor any Prospectus Supplements (as defined in the Purchase Agreement) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading and such Registration Statement, such Prospectus and such Prospectus Supplements comply with all applicable securities laws as to form and substance (unless all Common Shares issuable on the applicable Mandatory Redemption Date (or such other date requiring payment in Common Shares) may be resold by the Holder pursuant to Rule 144 under the Securities Act of 1933, as amended (the "Securities Act") without volume limitations or any public information requirements or such other exemption from registration that would permit the Holder to resell such Common Shares without restriction and without need for additional registration under any securities laws); (vii) the Corporation's transfer agent for the Common Shares is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer Program; and (ix) all Common Shares to be issued in connection with the applicable Mandatory Redemption Date (or such other date on or event for which the Equity Conditions are required to be satisfied) are duly authorized and will be validly issued, fully paid and non-assessable upon issuance, free and clear of all liens, claims or encumbrances, and the issuance thereof will not require any further approvals of the Corporation's Board of Directors or stockholders. All references to the "Registration Statement" or "Prospectus" shall include any amendments or supplements thereto, as filed from time to time, including, without limitation, any Exchange Act (as defined below) filings incorporated by reference.

(h) "Equity Conditions Measuring Period" means the period beginning twenty (20) Trading Days prior to the applicable Mandatory Redemption Date (or such other date on or event for which the Equity Conditions are required to be satisfied) and ending on and including such Mandatory Redemption Date. For the avoidance of doubt, the Equity Conditions Measuring Period for each Mandatory Redemption Date shall include the Stock Payment Pricing Period and such Mandatory Redemption Date.

(i) "Equity Line" means (i) the Common Stock Purchase Agreement, dated May 19, 2010, by and between the Corporation and Commerce Court Small Cap Value Fund, Ltd. and the transactions contemplated thereby and/or (ii) any other similar agreement, contract, arrangement or understanding commonly known as an "equity line" between the Corporation and any person.

(j) "Excluded Securities" means (a) Common Shares or Common Stock Equivalents issued pursuant to a stock option plan that has been approved by the Board of Directors and stockholders of the Corporation, pursuant to which the Corporation's securities may be issued only to a person eligible for award under such plan, (b) Common Shares or Common Stock Equivalents issued to employees or consultants (including in connection with investor relations activities) for compensatory purposes, (c) Common Shares or Common Stock Equivalents issued upon the exercise or conversion of Common Stock Equivalents outstanding on the date hereof, (d) Common Shares or Common Stock Equivalents issued to investors in the common stock and warrant offering contemplated by Section 4.2(i) of the Purchase Agreement, (e) Common Shares or Common Stock Equivalents issued in the pending transaction with Progenitor Cell Therapy, LLC ("Progenitor") as currently contemplated by that certain Agreement and Plan of Merger, dated September 23, 2010, by and among the Corporation, NBS Acquisition Company LLC and Progenitor (the "Merger Agreement"), (f) Common Shares or Common Stock Equivalents issued in the transactions contemplated by the Purchase Agreement, including pursuant to the Certificate of Designations or the Warrants, and (g) Common Shares or Common Stock Equivalents issued or deemed to be issued in connection with any acquisition by the Corporation, whether through a merger, an acquisition of stock or an acquisition of assets, or a license, of any business, product, assets or technologies, or any strategic partnership, strategic investment or joint venture involving any technology or product, or any other transaction the primary purpose of which is not to raise capital; provided however, that the number of Common Shares which may be issued pursuant to this clause (g) in any transaction, or series of related transactions, shall not exceed 33% of the number of Common Shares outstanding immediately prior to any such transaction.

(k) “Holder” means each holder of the Preferred Shares.

(l) “Initial Issuance Date” means November 19, 2010.

(m) “Mandatory Redemption Shares” means, with respect to (a) any Mandatory Redemption Date (other than the Maturity Date) an amount equal to l/27th of the Preferred Shares initially issued pursuant to the Purchase Agreement (regardless of whether any Holder has converted any shares of Preferred Stock pursuant to Section 7 or the Corporation has optionally redeemed any shares of Preferred Stock pursuant to Section 8) and (b) the Maturity Date, all outstanding Preferred Shares.

(n) “Mandatory Redemption Date” means March 19, 2011, and the 19th day of each calendar month thereafter (or the next Trading Day thereafter) and ending on and including the Maturity Date. Notwithstanding anything contained herein to the contrary and for all purposes hereunder, the Maturity Date shall be deemed to be a Mandatory Redemption Date.

(o) “Maturity Date” means May 20, 2013.

(p) “Purchase Agreement” means the Securities Purchase Agreement, of even date herewith, by and among the Corporation and the initial purchasers of Preferred Shares thereunder.

(q) “Required Holders” means the Holders of Preferred Shares representing at least a majority of the aggregate Preferred Shares then outstanding.

(r) “Stock Payment Price” means, with respect to any date when any amount hereunder is due and payable, that price which shall be computed as 92% of the arithmetic average of the five lowest Daily VWAPs of the Common Shares during the Stock Payment Pricing Period. All such determinations will be appropriately adjusted for any stock split, stock dividend, stock combination or other similar transaction.

(s) “Stock Payment Pricing Period” means, with respect to any Mandatory Redemption Date or any other date when any amount hereunder is due and payable, the twenty (20) Trading Days immediately prior to such date. For the avoidance of doubt, the Stock Payment Pricing Period does not include the Mandatory Redemption Date or such other date when any amount hereunder is due and payable.

(t) “Subsidiaries” shall have the meaning as set forth in the Purchase Agreement.

(u) "Trading Day" means 9:30AM to 3:59PM on any day on which the Common Shares are traded on a Trading Market, or, if the Common Shares are not so traded, a Business Day.

(v) "Trading Market" means the NYSE Amex Equities, the New York Stock Exchange or the NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market.

(w) "Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest).

(x) "Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under this Certificate of Designations.

(y) "Transfer Agent" means Continental Stock Transfer or such other person designated by the Corporation as the transfer agent for the Common Shares.

(z) "Warrants" shall have the meaning as set forth in the Purchase Agreement.

2. Designation. There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Series E 7% Senior Convertible Preferred Stock" (the "Preferred Stock"). The number of shares constituting such series shall be 10,582,011.

3. Cumulative Dividends. The Holders of the Preferred Shares shall be entitled to receive dividends payable in cash (or, at the Corporation's option in Common Shares pursuant to Section 6) on the Liquidation Preference (as defined below) of such Preferred Share at the per share rate of seven percent (7%) per annum, which shall be cumulative. Dividends on the Preferred Shares shall commence accruing on the Initial Issuance Date and shall be computed on the basis of a 360-day year of twelve 30-day months. Dividends shall be payable in arrears on each Mandatory Redemption Date.

4. Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidation Event"), the Holders of the Preferred Shares shall be entitled to receive, out of the assets of the Corporation available for distribution to stockholders ("Liquidation Funds"), prior and in preference to any distribution of any assets of the Corporation to the holders of any other class or series of equity securities, the amount of one dollar ($1.00) per share plus all accrued but unpaid dividends (the "Liquidation Preference"). After payment of the full amount of the Liquidation Preference, in the case of a Liquidation Event, the Holders will not be entitled to any further participation in any distribution of assets of the Corporation; provided that the foregoing shall not affect any rights which Holders may have with respect to any requirement that the Corporation repurchase the Preferred Shares or for any right to monetary damages. All the preferential amounts to be paid to the Holders of the Preferred Shares under this Section 4 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Corporation to the holders of shares of other classes or series of preferred stock of the Corporation junior in rank to the Preferred Shares in connection with a Liquidation Event. A Change of Control (as defined below) shall not, *ipso facto*, be deemed a Liquidation Event.

5. Issuance of Preferred Shares. The Preferred Shares shall be issued by the Corporation pursuant to the Purchase Agreement.

6. Mandatory Monthly Redemption.

(a) *General*. On each applicable Mandatory Redemption Date, the Corporation shall redeem the Mandatory Redemption Shares at an aggregate redemption price equal to the sum of (x) the product of (A) the Liquidation Preference and (B) the number of Mandatory Redemption Shares required to be redeemed on such Mandatory Redemption Date plus (y) any and all accrued but unpaid dividends on all of the outstanding Preferred Shares (the "Mandatory Redemption Price"). Subject to Section 6(g), the Mandatory Redemption Price shall be payable, at the Corporation's option, in cash or Common Shares or any combination of cash and Common Shares, subject to the provisions of this Section 6; provided, however, that no portion of the Mandatory Redemption Price may be paid in Common Shares unless the Equity Conditions are satisfied or waived by the Required Holders in writing prior to delivery of the applicable Mandatory Redemption Notice (as defined below); provided, further, however, that the portion of the applicable Mandatory Redemption Price that the Corporation elects to pay in Common Shares (if any) shall not exceed the Dollar Volume Limitation (unless waived by the Required Holders in writing).

(b) *Mandatory Redemption Notice.* On a date not less than twenty-two (22) Trading Days, but in no event more than twenty-five (25) Trading Days, prior to each Mandatory Redemption Date (the "Mandatory Redemption Notice Date"), the Corporation shall deliver a written notice (a "Mandatory Redemption Notice") to the Holders, which shall either: (i) confirm that the entire applicable Mandatory Redemption Price shall be paid in cash; or (ii) (A) state that the Corporation elects to pay all or a portion of the Mandatory Redemption Price in Common Shares, (B) specify the portion that the Corporation elects to pay in cash (expressed in dollars) (such amount, the "Cash Payment Amount") and the portion that the Corporation elects to pay in Common Shares (expressed in dollars) (such portion a "Stock Payment Amount"), which amounts when added together must equal the applicable Mandatory Redemption Price, (C) certify that the Equity Conditions are then satisfied (or waived by the Required Holders), (D) state the Dollar Volume Limitation (expressed in dollars) and certify that the Stock Payment Amount does not exceed such Dollar Volume Limitation and (E) certify that the Maximum Share Amount (as defined below) has not been exceeded. If (x) the Corporation does not timely deliver a Mandatory Redemption Notice in accordance with this Section 6(b) or (y) the Equity Conditions are not satisfied (unless waived by the Required Holders), then the Corporation shall be deemed to have delivered, a Mandatory Redemption Notice electing to pay the entire Mandatory Redemption Price in cash. Any Cash Payment Amount shall be paid in accordance with Section 6(c) and any Stock Payment Amount shall be paid in accordance with Section 6(d).

Each Mandatory Redemption Notice, whether actually given or deemed given, shall be irrevocable.

(c) *Mechanics of Cash Payment.* On each Mandatory Redemption Date, to the extent that the Corporation elects to pay all or any portion of the Mandatory Redemption Price in cash, then the Corporation shall pay all or such portion of the Mandatory Redemption Price, as applicable, by wire transfer of immediately available funds in accordance with the wire instructions of each Holder provided to the Corporation in writing. If the Corporation fails to pay such portion of the Mandatory Redemption Price ("Cash Payment Failure") to be paid in cash on the applicable Mandatory Redemption Date (the "Applicable Cash Payment"), then the Corporation shall pay damages to the Holder for each day after such Mandatory Redemption Date in an amount in equal to two percent (2%) of such Applicable Cash Payment, but in no event in excess of twenty-four percent (24%) ("Cash Payment Liquidated Damages"). Notwithstanding the foregoing, the Corporation shall only be liable for Cash Payment Liquidated Damages to the extent that there is more than one (1) Cash Payment Failure in any twelve (12) month period. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely pay any Applicable Cash Payment as required pursuant to the terms hereof.

(d) *Mechanics of Stock Payment.*

(i) To the extent that the Corporation elects (or is required pursuant to Section 6(g)) to pay all or any portion of the applicable Mandatory Redemption Price in Common Shares, the applicable Stock Payment Amount shall be paid as follows:

(A) twenty-one (21) Trading Days prior to the applicable Mandatory Redemption Date (the "First Advance Date"), the Corporation shall deliver to the Holders a number of Common Shares determined by dividing (x) the Stock Payment Amount for such Mandatory Redemption Date by (y) ninety-two percent (92%) of the Daily VWAP on the Trading Day immediately preceding such Advance Date (the "First Advance Shares");

(B) eleven (11) Trading Days prior to the applicable Mandatory Redemption Date (the "Second Advance Date" and together with the First Advance Date, the "Advance Dates" and each, an "Advance Date"), the Corporation shall deliver to the Holders a number of Common Shares equal to the positive difference (if any) between (x) the quotient of (1) the Stock Payment Amount and (2) ninety-two percent (92%) of the average of the five lowest Daily VWAPs during the first (10) ten Trading Days of the applicable Stock Payment Pricing Period and (y) the number of First Advance Shares delivered to the Holders pursuant to 6(d)(i)(B) in connection with such Mandatory Redemption Date (the "Second Advance Shares" and together with the First Advance Shares, the "Advance Shares"). For the avoidance of doubt, to the extent that the difference between clauses (x) and (y) is a negative number the Corporation shall not be required to deliver any Common Shares to the Holders pursuant to this Section 6(d)(i)(B); and

(C) not later than three (3) Trading Days after the applicable Mandatory Redemption Date, the Corporation shall deliver an additional number of Common Shares (the "True-Up Shares"), if any, to the Holders equal to the positive difference between (a) the Stock Payment Amount divided by the Stock Payment Price for such Mandatory Redemption Date and (b) the Advance Shares; provided; however, that if clause (b) exceeds clause (a), then each Holder shall return its pro rata portion of such excess number of Common Shares to the Corporation, and such excess shares shall immediately be deemed cancelled effective as of the applicable Mandatory Redemption Date, For the avoidance of doubt, no Holder shall have any liability to the Corporation to the extent that any Advance Shares that are returned to the Corporation pursuant to the immediately preceding sentence decrease in value following the applicable Advance Date.

(ii) Notwithstanding any other provision of this Section 6(d), to the extent that the Corporation elects to pay all or any portion of the applicable Mandatory Redemption Price in Common Shares:

(A) to the extent that the aggregate number of Advance Shares or True-Up Shares to be delivered to a Holder pursuant to this Section 6(d) in respect of any individual Stock Payment Amount would cause such Holder to exceed the Beneficial Ownership Limitation (as defined below), then, (I) the Holder shall provide written notice to the Corporation that such delivery of all or a portion of the Advance Shares or True-Up Shares would cause such Holder to exceed the Beneficial Ownership Limitation, and (II) in addition to delivery of the number of Advance Shares or True-Up Shares that would not cause such Holder to exceed the Beneficial Ownership Limitation, the Corporation shall pay to such Holder in lieu of such number of Advance Shares or True-Up Shares that would cause such Holder to exceed the Beneficial Ownership Limitation (such excess number of shares, the "Excess Shares"), not more than the later of three (3) Trading Days after the Mandatory Redemption Date or ten (10) Trading Days after the date of such Holder's written notice, an amount in cash equal to the portion of the Stock Payment Amount that would otherwise be payable in respect of the Excess Shares;

(B) to the extent that such Stock Payment Amount, when aggregated with any Common Shares already issued in respect of all of the Preferred Stock, would cause the Maximum Share Amount to be exceeded, then that portion of such Stock Payment Amount that would not exceed the Maximum Share Amount shall be delivered to the Holders hereunder in Common Shares as provided above, ratably based on the Holders' relative ownership of the outstanding Preferred Shares, and the Corporation shall pay to the Holders, not more than three (3) Trading Days after the Mandatory Redemption Date, an amount in cash equal to the Stock Replacement Payment in lieu of any portion of such Stock Payment Amount that would cause the Maximum Share Amount to be exceeded;

(C) if the Equity Conditions are neither (x) satisfied nor (y) waived in accordance with the terms hereof, as applicable, on the Trading Day immediately preceding the First Advance Date and/or on the First Advance Date, or if the Daily VWAP cannot be determined on the Trading Day immediately preceding the First Advance Date, or if the Corporation fails to deliver the First Advance Shares to the Holders on the First Advance Date, then the Holder may, at its option upon written notice to the Corporation, require the Corporation to pay to such Holder, not later than three (3) Trading Days after the Mandatory Redemption Date, an amount of cash equal to the Stock Replacement Payment in lieu of such Stock Payment Amount; or

(D) if subsequent to the delivery of the First Advance Shares (A) the Equity Conditions are neither (x) satisfied nor (y) waived in accordance with the terms hereof, as applicable, on any day of the Stock Payment Pricing Period or (B) if the Daily VWAP cannot be determined on any day of the Stock Payment Pricing Period, then each Holder may, at its option, elect in a written notice to the Corporation to redeliver ail or any portion of the Advance Shares to the Corporation and the Corporation shall pay to such Holder, not later than three (3) Trading Days after the Mandatory Redemption Date, an amount of cash equal to the Stock Replacement Payment in lieu of such portion of the Stock Payment Amount for which such Holder has elected in writing to redeliver Advance Shares to the Corporation. For the avoidance of doubt, to the extent this Section 6(d)(ii)(D) applies, then by the third (3rd) Trading Day after the Mandatory Redemption Date the Corporation must pay to the Holder an amount of cash and Advance Shares equal in value to at least the product of (x) a fraction the numerator of which is the average Daily VWAP of the Common Shares for the applicable Stock Payment Pricing Period and the denominator of which is the Stock Payment Price for such Stock Payment Pricing Period and (y) the entire Stock Payment Amount.

The "Stock Replacement Payment" shall be determined according to the following formula:

SRP = (X/Y) * S

For the purposes of the foregoing formula:

SRP = Stock Replacement Payment

X = the average Daily VWAP of the Common Shares for the applicable Stock Payment Pricing Period

Y = the Stock Payment Price for the applicable Stock Payment Pricing Period

S = the Stock Payment Amount (or, (A) in the case that either or both of Maximum Share Amount and/or Beneficial Ownership Limitation is exceeded as provided above, only that portion of such Stock Payment Amount that would exceed the Maximum Share Amount and/or Beneficial Ownership Limitation, as applicable, and/or (B) in the case of Section 6(d)(ii)(D) that portion of the Stock Payment Amount for which the Holder has elected in its written notice to redeliver Advance Shares to the Corporation).

(iii) Any Common Shares required to be delivered by the Corporation to a Holder under this Section 6 shall be credited to such Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system ("DWAC"). In addition, the provisions of Section 7(c) and Section 7(g) shall apply to the delivery of Common Shares under this Section 6 *mutatis mutandis* as if each date when Common Shares are required to be delivered under this Section 6 was a Share Delivery Date. Notwithstanding the foregoing, the Corporation shall only be liable for Stock Payment Liquidated Damages (as defined below) with respect to any Advance Date or Mandatory Redemption Date to the extent that the Corporation fails to deliver Common Shares when due more than once (I) in any twelve month period.

(e) Each mandatory redemption pursuant to this Section 6 (and the related payment of the Mandatory Redemption Price) shall be made pro rata among the Holders based on each Holder's relative percentage ownership of the outstanding Preferred Shares.

(f) Notwithstanding the delivery of a Mandatory Redemption Notice or any provision of this Section 6 to the contrary, the Holder may deliver a Conversion Notice with respect to all or any portion of the specific Mandatory Redemption Shares to be redeemed on the applicable Mandatory Redemption Date at any time prior to such Mandatory Redemption Date. Any Advance Shares delivered to such Holder in connection with such Mandatory Redemption Date shall count towards the number of Common Shares that Corporation shall be obligated to deliver on the applicable Share Delivery Date (as defined below), and to the extent that the Advance Shares exceeds the number of Common Shares that the Corporation would be required to deliver on the applicable Share Delivery Date, the Holder shall return such excess to the Corporation.

(g) Each and every time that the Corporation sells any Common Shares pursuant to any Equity Line, the Corporation shall immediately deliver a written notice to each Holder (an "Equity Line Draw Notice"), which Equity Line Draw Notice shall state the aggregate purchase price for such Common Shares (the "Equity Line Aggregate Purchase Price"), Each Holder may, at its option, by delivering a written notice to the Corporation, require the Corporation to pay the Mandatory Redemption Price (or the appropriate portion thereof) on the next succeeding Mandatory Redemption Date (or to the extent that the date of such Equity Line Draw notice is subsequent to the date of the Mandatory Redemption Notice for such Mandatory Redemption Date, then the next succeeding Mandatory Redemption Date) in Common Shares in an amount equal to its "pro rata portion" of the Equity Line Aggregate Purchase Price. To the extent that the Equity Line Aggregate Purchase Price exceeds the aggregate amount of the entire Mandatory Redemption Price for such Mandatory Redemption Date, then on each succeeding Mandatory Redemption Date the Holder may, at its option, by delivering a written notice to the Corporation, require the Corporation to pay its "pro rata portion" of the applicable Mandatory Redemption Price in Common Shares until the Corporation has made aggregate payments in Common Shares equal to its "pro rata portion" of the entire Equity Line Aggregate Purchase Price. Notwithstanding anything contained in this Section 6(g) to the contrary, all payments of Mandatory Redemption Price made in Common Shares shall be subject to Section 6(d) and upon the occurrence of any of the events described in Sections 6(d)(ii)(A) – (D) the Corporation shall make the appropriate Stock Replacement Payment as required by Section 6(d)(ii). For purposes of this Section 6(g), "pro rata portion" means, with respect to each Holder, the number of Preferred Shares then held by such Holder divided by the aggregate number of outstanding Preferred Shares.

7. Optional Conversion by the Holders. Each Holder shall have the right at any time and from time to time, at the option of such Holder, to convert all or any portion of the Preferred Shares held by such Holder, for such number of Common Shares, free and clear of any liens, claims or encumbrances, as is determined by dividing (i) the Liquidation Preference times the number of Preferred Shares being converted, by (ii) the Conversion Price (as defined below) in effect on the Conversion Date (as defined below). Immediately following such conversion, the persons entitled to receive the Common Shares upon the conversion of Preferred Shares shall be treated for all purposes as having become the owners of such Common Shares, subject to the rights provided herein to Holders. The term "Conversion Price" means $2.0004, subject to adjustment as provided herein.

(a) *Delivery of Conversion Notice.* To convert Preferred Shares into Common Shares on any date (a "Conversion Date"), the Holder shall give written notice (a "Conversion Notice") to the Corporation in the form of page 1 of Exhibit A hereto (which Conversion Notice will be given by facsimile transmission, e-mail or other electronic means no later than 11:59 p.m. New York City Time on such date, and sent via overnight delivery no later than one (1) Trading Day (as defined below) after such date) stating that such Holder elects to convert the same and shall state therein the number of Preferred Shares to be converted and the name or names in which such Holder wishes the certificate or certificates for Common Shams to be issued. If required by Section 14, as soon as possible after delivery of the Conversion Notice, such Holder shall surrender the certificate or certificates representing the Preferred Shares being converted, duly endorsed, at the office of the Corporation.

(b) *Mechanics of Conversion.* The Corporation shall, promptly upon receipt of a Conversion Notice (but in any event not less than one (1) Trading Day after receipt of such Conversion Notice), (I) send, via facsimile, e-mail or other electronic means a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent (as defined below), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (II) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice (the "Share Delivery Date"), credit such aggregate number of Common Shares to which the Holder shall be entitled to such Holder's or its designee's balance account with DTC via DWAC. If the number of Preferred Shares represented by the Preferred Stock certificate(s) delivered to the Corporation in connection with a Conversion Notice, to the extent required by Section 14 or to the extent otherwise requested by the Holder, is greater than the number of Preferred Shares being converted, then the Corporation shall, as soon as practicable and in no event later than three (3) Business Days after receipt of such Preferred Stock certificate(s) (the "Preferred Stock Delivery Date") and at its own expense, issue and deliver to the Holder a new Preferred Stock certificate representing the number of Preferred Shares not converted. The person or persons entitled to receive the Common Shares issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such Common Shares on the Conversion Date.

The Corporation's obligation to issue Common Shares upon conversion of Preferred Shares shall, except as set forth below, be absolute, is independent of any covenant of any Holder, and shall not be subject to: (i) any offset or defense; or (ii) any claims against the Holders of Preferred Shares whether pursuant to this Certificate, the Purchase Agreement, the Warrant or otherwise, including, without limitation, any claims arising out of any selling or short-selling activity by Holders.

(c) Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the facsimile copy of a Conversion Notice the Corporation shall fail to credit a Holder 's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Preferred Shares, then in addition to all other available remedies which such Holder may pursue hereunder and under the Purchase Agreement (including indemnification pursuant to Article 5 thereof), the Corporation shall pay additional damages to such Holder for each day after the Share Delivery Date that such conversion is not timely effected in an amount equal to two percent (2.0%) of the product of (I) the sum of the number of Common Shares not issued to the Holder on or prior to the Share Delivery Date and to which such Holder is entitled pursuant to the applicable Conversion Notice and the terms of this Certificate of Designations, and (II) the Closing Sale Price (as defined below) of the Common Stock on the Share Delivery Date, but in no event in excess of twenty- four percent (24.0%) ("Stock Payment Liquidated Damages"). In addition to the foregoing, if on the Share Delivery Date, the Corporation shall fail to credit such Holder's balance account with DTC for the number of Common Shares to which such Holder is entitled upon such Holder's conversion of Preferred Shares, and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) Common Shares to deliver in satisfaction of a sale by the Holder of the Common Shares issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the Common Shares so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Shares) shall terminate, or (it) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Shares and pay cash to the Holder in an amount equal to the difference between (if any) of the Buy-In Price and the product of (A) such number of Common Shares, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance ane/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing Common Shares upon conversion of the Preferred Shares as required pursuant to the terms hereof.

The terms "Closing Sale Price" means the last closing trade price for the Common Shares on the NYSE Amex Equities, as reported by Bloomberg, or, if the NYSE Amex Equities begins to operate on an extended hours basis and does not designate the closing trade price then the last trade price, respectively, of such security prior to 3:59 p.m., New York City Time, as reported by Bloomberg, or, if the foregoing do not apply, the last trade price, respectively, of the Common Shares in the over-the-counter market on the electronic bulletin board for the Common Shares as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the highest bid price as reported on the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.) at the close of trading. If the Closing Sale Price cannot be calculated for the Common Shares on a particular date on any of the foregoing bases, the Closing Sale Price of the Common Shares on such date shall be the fair market value as mutually determined by the Corporation and the Holder. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(d) *Adjustments to the Conversion Price.*

(i) *Adjustments for Stock Splits and Combinations.* If the Corporation shall at any time or from time to time after the Closing Date effect a stock split of the outstanding Common Stock, the applicable Conversion Price in effect immediately prior to the stock split shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Closing Date, combine the outstanding shares of Common Stock, the applicable Conversion Price in effect immediately prior to the combination shall be proportionately increased. Any adjustments under this Section 7(d)(i) shall be effective at the close of business on the date the stock split or combination occurs.

(ii) *Adjustments for Certain Dividends and Distributions.* If the Corporation shall at any time or from time to time on or after the Initial Issuance Date make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in Common Shares then, and in each event, the applicable Conversion Price in effect immediately prior to such event shall be decreased as of the time of such issuance or, in the event such record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(A) the numerator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(B) the denominator of which shall be the total number of Common Shares issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of Common Shares issuable in payment of such dividend or distribution.

(iii) *Adjustment for Other Dividends and Distributions.* If the Corporation shall at any time or from time to time on or after the Initial Issuance Date make or issue or set a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities or property other than Common Shares, then, and in each event, an appropriate revision to the applicable Conversion price shall be made and provision shall be made (by adjustments of the Conversion Price or otherwise) so that the Holders of Preferred Shares shall receive upon conversions thereof, in addition to the number of Common Shares receivable thereon, the number of securities of the Corporation or other issuer (as applicable) or other property that they would have received had the Preferred Shares been converted into Common Shares on the date of such event.

(iv) *Adjustments for Issuance of Additional Shares of Common Stock.* In the event the Corporation shall issue or sell any Common Shares (otherwise than as provided in the foregoing subsections (i) through (iii) of this Section 7 or upon the exercise or conversion of Common Stock Equivalents (as defined below) that were outstanding on or prior to the Initial Issuance Date (for the avoidance of doubt, this Section 7(d)(iv) shall apply to the issuance and sale of Common Shares under the Equity Line) (the "Additional Shares"), at a price per share less than the Conversion Price, or without consideration, the Conversion Price then in effect upon each such issuance shall be adjusted to that price (rounded to the nearest cent) determined by multiplying the Conversion Price by a fraction:

(A) the numerator of which shall be equal to the sum of (A) the number of Common Shares outstanding immediately prior to the issuance of such Additional Shares plus (B) the number of Common Shares (rounded to the nearest whole share) which the aggregate consideration for the total number of such Additional Shares so issued would purchase at a price per share equal to the men Conversion Price, and

(B) the denominator of which shall be equal to the number of Common Shares outstanding immediately after the issuance of such Additional Shares.

No adjustment shall be made under this Section 7(d)(iv) upon the issuance of any Additional Shares which are issued pursuant to the exercise, conversion or exchange rights under any Common Stock Equivalents (as defined below), if any such adjustment shall previously have been made upon the issuance of such Common Stock Equivalents (or upon the issuance of any warrant or other rights therefore) pursuant to Section 7(d)(v).

(v) *Issuance of Common Stock Equivalents.* In the event the Corporation shall issue or sell any Common Stock Equivalents (other than the Preferred Shares and the Warrants) and the price per share for which Additional Shares may be issued pursuant to any such Common Stock Equivalent shall be less than the applicable Conversion Price then in effect, or if, after any such issuance of Common Stock Equivalents, the price per share for which Additional Shares of Common Stock may be issued thereafter is amended or adjusted, and such price as so amended shall be less than the applicable Conversion Price in effect at the time of such amendment or adjustment, then the applicable Conversion Price upon each such issuance or amendment shall be adjusted as provided in Section 7(d)(iv). For purposes of the foregoing, in the case of the sale of issuance of any Common Stock Equivalents or in that case that any Common Stock Equivalents are amended and adjusted as provided in this Section 7(d)(v), the maximum number of Additional Shares issuable upon conversion, exchange or exercise of such Common Stock Equivalent shall be deemed to be outstanding at the time of such sale or issuance or amendment or adjustment, as the case may be, and no further adjustment shall be made to the Conversion Price upon the actual issuance of Additional Shares pursuant to the exercise, conversion or exchange of such Common Stock Equivalents. The term "Common Stock Equivalent" means any rights, warrants or options to purchase or other securities convertible into or exchangeable or exercisable for, directly or indirectly, any (1) Common Shares or (2) securities convertible into or exchangeable or exercisable for, directly or indirectly, Common Shares or Common Stock Equivalents.

(vi) *Certain Issues Excepted.* There shall be no adjustment to the Conversion Price pursuant to Section 7(d)(iv) or Section 7(d)(v) with respect to the sale or issuance of Excluded Securities.

(vii) *Calculation of Consideration Received.* In case any Common Stock Equivalents are issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction in which no specific consideration is allocated to such Common Stock Equivalents by the parties thereto, the Common Stock Equivalents will be deemed to have been issued for a consideration of $.01. If any Common Shares or Common Stock Equivalents arc issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount received by the Corporation therefor. If any Common Stock or Common Stock Equivalents arc issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair market value of such consideration. If any Common Stock or Common Stock Equivalents are issued to the owners of the non surviving entity in connection with any merger in which the Corporation is the surviving entity, the amount of consideration therefor will be deemed to be the fair market value of such portion of the net assets and business of the non surviving entity as is attributable to such Common Stock or Common Stock Equivalents, as the case may be. The fair market value of any consideration other than cash or securities will be determined jointly by the Corporation and the Holders of the Preferred Shares. If such parties are unable to reach agreement within 10 days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair market value of such consideration will be determined within five (5) Business Days after the tenth (10th) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Corporation and the Required Holders. The determination of such appraiser shall be deemed binding upon all parries absent manifest error or fraud and the fees and expenses of such appraiser shall be borne by the Corporation.

(e) *Notice of Record Date.* In the event of any taking by the Corporation of a record date of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any security or right convertible into or entitling the holder thereof to receive additional Common Shares, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall deliver to each Holder at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, security or right and the amount and character of such dividend, distribution, security or right.

(f) *Reservation of Stock Issuable Upon Conversion.* The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purposes of effecting the conversion and/or redemption of the Preferred Shares, an amount of Common Shares equal to 200% of the number of shares issuable upon conversion of the Preferred Shares at the current Conversion Price (the "Required Reserve Amount"). If at any time while any of the Preferred Shares remain outstanding the Corporation does not have a sufficient number of authorized and unreserved Common Shares to satisfy its obligation to reserve for issuance upon conversion and/or redemption of the Preferred Shares at least a number of Common Shares equal to the Required Reserve Amount (an "Authorized Share Failure"), then the Corporation shall promptly take all action necessary to increase the Corporation's authorized Common Shares to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days (or the lesser of (i) ninety (90) days if the proxy statement is reviewed by the staff of the SEC or (ii) ten (10) days after the staff of the SEC indicates that it has no further comments to such proxy statement) after the occurrence of such Authorized Share Failure (the "Meeting Outside Date"), the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized Shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized Common Shares and to cause its Board of Directors to recommend to the stockholders that they approve such proposal. Notwithstanding the foregoing, if at such time of an Authorized Share Failure, the Corporation is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock, the Corporation shall satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

(g) *Fractional Shares.* No fractional shares shall be issued upon the conversion of any Preferred Shares. All Common Shares (including fractions thereof) issuable upon conversion of more than one Preferred Share by a Holder thereof and all Preferred Shares issuable upon the purchase thereof shall be aggregated for purposes of determining whether the conversion and/or purchase would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion and/or purchase would result in the issuance of a fraction of a share of Common Stock, the Corporation shall, in lieu of issuing any fractional share, either round up the number of shares to the next highest whole number or, at the Corporation's option, pay the Holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the Conversion Date (as determined in good faith by the Board of Directors of the Corporation).

(h) *Reorganization, Merger or Going Private.* In case of any reorganization or any reclassification of the capital stock of the Corporation or any consolidation or merger of the Corporation with or into any other corporation or corporations or a sale or transfer of all or substantially all of the assets of the Corporation to any other person or a "going private" transaction under Rule 13e-3 promulgated pursuant to the Securities Exchange Act of 1934 (the "Exchange Act"), as amended, then, as part of such reorganization, consolidation, merger, or transfer if the holders of Common Shares receive any publicly traded securities as part or all of the consideration for such reorganization, reclassification, consolidation, merger or sale, then it shall be a condition precedent of any such event or transaction that provision shall be made such that each Preferred Share shall thereafter be convertible into such new securities at a conversion price and pricing formula which places the Holders of Preferred Shares in an economically equivalent position as they would have been if not for such event. The Corporation shall give each holder written notice at least ten (10) Trading Days prior to the consummation of any such reorganization, reclassification, consolidation, merger or sale. Notwithstanding anything contained herein to the contrary, nothing contained in this Section 7(h) shall be deemed to limit the Holder's right to require the Corporation to repurchase the Preferred Shares in accordance with Section 9.

(i) *Certificate for Conversion Price Adjustment.* The Corporation shall promptly furnish or cause to be furnished to each Holder a certificate prepared by the Corporation setting forth any adjustments or readjustments of the Conversion Price pursuant to this Section 7.

(j) *Failure to Redeliver.* If a Holder fails to re-deliver shares of Common Stock to the Corporation within ten (10) Trading Days of being required to do so pursuant to Section 6(d)(i)(C) in connection with a Mandatory Redemption or Section 8 in connection with an optional redemption by the Corporation, then, unless such Common Shares have been cancelled by the Corporation, the Corporation may, at its option, redeem a number of Preferred Share having a Liquidation Preference equal in value to the product of (x) such number of Common Shares and (y) the Stock Payment Price for such Mandatory Redemption Date or Optional Redemption Date, as the case may be, in lieu of requiring such Holder to return such Common Shares.

(k) *Cash Settlement.* Notwithstanding anything contained herein to the contrary, to the extent that the effectiveness of the Registration Statement or the ability to use the Prospectus has lapsed or such Registration Statement or Prospectus is unavailable for the issuance of Common Shares pursuant to this Section 7, then, unless such Common Shares may be resold by the Holder pursuant to Rule 144 under the Securities Act without volume limitations or any public information requirements or such other exemption from registration that would permit the Holder to resell such Common Shares without restriction and without need for additional registration under any securities laws, at the option of the Holder, any conversion of Preferred Shares into Common Shares shall be "cash settled" and the Corporation shall pay to such Holder an amount in cash equal to the sum of (x) the Liquidation Preference for each Preferred Share being converted and (y) the Conversion Premium. The "Conversion Premium" means the product of (v) the difference between (A) the Daily VWAP on the Conversion Date and (B) the Conversion Price in effect on such Conversion Date and (w) the quotient of (I) the Liquidation Preference times the number of Preferred Shares being converted and (II) the Conversion Price in effect on such Conversion Date, no later than three (3) Trading Days after the date of the applicable Conversion Notice.

8. Optional Redemption by the Corporation. The Corporation may, at its option, redeem the Preferred Stock, at any time and from time to time, in whole or in part (but not less than 1,000,000 Preferred Shares at any one time) for an amount equal to (a) the Liquidation Preference per Preferred Share plus any accrued and unpaid dividends through the Optional Redemption Date (as defined below) (the "Base Redemption Price") plus (b) (i) if such prepayment occurs on or before the twelve (12) month anniversary of the Initial Issuance Date, an amount equal to 15% of the Base Redemption Price or (ii) if such prepayment occurs at any time after the twelve (12) month anniversary of the Initial Issuance Date, an amount equal to 10% of the Base Redemption Price (the additional amount under clause (b) being referred to as the "Additional Redemption Price"). The Base Redemption Price shall be paid in cash and the Additional Redemption Price shall be paid in cash or, at the Corporation's option and provided (w) the Equity Conditions are satisfied (unless waived by the Required Holders), (x) the portion of the Additional Redemption Price to be paid in Common Shares does not exceed the Dollar Volume Limitation (unless waived by the Required Holders), (y) the Maximum Share Amount is not exceeded and (z) the Daily VWAP is available on the Trading Day immediately preceding the First Optional Redemption Advance Date (as defined below) and on each day of the Stock Payment Pricing Period, in Common Shares. The Corporation shall deliver written notice of optional redemption (an "Optional Redemption Notice") to the Holders thirty (30) Trading Days prior to the date set by the Corporation for such optional redemption (the "Optional Redemption Date"), which Optional Redemption Date may not be a Mandatory Redemption Date or any day of a Stock Payment Pricing Period with respect to any Mandatory Redemption Date. For the avoidance of doubt, each Holder may submit a Conversion Notice for the specific Optional Redemption Shares (as defined below) to be redeemed on such Optional Redemption Date at any time prior to the Optional Redemption Date notwithstanding the delivery of an Optional Redemption Notice by the Corporation. Such Optional Redemption Notice shall specify the number of preferred shares to be redeemed (the "Optional Redemption Shares") and what portion of the Additional Redemption Price will be paid in Common Shares (expressed in dollars), what portion of the Additional Redemption Price will be paid in cash (expressed in dollars) and (A) certify that the Equity Conditions are satisfied, (B) state the Dollar Volume Limitation (expressed in dollars) and certify that the portion of the Additional Redemption Price to be paid in Common Shares does not exceeded such Dollar Volume Limitation and (C) certify that the Maximum Share Amount has not been exceeded. Such Optional Redemption Notice shall be irrevocable. To the extent that any portion of the Additional Redemption Price will be paid in Common Shares, twenty-one (21) Trading Days prior to the Optional Redemption Date (the "First Optional Redemption Advance Date"), the Corporation shall advance to the Holder a number of Common Shares determined by dividing (x) that portion of the Additional Redemption Price to be paid in Common Shares by (y) 92% of the Daily VWAP on the Trading Day immediately preceding the First Optional Redemption Advance Date (the "First Optional Redemption Advance Shares"). In addition, eleven (11) Trading Days prior to the applicable Optional Redemption Date (the "Second Optional Redemption Advance Date" and together with the First Optional Redemption Advance Date, the "Optional Redemption Advance Dates" and each, an "Optional Redemption Advance Date"), the Corporation shall advance to the Holders and an additional number of Common Shares equal to the positive difference (if any) between (x) the quotient of (1) the portion of the Additional Redemption Price to be paid in Common Shares and (2) the average of the five lowest Daily VWAPs during the first ten (10) Trading Days of the applicable Stock Payment Pricing Period and (y) the number of First Optional Redemption Advance Shares delivered to the Holders pursuant to the immediately preceding sentence in connection with such Optional Redemption Date (the "Second Optional Redemption Advance Shares" and together with the First Optional Redemption Advance Shares, the "Optional Redemption Advance Shares"). Not later than three (3) Trading Days after the Optional Redemption Date, the Corporation shall deliver an additional number of Common Shares, if any, to the Holder equal to the positive difference between (I) that portion of the Additional Redemption Price to be paid in Common Shares divided by the Stock Payment Price and (2) the Optional Redemption Advance Shares. If clause (2) of the immediately preceding sentence exceeds clause (1) of the immediately preceding sentence, then each Holder shall return to the Corporation its pro rata portion of such excess number of Common Shares. For the avoidance of doubt, no Holder shall have any liability to the Corporation to the extent that any Optional Redemption Advance Shares that are returned to the Corporation pursuant to the immediately preceding sentence decrease in value following the applicable Optional Redemption Advance Date. The provisions of Section 6(d)(ii), Section 6(d)(iii), Section 6(e) and Section 6(f) shall apply to this Section 8 mutatis mutandis.

9. Mandatory Repurchase. Each Holder shall have the unilateral option and right to compel the Corporation to repurchase for cash any or all of such Holder's Preferred Shares within three (3) days of a written notice requiring such repurchase (provided that no such written notice shall be required for clauses (v) and (vi) and such demand for repurchase shall be deemed automatically made upon the occurrence of any of the events set forth in such clauses (v) and (vi)) , at a price per Preferred Share equal to the sum of (a) the Liquidation Preference plus (b) any and all accrued and unpaid dividends on the Preferred Shares (the sum of (a) and (b), the "Base Mandatory Repurchase Price") plus (c) (i) if such demand for repurchase occurs on or before the twelve (12) month anniversary of the Initial Issuance Date, an amount equal to 15% of the Base Mandatory Repurchase Price, or (ii) if such demand for repurchase occurs at any time after the twelve (12) month anniversary of the Initial Issuance Date, an amount equal to 10% of the Base Mandatory Repurchase Price, if any of the following events shall have occurred or are continuing:

(i) A Change in Control Transaction (as defined below);

(ii) A "going private" transaction under Rule 13e-3 promulgated pursuant to the Exchange Act;

(iii) A tender offer by the Corporation under Rule 13e-4 promulgated pursuant to the Exchange Act;

(iv) the suspension from trading or the failure of the Common Shares to be listed on a Trading Market for a period of five (5) consecutive Trading Days or for more than an aggregate of ten (10) trading days in any 365-day period;

(v) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Corporation or any Subsidiary of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Corporation or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Corporation or any Subsidiary under any applicable federal or state law or (iii) appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(vi) the commencement by the Corporation or any Subsidiary of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Corporation or any Subsidiary in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Corporation or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Corporation or any Subsidiary in furtherance of any such action;

(vii) following an Authorized Share Failure, the Corporation fails to receive stockholder approval or the written consent of a majority of the issued and outstanding Common Shares to approve the required increase in the number of Common Shares within five (5) days after the Meeting Outside Date; or

(viii) the Corporation's failure to deliver Common Shares on any Share Delivery Date, Advance Date, Mandatory Redemption Date or Optional Redemption Date, if such failure continues for two (2) Trading Days after the date that delivery of such Common Shares is due;

(ix) the Corporation's failure to pay any amounts when and as due pursuant to this Certificate of Designations or any other Transaction Document, if such failure continues for two (2) Trading Days after the date that such payment is due;

(x) the Corporation breaches any covenants and agreements contained in Section 13 of this Certificate of Designations, Section 3.10 of the Purchase Agreement, Section 3.11, Section 3.12 of the Purchase Agreement and/or Section 3.14 of the Purchase Agreement;

(xi) the Corporation or any of its Subsidiaries shall (A) default in any payment of any amount or amounts of principal of or interest on any Indebtedness (as defined the Purchase Agreement) the aggregate principal amount of which Indebtedness is in excess of $1,000,000 or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, as a result of which default or other event or condition the holder or holders or beneficiary or beneficiaries of such Indebtedness or a trustee on their behalf have declared such Indebtedness to be due prior to its stated maturity;

(xii) the effectiveness of the Registration Statement or the ability to use the Prospectus lapses for any reason (including, without limitation, the issuance of a stop order) or such Registration Statement or Prospectus is unavailable for the issuance of Common Shares hereunder, and such lapse or unavailability continues for a period of ten (10) consecutive days or for more than an aggregate of twenty (20) days in any 365-day period;

(xiii) the Corporation breaches any representation, warranty, covenant or other term or condition of any this Certificate of Designations, the Purchase Agreement or the Warrant, except to the extent that such breach, or the event that gave rise to such breach, would not have a Material Adverse Effect (as defined in the Purchase Agreement), and except in the case of a breach of a covenant which is curable, only if such breach remains uncured for a period of at least ten (10) calendar days (the events described in clauses (v), (vi), (viii), (ix), (x), (xi), (xii) and this (xiii) of this Section 9, collectively, the "Trigger Events" and each a "Trigger Event").

A "Change in Control Transaction" will be deemed to exist if (i) there occurs any consolidation or merger of the Corporation with or into any other corporation or other entity or person (whether or not the Corporation is the surviving corporation), or any other corporate reorganization or transaction or series of related transactions in which in excess of 50% of the Corporation's voting power is transferred through a merger, consolidation, tender offer or similar transaction, (ii) any person (as defined in Section 13(d) of the Exchange Act), together with its affiliates and associates (as such terms are defined in Rule 405 under the Securities Act), beneficially owns or is deemed to beneficially own (as described in Rule 13d-3 under the Exchange Act without regard to the 60-day exercise period) in excess of 50% of the Corporation's voting power (provided, however, that if any person is immediately prior to he Initial Issuance Date a Beneficial Owner of 40% or more of the Corporation's Common Stock, it shall not be deemed to be a Change of Control Transaction if such person increases its Beneficial Ownership percentage by not more than 10 percentage points), (iii) there is a replacement of more than one-half of the members of the Corporation's Board of Directors which is not approved by those individuals who are members of the Corporation's Board of Directors on the date thereof, in one or a series of related transactions or (iv) a sale or transfer of all or substantially all of the assets of the Corporation, determined on a consolidated basis; provided, however that a Change in Control Transaction will not be deemed to have occurred pursuant to clause (iv) if such sale or transfer is the sale or transfer of not more than one business segment during the period from the Initial Issuance Date through the Maturity Date and the Corporation remains a publicly traded corporation and if, on the effective date of the sale or transfer described therein, the Corporation deposits funds in the Escrow Account (as defined in the Purchase Agreement) such that the balance in the Escrow Account after such deposit is the lesser of $5 million or 100% of the aggregate Liquidation Preference of the outstanding Preferred Shares.

10. Voting Rights. Except as otherwise set forth herein, the Preferred Shares shall not have any voting rights.

11. Rank. All shares of Common Stock shall be of junior rank to all Preferred Shares with respect to the preferences as to dividends, distributions and payments upon a Liquidation Event. The rights of the shares of Common Stock shall be subject to the preferences and relative rights of the Preferred Shares. Without the prior express written consent of the Required Holders, the Corporation shall not hereafter authorize or issue additional or other capital stock that is of senior or pari-passu rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon Liquidation Event. The Corporation shall be permitted to issue preferred stock that is junior in rank to the Preferred Shares in respect of the preferences as to dividends and other distributions, amortization and redemption payments and payments upon Liquidation Event, provided, that the maturity date (or any other date requiring redemption, repayment or any other payment, including, without limitation, dividends in respect of any such preferred shares) of any such junior preferred shares is not on or before ninety-one (91) days after the Maturity Date. In the event of the merger or consolidation of the Corporation with or into another corporation, the Preferred Shares shall maintain their relative powers, designations and preferences provided for herein (except that the Preferred Shares may not be pari passu with, or junior to, any capital stock of the successor entity) and no merger shall have a result inconsistent therewith.

12. Participation. The Holders of the Preferred Shares shall be entitled to such dividends paid and distributions made to the holders of Common Stock to the same extent as if such Holders of the Preferred Shares had converted the Preferred Shares into Common Shares (without regard to any limitations on conversion herein or elsewhere) and had held such Common Shares on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

13. Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the Holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, shall be required before the Corporation may: (a) amend or repeal any provision of, or add any provision to, this Certificate of Designations, the Certificate of Incorporation or bylaws, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of preferred stock, if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Preferred Shares, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease (other than by conversion) the authorized number of shares of Preferred Shares (for the avoidance of doubt, the Corporation may increase or decrease the number of authorized shares of undesignated "blank check" preferred stock); (c) create or authorize (by reclassification or otherwise) any new class or series of shares that has a preference over or is on a parity with the Preferred Shares with respect to dividends or the distribution of assets on a Liquidation Event; (d) purchase, repurchase or redeem any Common Shares or other shares of capital stock of the Corporation; (e) pay dividends or make any other distribution on the Common Stock or any other capital stock of the Corporation or (f) whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares.

14. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion or redemption of Preferred Shares in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the certificate representing the Preferred Shares to the Corporation unless (A) the full or remaining number of Preferred Shares represented by the certificate are being converted or redeemed or (B) such Holder has provided the Corporation with prior written notice requesting reissuance of Preferred Shares upon physical surrender of any Preferred Shares. Each Holder and the Corporation shall maintain records showing the number of Preferred Shares so converted or redeemed and the dates of such conversions or redemptions. Notwithstanding the foregoing, if Preferred Shares represented by a certificate are converted or redeemed as aforesaid, a Holder may not transfer the certificate representing the Preferred Shares unless such Holder first physically surrenders the certificate representing the Preferred Shares to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of Preferred Shares represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledges and agrees that, by reason of the provisions of this paragraph, following conversion or redemption of any Preferred Shares, the number of Preferred Shares represented by such certificate will be less than the number of Preferred Shares stated on the face thereof. Each certificate for Preferred Shares shall bear the following legend:

> ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE. THE NUMBER OF PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF PREFERRED SHARES STATED ON THE face HEREOF PURSUANT TO THE CERTIFICATE OF DESIGNATIONS RELATING TO THE PREFERRED SHARES REPRESENTED BY THIS CERTIFICATE.

15. Taxes.

(a) Any and all payments made by the Corporation hereunder, including any amounts received on a conversion or redemption of the Preferred Shares and any amounts on account of dividends or deemed dividends, must be made by it without any Tax Deduction, unless a Tax Deduction is required by law. If the Corporation is aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction) in respect of any payment to any Holder, it must notify such Holders promptly.

(b) If a Tax Deduction for Taxes other than Excluded Taxes (as defined below) is required to be made by the Corporation with respect to any payment to any Holder, the amount of the payment made by the Corporation will be increased to an amount which (after making the Tax Deduction, including any Tax Deduction applicable to additional sums payable pursuant to this Section 15(b)) results in the receipt by such Holder of an amount equal to the payment which would have been due if no Tax Deduction had been required. If the Corporation is required to make a Tax Deduction, it must make any payment required in connection with that Tax Deduction within the time allowed by law. As soon as practicable after making a Tax Deduction or a payment required in connection with a Tax Deduction, the Corporation must deliver to the Holder any official receipt or form, if any, provided by or required by the taxing authority to whom the Tax Deduction was paid, "Excluded Taxes" means (a) Taxes imposed on or measured by the Holder's net income (however denominated), and franchise Taxes imposed on the Holder (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the taws of which such Holder is a citizen or resident, under the laws of which such Holder is organized, in which the Holder's principal office is located, or in which the Holder is otherwise doing business, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Corporation is located, (c) in the case of a non-US Holder, any withholding Tax that is imposed on amounts payable to such non-US Holder at the time such non-US Holder becomes a Holder (or at such time that such Holder changes its citizenship, residence, place of organization, principal office, or location where doing business) or is attributable to such non-US Holder's failure or inability to comply with any applicable documentation requirements or to provide any documents or certifications that are reasonably requested by the Corporation, and (d) in the case of any Holder, any withholding Tax (including any backup withholding tax) that is imposed on amounts payable to such Holder that is attributable to such Holder's failure or inability to comply with any applicable documentation requirements or to provide any documents or certifications that arc reasonably requested by the Corporation.

(c) In addition, the Corporation agrees to pay in accordance with applicable law any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration or performance of, or otherwise with respect to, the Preferred Shares other than income taxes ("Other Taxes"). As soon as practicable after making a payment of Other Taxes, the Corporation must deliver to such Holder any official receipt or form, if any, provided by or required by the taxing authority to whom such Other Taxes were paid.

(d) The obligations of the Corporation under this Section 15 shall survive the Maturity Date of the Preferred Shares and the payment for the Preferred Shares and all other amounts payable hereunder.

16. Issuance Limitations. The total number of Common Shares issued or issuable hereunder shall not (when aggregated with any Common Shares already issued in respect of all of the Preferred Shares) exceed the maximum number of Common Shares which the Corporation can so issue pursuant to any rule or regulation of the NYSE Amex Equities (or any other Trading Market on which the Common Shares trade) (the "Maximum Share Amount"), subject to equitable adjustments from time to time for stock splits, stock dividends, combinations, capital reorganizations and similar events relating to the Common Shares occurring after the Initial Issuance Date. For the avoidance of doubt, each and every provision of this Certificate of Designations shall remain in full force and effect and the Corporation shall be required to perform its obligations in accordance with the terms hereof notwithstanding the fact that the number of Common Shares issued hereunder may exceed the Maximum Share Amount. Notwithstanding any other provision hereof, no shares of Common Stock in excess of 4,962,000 shares shall be issued by the Corporation hereunder, whether by reason of conversion, redemption or otherwise, and no voting rights may be exercised, until after approval of the shareholders of the Corporation as contemplated by Section 3.14 of the Purchase Agreement.

17. Ownership Cap. Notwithstanding anything to the contrary set forth herein, at no time may the Corporation issue to a Holder, Common Shares if the number of Common Shares to be issued pursuant to such issuance would exceed, when aggregated with all other Common Shares beneficially owned by such Holder at such time (as determined in accordance with Section 13(d) of the Exchange Act and the rules thereunder, including without limitation, Common Shares that would be aggregated with the Holder's beneficial ownership for purpose of determining a group under Section 13(d) of the Exchange Act), the number of Common Shares that would result in the Holder beneficially owning (as determined in accordance with Section 13(d) of the Exchange Act and the rules thereunder, including without limitation, Common Shares that would be aggregated with the Holder's beneficial ownership for purpose of determining a group under Section 13(d) of the Exchange Act) more than 4.9% (the "Beneficial Ownership Limitation") of the then issued and outstanding Common Shares. Each Holder shall have the right (with respect to itself only) to waive the provisions of this Section 17 upon not less than sixty-five (65) days' prior notice to the Corporation. Notwithstanding the foregoing, the Holder shall have the right to: (A) at any time and from time to time immediately reduce the Beneficial Ownership Limitation and (B) (subject to waiver) at any time and from time to time, increase the Beneficial Ownership Limitation immediately in the event of the announcement as pending or planned, of a Change in Control Transaction.

18. Notices. The Corporation shall distribute to the Holders of Preferred Shares copies of all notices, materials, annual and quarterly reports, proxy statements, information statements and any other documents distributed generally to the holders of shares of Common Stock of the Corporation, at such times and by such method as such documents are distributed to such holders of such Common Stock.

19. Replacement Certificates. The certificate(s) representing the Preferred Shares held by any Holder may be exchanged by such Holder at any time and from time to time for certificates with different denominations representing an equal aggregate number of Preferred Shares, as reasonably requested by such Holder, upon surrendering the same. No service charge will be made for such registration or transfer or exchange.

20. Attorneys' Fees. In connection with enforcement by a Holder of any obligation of the Corporation hereunder, the prevailing party shall be entitled to recovery of reasonable attorneys' fees and expenses incurred.

21. No Reissuance. No Preferred Shares acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued. Preferred Shares issued and reacquired by the Corporation, whether upon redemption, conversion or otherwise, shall have the status of authorized and unissued undesignated shares of "blank check" preferred stock.

22. Severability of Provisions. If any right, preference or limitation of the Preferred Shares set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall nevertheless remain in full force and effect, and no right, preference or limitation herein set forth be deemed dependent upon any such other right, preference or limitation unless so expressed herein.

23. Limitations. Except as may otherwise be required by law and as are set forth in the Purchase Agreement, the Preferred Shares shall not have any powers, preference or relative participating, optional or other special rights other than those specifically set forth in this Certificate of Designation (as may be amended from time to time) or otherwise in the Certificate of Incorporation of the Corporation.

24. Payments. Any payments required to be made to the Holders in cash hereunder, shall be made by wire transfer of immediately available funds.

Signed on November 18, 2010

NEOSTEM, INC.

By: /s/ Robin Smith
Name: Robin Smith
Title: CEO

EXHIBIT A

(To be Executed by Holder
in order to Convert Preferred Shares)

CONVERSION NOTICE
FOR
SERIES E 7% SENIOR CONVERTIBLE PREFERRED STOCK

The undersigned, as a holder ("Holder") of shares of Series E 7% Senior Convertible Preferred Stock ("Preferred Shares") of Neostem, Inc. (the "Corporation"), hereby irrevocably elects to convert _____ Preferred Shares for shares ("Common Shares") of common stock, par value $0.01 per share (the "Common Stock"), of the Corporation according to the terms and conditions of the Certificate of Designations for the Preferred Shares as of the date written below. The undersigned hereby requests the Common Shares to be issued to the undersigned pursuant to this Conversion Notice be issued in the name of, and delivered via DWAC to, the undersigned or its designee as indicated below. No fee will be charged to the Holder of Preferred Shares for any conversion. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Certificate of Designations.

Conversion Date: _____

Conversion Information: NAME OF HOLDER:

By:
Print Name
Print Title:

Print Address of Holder:

_____

_____

DWAC Instructions: _____

_____

_____

If Common Shares are to be issued to a person other than Holder,
Holder's signature must be guaranteed below:

SIGNATURE GUARANTEED BY:

THE COMPUTATION OF NUMBER OF COMMON SHARES TO BE RECEIVED IS SET FORTH ON PAGE 2 OF THE CONVERSION NOTICE.

Page 1 of Conversion Notice

Page 2 to Conversion Notice dated _____ **for:** _____

(Conversion Date) **(Name of Holder)**

COMPUTATION OF NUMBER OF COMMON SHARES TO BE RECEIVED

Number of Preferred Shares converted: _____ shares

Number of Preferred Shares converted x Liquidation Preference $

Total dollar amount converted $

Conversion Price **$**

Number of Common Shares = Total dollar amount converted / Conversion Price = _____

Number of Common Shares =

Please issue and deliver _____ certificate(s) for Common Shares in the following amount(s):

AMENDED AND RESTATED

BY-LAWS

OF

NEOSTEM, INC.

A DELAWARE CORPORATION

Dated: August 31, 2006

NEOSTEM, INC.

*** * * * ***

AMENDED AND RESTATED BY-LAWS

*** * * * ***

ARTICLE I

MEETINGS OF STOCKHOLDERS

1.1 Place of Meetings. All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Chairman of the Board (if any), the board of directors of the Corporation (the "Board of Directors") or the Chief Executive Officer, or if not so designated, at the registered office of the Corporation. Notwithstanding the foregoing, the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of Delaware. If so authorized, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held, at such date (which date shall not be a legal holiday in the place where the meeting is to be held) and time and by such means of remote communication, if any, as shall be designated from time to time by the Chairman of the Board (if any), the Board of Directors or the Chief Executive Officer and stated in the notice of the meeting.

1.3 Special Meetings. Special meetings of the stockholders may, unless otherwise prescribed by law or by the certificate of incorporation, be called by the Chairman of the Board (if any), the Board of Directors or the Chief Executive Officer and shall be held at such place, on such date and at such time as shall be fixed by the Board of Directors or the person calling the meeting, Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, stating the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting.

1.5 Voting List. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) at the Corporation's principal place of business. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

1.6 Quorum. Except as otherwise required by law, the certificate of incorporation or these By-Laws, the holders of a majority of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereat, present in person or by remote communication, or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. Shares held by brokers which such brokers are prohibited from voting (pursuant to their discretionary authority on behalf of beneficial owners of such shares who have not submitted a proxy with respect to such shares) on some or all of the matters before the stockholders but which shares would otherwise be entitled to vote at the meeting ("Broker Non-Votes") shall be counted, for the purpose of determining the presence or absence of a quorum, both (a) toward the total voting power of the shares of capital stock of the Corporation and (b) as being represented by proxy. If a quorum has been established for the purpose of conducting the meeting, a quorum shall be deemed to be present for the purpose of all votes to be conducted at such meeting; provided that where a separate vote by a class or classes, or series thereof, is required, a majority of the voting power of the shares of such class or classes, or series present in person or by remote communication, or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. If no quorum shall be present or represented at any meeting of stockholders, such meeting may be adjourned in accordance with Section 1.7 hereof, until a quorum shall be present or represented.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws, which time and place shall be announced at the meeting, by a majority of the stockholders present in person or by remote communication, or represented by proxy at the meeting and entitled to vote (whether or not a quorum is present), or, if no stockholder is present or represented by proxy, by any officer entitled to preside at or to act as secretary of such meeting, without notice other than announcement at the meeting. At such adjourned meeting, any business may be transacted which might have been transacted at the original meeting, provided that a quorum either was present at the original meeting or is present at the adjourned meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting,

1.8 Voting and Proxies. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of capital stock having voting power held of record by such stockholder and a proportionate vote for each fractional share so held. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting (to the extent not otherwise prohibited by the certificate of incorporation or these By-Laws), may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

1.9 Action at Meetings. When a quorum is present at any meeting of stockholders, the affirmative vote of the holders of a majority of the stock present in person or by remote communication, or represented by proxy, entitled to vote and voting on the matter (or where a separate vote by a class or classes, or series thereof, is required, the affirmative vote of the majority of shares of such class or classes or series present in person or represented by proxy at the meeting) shall decide any matter (other than the election of Directors) brought before such meeting, unless the matter is one upon which by express provision of law, the certificate of incorporation or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such matter. The stock of holders who abstain from voting on any matter shall be deemed not to have been voted on such matter. Directors shall be elected by a plurality of the votes of the shares present in person or by remote communication, or represented by proxy at the meeting, entitled to vote and voting on the election of Directors, except as otherwise provided by the certificate of incorporation. For purposes of this paragraph, Broker Non-Votes represented at the meeting but not permitted to vote on a particular matter shall not be counted, with respect to the vote on such matter, in the number of (a) votes cast, (b) votes cast affirmatively, or (c) votes cast negatively.

1.10 Introduction of Business at Meetings.

A. Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 1.10, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.10.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.10, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the one hundred twentieth (120th) day nor earlier than the close of business on the one hundred fiftieth (150th) day prior to the first anniversary of the date of the proxy statement delivered to stockholders in connection with the preceding year's annual meeting; provided, however, that if either (i) the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such an anniversary date or (ii) no proxy statement was delivered to stockholders in connection with the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of (x) the sixtieth (60th) day prior to such annual meeting and (y) the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of capital stock of the Corporation that are owned beneficially and held of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.10 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting (or, if the annual meeting is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least seventy (70) days prior to such annual meeting), a stockholder's notice required by this Section 1.10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

B. Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which Directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that Directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.10. If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 1.10 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth (90th) day prior to such special meeting nor later than the later of (x) the close of business on the sixtieth (60th) day prior to such special meeting or (y) the close of business on the tenth (10th) day following the day on which public announcement is first made of the date of such special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

C. General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.10 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.10. Except as otherwise provided by law, the certificate of incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.10 and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Section 1.10, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 1.10, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.10 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

1.11 Action without Meeting. Stockholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provision of law, the certificate of incorporation or these By-Laws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast at any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Section 1,11.

1.12 Inspectors. Prior to any meeting of stockholders, the Board of Directors or the President shall appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted therewith, any information provided by a stockholder who submits a proxy by telegram, cablegram or other electronic transmission from which it can be determined that the proxy was authorized by the stockholder, ballots and the regular books and records of the Corporation, and they may also consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for such purpose, they shall, at the time they make their certification, specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

ARTICLE II
DIRECTORS

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the Corporation except as otherwise provided by law or the certificate of incorporation. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law or the certificate of incorporation, may exercise the powers of the full Board of Directors until the vacancy is filled.

2.2 Number: Election and Qualification. The number of directors which shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors, but in no event shall be less than three. Subject to the preceding sentence, the number of Directors may be decreased at any time and from time to time by a majority of the directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more directors. The Directors shall be elected at the annual meeting of stockholders (or, if so determined by the Board of Directors pursuant to Section 2.10 hereof, at a special meeting of stockholders), by such stockholders as have the right to vote on such election. Directors need not be stockholders of the Corporation.

2.3 Tenure. Each Director shall serve for a term ending on the date of the annual meeting following the annual meeting at which such Director was elected. Notwithstanding any provisions to the contrary contained herein, each Director shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

2.4 Vacancies. Unless and until filled by the stockholders, any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement thereof, may be filled only by vote of a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, if applicable, and a Director chosen to fill a position resulting from an increase in the number of Directors shall hold office until the next election of Directors and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

2.5 Resignation. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation at its principal place of business or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

2.6 Chairman of the Board. If the Board of Directors appoints a chairman of the board, he shall, when present, preside at all meetings of the stockholders and the Board of Directors. He shall perform such duties and possess such powers as are customarily vested in the office of the Chairman of the Board or as may be vested in him by the Board of Directors.

2.7 Place of Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

2.8 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors; provided that any Director who is absent when such a determination is made shall be given notice of such determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.9 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board (if any), the Chief Executive Officer, two (2) or more Directors, or by one Director in the event that mere is only one Director in office. At least one (1) days' notice to each Director, either personally or by telegram, cable, telecopy, electronic mail, commercial delivery service, telex or similar means sent to his business or home address, or three (3) days' notice by written notice deposited in the mail, shall be given to each Director by the Secretary or by the officer or one of the Directors calling the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.10 Quorum, Action at Meeting, Adjournments . At all meetings of the Board of Directors a majority of Directors then in office shall constitute a quorum for the transaction of business. In the event one or more of the Directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each so disqualified; provided however, that in no case shall less than one third of the entire Board of Directors constitute a quorum for the transaction of business. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, the certificate of incorporation or these By-Laws. For purposes of this section, the term "entire Board of Directors" shall mean the number of Directors last fixed by the stockholders or Directors, as the case may be, in accordance with law, the certificate of incorporation and these By-Laws; provided, however, that if less than all the number so fixed of Directors were elected, the "entire Board of Directors" shall mean the greatest number of Directors so elected to hold office at any one time pursuant to such authorization. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

2.11 Action by Consent. Unless otherwise restricted by the certificate of incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.12 Telephonic Meetings. Unless otherwise restricted by the certificate of incorporation or these By-Laws, members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of any committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

2.13 Removal. Unless otherwise provided in the certificate of incorporation, any one or more or all of the Directors may be removed without cause by the holders of at least seventy-five percent (75%) of the shares then entitled to vote at an election of Directors. Any one or more or all of the Directors may be removed with cause only by the holders of at least a majority of the shares then entitled to vote at an election of Directors.

2.14 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (a) adopting, amending or repealing the By-Laws of the Corporation or any of them or (b) approving or adopting, or recommending to the stockholders any action or matter expressly required by law to be submitted to stockholders for approval. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and make such reports to the Board of Directors as the Board of Directors may request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the conduct of its business by the Board of Directors. Adequate provisions shall be made for notice to members of all meetings of committees. One third of the members of any committee shall constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum, and all matters shall be determined by a majority vote of the members present.

2.15 Compensation. Unless otherwise restricted by the certificate of incorporation or these By-Laws, the Board of Directors shall have the authority to fix from time to time the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and the performance of their responsibilities as Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated salary as a Director. No such payment shall preclude any Director from serving the Corporation or its parent or subsidiary corporations in any other capacity and receiving compensation therefor. The Board of Directors may also allow compensation for members of special or standing committees for service on such committees.

2.16 Amendments to Article . Notwithstanding any other provisions of law, the certificate of incorporation or these By-Laws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of a least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast at any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article II.

ARTICLE III

OFFICERS

3.1 Enumeration. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer and such other officers with such titles, terms of office and duties as the Board of Directors may from time to time determine, including one or more Vice-Presidents, and one or more Assistant Secretaries and Assistant Treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these By-Laws otherwise provide.

3.2 Election. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a President, a Secretary and a Treasurer. Other officers may be appointed by the Board of Directors at such meeting, at any other meeting, or by written consent.

3.3 Tenure. The officers of the Corporation shall hold office until their successors are chosen and qualify, unless a different term is specified in the vote choosing or appointing them, or until their earlier death, resignation or removal. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors, at its discretion. Any officer may resign by delivering his written resignation to the Chairman of the Board (if any), to the Board of Directors at a meeting thereof, to the Corporation at its principal place of business or to the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

3.4 Chairman of the Board. The Chairman of the Board shall be the Chief Executive Officer of the Corporation. Subject only to the direction and control of the Board, the Chairman shall have general charge and supervision over, and responsibility for, the business and affairs of the Corporation. Unless otherwise directed by the Board, all other Officers shall be subject to the authority and supervision of the Chairman. The Chairman may enter into and execute in the name of the Corporation contracts and other instruments in the regular course of business which are authorized, either generally or specifically, by the Board. The Chairman shall have the general powers and duties of management usually vested in the Chairman of a business corporation and shall have such other powers and duties as may be prescribed by the Board.

3.5 President. In the event the Board so designates, in the Chairman's absence or inability to act, the President shall be the Chief Executive Officer of the Corporation. Otherwise, the President shall be responsible only to the Chairman and to the Board for those areas of operation of the business and affairs of the Corporation as shall be delegated to the President by the Board or by the Chairman. If specified by the Board or by the Chairman, all other Officers of the Corporation (except the Chairman) shall be subject to the authority and supervision of the President. The President may enter into and execute in the name of the corporation contracts or other instruments in the regular course of business that are authorized, either generally or specifically, by the Board.

3.6 Vice-Presidents. In the absence of the President or in the event of his or her inability or refusal to act, the Vice-President, or if there be more than one Vice-President, the Vice-Presidents in the order designated by the Board of Directors or the Chief Executive Officer shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

3.7 Secretary. The Secretary shall have such powers and perform such duties as are incident to the office of Secretary. The Secretary shall maintain a stock ledger and prepare lists of stockholders and their addresses as required and shall be the custodian of corporate records. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the Corporation and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be from time to time prescribed by the Board of Directors or Chief Executive Officer, under whose supervision the Secretary shall be. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or an assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature.

3.8 Assistant Secretaries. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, the Chief Executive Officer or the Secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or Directors, the person presiding at the meeting shall designate a temporary or acting secretary to keep a record of the meeting.

3.9 Treasurer. The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board of Directors, when the Chief Executive Officer or Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

3.10 Assistant Treasurers. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, the Chief Executive Officer or the Treasurer (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe.

3.11 Bond. If required by the Board of Directors, any officer shall give the Corporation a bond in such sum and with such surety or sureties and upon such terms and conditions as shall be satisfactory to the Board of Directors, including without limitation a bond for the faithful performance of the duties of his office and for the restoration to the Corporation of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control and belonging to the Corporation.

3.12 Action with Respect to Securities of Other Corporations . The President, the Chief Executive Officer, the Treasurer or any officer of the Corporation authorized by the Board of Directors shall, unless otherwise directed by the Board of Directors, have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE IV

NOTICES

4.1 Delivery. Except as otherwise specifically provided herein or required by law or the certificate of incorporation, all notices required to be given to any person under these By-Laws, such notice may be given by mail, addressed to such person, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Unless written notice by mail is required by law, notice may also be given by telegram, cable, telecopy, commercial delivery service, telex or similar means, addressed to such person at his address as it appears on the records of the corporation, in which case such notice shall be deemed to be given when delivered into the control of the persons charged with effecting such transmission, the transmission charge to be paid by the Corporation or the person sending such notice and not by the addressee. Notice may also be given to stockholders by a form of electronic transmission in accordance with and subject to the provisions of Section 232 of the General Corporation Law of Delaware. Oral notice or other in-hand delivery (in person or by telephone) shall be deemed given at the time it is actually given.

4.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of law or of the certificate of incorporation or of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

CAPITAL STOCK

5.1 Issuance of Stock. Unless otherwise voted by the stockholders and subject to the provisions of the certificate of incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any issued, authorized capital stock of the Corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

5.2 Certificates of Stock. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the chairman or Vice-chairman of the Board of Directors, or the President or a Vice-President and the Treasurer or an assistant Treasurer, or the Secretary or an assistant Secretary of the Corporation, certifying the number of shares owned by such holder in the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the certificate of incorporation, these By-Laws, applicable securities laws or any agreement among any number of shareholders or among any such holders and the Corporation shall have conspicuously noted on the face or back of such certificate either the full text of such restriction or a statement of the existence of such restriction.

5.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors or the Chief Executive Officer may, in their discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to give reasonable evidence of such loss, theft or destruction, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

5.4 Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) days nor less then ten (10) days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is. held. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted, and which shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

5.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VI

CERTAIN TRANSACTIONS

6.1 Transactions with Interested Parties. No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(a) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or

(b) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

6.2 Quorum. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE VII

GENERAL PROVISIONS

7.1 Fiscal Year. The fiscal year of the Corporation shall be the calendar year unless otherwise fixed by resolution of the Board of Directors.

7.2 Seal. The Board of Directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the word "Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board of Directors.

7.3 Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized by these By-Laws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

7.4 Time Periods. In applying any provision of these By-Laws that requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, unless otherwise required by law or the certificate of incorporation, calendar days shall be use, the day of the doing of the act shall be excluded, and the day of the event shall be included.

7.5 Certificate of Incorporation. All references in these By-Laws to the certificate of incorporation shall be deemed to refer to the certificate of incorporation of the Corporation, as amended and restated and in effect from time to time.

7.6 Severability. Any determination that any provision of these By-Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

7.7 Pronouns. All pronouns used in these By-Laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons so designated may require.

ARTICLE VIII

AMENDMENTS

8.1 By the Board of Directors. Except as is otherwise set forth in these By-Laws or the certificate of incorporation, these By-Laws may be altered, amended or repealed, or new by-Jaws may be adopted, by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

8.2 By the Stockholders. Except as otherwise set forth in these By-Laws or the certificate of incorporation, these By-Laws may be altered, amended or repealed or new by-laws may be adopted by the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of all the then outstanding shares of capital stock of the Corporation entitled to vote at any regular meeting of stockholders, or at any special meeting of stockholders, voting together as a single class; provided notice of such alteration, amendment, repeal or adoption of new by-laws shall have been stated in the notice of such special meeting.

VANNI BUSINESS PARK INDUSTRIAL LEASE

ARTICLE I

PARTIES

This Lease, dated, for reference purposes only, September 1, 2005, is made by and between the Vanni Business Park, LLC, a Delaware limited liability company ("**Lessor**"), and Progenitor Cell Therapy, LLC, a New Jersey limited liability company ("**Lessee**").

ARTICLE II

PREMISES

Section 2.01. Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all of the terms and conditions set forth herein, the premises (the "**Premises**") situated in the City of Mountain View, County of Santa Clara, State of California, commonly known as Building F of Vanni Business Park (the "**Business Park**"), 291 North Bernardo Avenue, Mountain View, California 94043, and more particularly described on the site plan attached hereto as **Exhibit "A"** and incorporated herein by this reference. The Premises consist only of the building identified on such site plan as the "**Premises**." The Premises are deemed for purposes of this Lease to contain 25,024 square feet of floor space. In the absence of a condemnation of a portion of the Premises that reduces the size of the Premises, or Lessee's leasing of additional space within the Business Park which increases the size of the Premises, no remeasurement of the square footage of the Premises by either party will result in any increase or decrease in rent or any other number in this Lease which is a function of the square footage of the Premises.

Section 2.02. Business Park. The Premises comprises one of the six buildings situated in the Business Park as of the date of this Lease. The Business Park is shown on the site plan attached hereto as **Exhibit "A."** All areas outside the buildings within the Business Park are herein called the "**Common Areas.**" Lessee shall be entitled to park in its prorata share of parking spaces within the parking areas provided from time to time in the Common Areas; provided that, in all events Lessee shall be entitled to park in no less than 3.7 parking spaces per 1,000 square feet of floor space within the Premises. Lessee shall also be entitled to use such exercise facilities as may exist thereon from time to time, on a nonexclusive basis with other tenants of the Business Park and their respective employees and invitees. Lessee acknowledges that there are no parking spaces specifically assigned or designated for the exclusive use of Lessee. Lessor reserves the right to designate for each tenant of the Business Park a pro rata share of parking within the Business Park, in which event Lessee shall thereafter cause its employees, agents, contractors, and other invitees to park only in the spaces so designated for Lessee's parking and shall not cause or permit such entities to park in other areas of the Business Park. In the event Lessor designates specific parking areas for each tenant of the Business Park, the location and size of the parking area designated for Lessee shall be subject to Lessee's approval, which approval shall not unreasonably be withheld or delayed.

ARTICLE III

TERM

Section 3.01. Term. The term of this lease shall be for one (1) year, commencing on July 1, 2006 ("**Commencement Date**"), and ending on June 30, 2007, subject to Section 21 set forth in the Addendum to this Lease attached hereto.

Section 3.02. Early Possession. If Lessee occupies the Premises prior to the Commencement Date, such occupancy shall be subject to all provisions hereof, and Lessee shall pay base rent (at the rate payable for the first month of the term), all triple net expenses, and all other expenses under this Lease for such period.

Section 3.03. Delivery of Possession. Lessee acknowledges that it currently occupies a portion of the Premises under a sublease that expires on June 30, 2006, and thus already has possession of and will continue in possession of that portion of the Premises from and after July 1, 2006, and will take possession of the balance of the Premises starting July 1, 2006. As to any portion of the Premises that Lessee does not already possess as of June 30, 2006, Lessor will deliver possession thereof to Lessee on July 1, 2006, provided that if Lessor for any reason whatsoever does not deliver possession thereof to Lessee on July 1, 2006, (i) this Lease shall not be void or voidable nor shall Lessor be liable to Lessee for any loss or damage resulting therefrom, (ii) Lessee agrees to take possession thereof when Lessor is able to deliver possession thereof, and (iii) until Lessor so delivers possession thereof to Lessee, the obligations of Lessee to pay rent and other charges under this Lease, and to perform its other obligations under this Lease, shall be prorated to reflect the extent the square footage of the space actually delivered is less than the square footage of the entire Premises, except that Lessee shall deposit the first month's rent upon execution of this Lease, and (iv) neither the scheduled Commencement Date (i.e., July 1, 2006) nor the ending date (i.e. June 30, 2007) of the lease term set forth in Section 3.01 shall be changed. Notwithstanding the foregoing, in the event Lessor is unable to deliver possession of the entire Premises by October 1, 2006, then Lessee, at its sole option, shall be entitled to terminate this Lease. Any such termination shall be effectuated by written notice to Lessor by October 10, 2006. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME OF EXERCISE OF ANY SUCH RIGHT OF TERMINATION. Upon such termination, neither party shall have any further obligation to the other under this Lease, provided that Lessor shall return to Lessee any sums previously deposited by Lessee with Lessor hereunder to the extent required to do so by law and this Lease.

ARTICLE IV

RENT: SPECIAL NET LEASE

Section 4.01. Base Rent. Lessee shall pay to Lessor base rent for the Premises in advance on the first day of each month based on the following schedule of rents:

Months	Rent Per Square Foot	Square Footage	Monthly Base Rent
01-12	$1.05 "NNN"	25,024 sq. ft.	$ 26,275.30

Rent for any period during the term hereof which is for less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable in lawful money of the United States, without prior notice or demand, to Lessor at the address stated herein or to such other persons or at such other places as Lessor may designate in writing. Upon execution of this Lease, Lessee shall pay the sum of $26,275.30 as and for the first month's rent.

Section 4.02. Special Net Lease. This Lease is what is commonly called a "Net, Net, Net Lease", it is being understood that the Lessor shall receive the rent set forth in Section 4.01 free and clear of any and all impositions, taxes, liens, charges or expenses of any nature relating to the Premises except as otherwise provided in this Lease. In addition to the rent reserved by Section 4.01, Lessee shall pay to the parties respectively entitled thereto all insurance premiums, taxes, assessments, operating charges, management fees, maintenance charges, and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease for the entire Premises during the term hereof. All of such charges, costs and expenses shall constitute additional rent, and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay rent. It is the intention of the parties hereto that this Lease shall not be terminable for any reason by Lessee except as set forth in Section 3.01, and that Lessee shall in no event be entitled to any abatement of or reduction in rent payable under this Lease, except as herein expressly provided. Any present or future law to the contrary shall not alter this agreement of the parties.

Section 4.03. Cap on Base Rent and Triple Net Charges. Notwithstanding anything to the contrary contained in Sections 4.01 and 4.02 or elsewhere in this Lease, but subject to the following sentence, Lessee shall not be obligated to pay an amount for Base Rent plus insurance premiums, taxes, assessments, operating charges, management fees, and maintenance charges payable under this Lease which in the aggregate exceeds Three Hundred Eighty Four Thousand Dollars ($384,000) over the period of time from July 1, 2006 through June 30, 2007. Insurance premiums, taxes, assessments, operating charges, management fees and maintenance charges included within the dollar cap specified in the preceding sentence are only those that are otherwise payable by Lessee to Lessor under this Lease, and not premiums for insurance obtained by Lessee directly, or Lessee's personal property taxes, or Lessee's utility payments, or any other fees, charges, and costs that are not required to be paid to Lessor or reimbursed to Lessor under this Lease.

ARTICLE V

SECURITY DEPOSIT.

Lessee shall deposit with Lessor, upon execution of this Lease, as a security deposit for Lessee's faithful performance of Lessee's obligations hereunder, cash in the amount of Twenty Six Thousand Two Hundred Seventy Five Dollars and Thirty Cents ($26,275.30). If Lessee fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Lessor may, without waiving or releasing Lessee from any obligation under this Lease, and without waiving Lessor's right to treat such failure as a default hereof, use, apply, or retain all or any portion of said cash deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Lessor may become obligated by reason of Lessee's default, or to compensate Lessor for any loss or damage which Lessor may suffer thereby. If Lessor so uses or applies all or any portion of said cash deposit, Lessee shall within ten (10) days after written demand therefor deposit cash with Lessor in an amount sufficient to restore said deposit to the full amount hereinabove stated and Lessee's failure to do so shall be a material breach of this Lease. Said cash deposit, less sums which Lessor is entitled to deduct therefrom pursuant to this paragraph, shall be returned to Lessee (or, at Lessee's option, to the last assignee, if any, of Lessee's interest hereunder), without interest, at the expiration of the term hereof and within twenty one (21) days after Lessee has vacated the Premises. No trust relationship is created herein between Lessor and Lessee with respect to said security deposit, and Lessor may commingle it, use it in ordinary business, transfer or assign it, or use it in any combination of those ways. In the event Lessor transfers its interest in this Lease, Lessor shall transfer said deposit to Lessor's successor in interest, whereupon Lessor shall no longer have any liability for the return of such deposit or the accounting therefor.

ARTICLE VI

USE

Section 6.01. Use. The Premises shall be used and occupied for general offices, warehouse, research and development, laboratories, light assembly, wholesale sales, and any other incidental related legal use which is otherwise in compliance with the reasonable rules and regulations that may be imposed by Lessor from time to time on the Business Park. Such incidental related uses may include, without limitation, the right on the part of Lessee to use telecommunications equipment for internal business purposes, and to have a call center comprised of a technical support group answering telephone lines. Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance or tend to unreasonably disturb any other tenants. This Lease does not grant to Lessee any exclusive use rights that would prevent other tenants or lessees from conducting businesses or operations within the Business Park similar to the business or operations of Lessee.

Section 6.02. Compliance with Law.

(a) Lessor warrants to Lessee that the Premises, in its state existing on the Commencement Date, but without regard to the use for which Lessee will use the Premises, and except for any Alterations made to the Premises during the period of Lessee's occupancy thereof prior to the Commencement Date, (i) does not violate any laws, or permits, licenses, or covenants or restrictions of record, or any applicable building code, regulation or ordinance in effect upon completion of the initial construction thereof, and (ii) to the actual knowledge of Chris Vanni has not received written notice from any governmental authority with jurisdiction over the Premises that the Premises are in violation of any laws, permits, or building code, regulation or ordinance in effect as of the date this Lease is executed which violation remains uncured.

(b) Except as provided in Section 6.02(a), Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants, and restrictions of record in effect during the term or any part of the term hereof, regulating the use, condition, or occupancy of the Premises. Without limiting the generality of the foregoing, Lessee shall be obligated at its sole expense to make all alterations or improvements to the Premises which may be required by lawful governmental authority due to new laws, codes, ordinances or other promulgations of lawful governmental authority which come into effect during the term of this Lease. Notwithstanding the preceding sentence, if any structural alterations to the Premises are required as a result of a change in laws, codes, ordinances, rules, or regulations (collectively, "**Laws**") existing on the date this Lease is executed or as a result of additional Laws enacted after the date this Lease is executed which changed or additional Laws are applicable to buildings generally (including the Premises) and are not applicable to the Premises because of Lessee's particular use of the Premises or any improvements, additions or alterations (collectively, "**Alterations**") thereto by Lessee, then (i) in the event the term of this Lease is not extended beyond June 30, 2007, as between Lessor and Lessee neither party shall have any obligation to make or pay for such Alterations, and (ii) in the event the term of this Lease is extended beyond June 30, 2007, then promptly after the term is so extended (if such Alteration has not already been made by Lessor) Lessor shall cause such Alterations to be made. In the event the term of the Lease is extended beyond June 30, 2007, then the Amortized Portion (as defined below) of the cost incurred by Lessor for such Alterations made during the term of this Lease shall be paid by Lessee to Lessor as additional rent each month together with and in the same manners as payments of rent under Section 4.01 above. The "**Amortized Portion**" of costs of items, as reasonably determined by Lessor, shall mean an amount equal to a fraction of the cost of such item the numerator of which is the lesser of (i) the number of years remaining in the term as of the date the Alteration made by Lessor is completed, and (ii) the number of years of the estimated useful life of such item as reasonably determined by Lessor, and the denominator of which is the number of years of the estimated useful life of such item as reasonably determined by Lessor, with such amount amortized monthly over the remainder of the term as of the date such cost is incurred assuming an interest rate (the "**Assumed Interest Rate**") equal to the rate of interest on any loan obtained by Lessor to pay for such item, or if Lessor does not obtain a loan to pay for such item, then assuming an interest rate equal to the rate of interest Lessor would have to pay if Lessor were to borrow such funds, as reasonably determined by Lessor. If Lessee exercises any option to extend the Term, upon commencement of each such extended term, if such item was not previously fully amortized pursuant to the preceding sentence, then Lessee shall pay as additional rent each month together with and in the same manner as payments of rent under Section 4.01 an additional Amortized Portion of the cost of such item equal to a fraction the numerator of which is the lesser of (i) the number of years by which the term of the Lease has been extended, or (ii) the same number of years of the estimated useful life of such item as originally determined by Lessor as reduced by the number of years represented in the numerator determined pursuant to the preceding sentence, and the denominator of which is the same number of years of the estimated useful life of such item as originally determined by Lessor (with no reduction in such number reflecting any time which has passed since the item was made), with such portion amortized monthly over the extended term assuming interest thereon over such period at the Assumed Interest Rate.

(c) By executing this Lease, Lessee acknowledges that it has reviewed and satisfied itself as to its compliance, or intended compliance, with the applicable zoning and permit laws, hazardous waste requirements, and all other statutes, laws, or ordinances relevant to the uses stated in Section 6.01 above.

Section 6.03. Condition of Premises.

(a) Lessor warrants to Lessee that the Premises were upon completion of the initial construction thereof built in accordance with the approved plans therefor in a workmanlike manner. In the event that it is determined that this warranty has been violated, then it shall be the obligation of Lessor, after receipt of written notice from Lessee setting forth with specificity the nature of the violation, to promptly, at Lessor's sole cost, rectify such violation. Lessor shall not have any liability for any claimed violation by Lessor of the foregoing warranty unless and except to the extent Lessor receives written notice from Lessee thereof within thirty (30) days after the Commencement Date.

(b) Except as otherwise provided in this Lease, Lessee hereby accepts the Premises in their condition existing as of the Commencement Date, subject to all zoning, municipal, county, state, and other applicable laws governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto. Lessee acknowledges that neither Lessor nor Lessor's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Lessee's business. Except as specified in Section 6.03(a) above, Lessee acknowledges that Lessor has no obligation to make any improvements or repairs to the Premises at the outset of the Lease, and except as provided in Section 6.02(a) above is not warranting that as of the Commencement Date the interior or exterior of the Premises is in compliance with all ordinances, rules, codes and regulations of applicable governmental authority, as Lessee is taking possession of the Premises in their "as-is" physical condition and will be solely responsible for making any and all repairs and improvements to the Premises as may be necessary to operate the Premises for the use specified herein and, to the extent compliance is required due to Lessee's specific use of the Premises rather than as a requirement for buildings generally to bring the Premises into compliance with all such ordinances, rules, codes and regulations, all of which repairs and/or improvements shall be made in strict accordance with the provisions of this Lease and at the sole cost and expense of Lessee. Nothing in the preceding sentence shall be construed to impose any obligation on Lessor to make any repairs or improvements the Lessee is not required to make but which are nonetheless required to comply with any such ordinances, rules, codes and regulations.

Section 6.04. Prohibited Uses. Notwithstanding anything to the contrary contained in Section 6.01 above, in no event shall the Premises be used for any retail use, or for any of the other following uses: (i) health club, spa or gymnasium, (ii) night club or discotheque, (iii) mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction provided Lessee has obtained Lessor's prior written consent thereto), (iv) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located adjacent to the rear of and outside the Premises), (v) any close-out, odd lot, fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (vi) automobile, truck, trailer or R.V. leasing, display or repair, (vii) skating rink or roller rink, (viii) living quarters, sleeping apartments, or lodging rooms, (ix) veterinary hospital or animal raising or grooming facilities, (x) mortuary, (xi) educational or training facility, (xvii) any movie theater or other theater use; (xviii) any use which creates vibrations or offensive odors which are noticeable outside of the Premises, or any noise or sound which can be heard outside of the Premises and which is offensive due to intermittency, beat, frequency, shrillness or loudness, provided any usual paging system shall be allowed.

ARTICLE VII

HAZARDOUS OR TOXIC MATERIALS

Section 7.01. Hazardous or Toxic Materials. As used herein, "**Hazardous Materials**" means any hazardous, toxic, environmentally damaging or radioactive materials, substances or wastes, including, but not limited to, those materials, substances or wastes; (1) defined or listed as hazardous or extremely hazardous materials or wastes pursuant to Title 22, Division 4.5, Chapter 10 et seq., of the California Code of Regulations, as may be amended; (2) defined or listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. and regulations promulgated thereunder, as may be amended; (3) defined or listed as hazardous or acutely hazardous wastes pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. and regulations promulgated thereunder, as may be amended; and/or (4) which consists in whole or part of petroleum, petroleum fractions, petroleum products or petroleum distillates.

Section 7.02. Compliance with Laws. Lessee, at its sole expense, shall comply with all applicable governmental rules, regulations, codes, ordinances, statutes, directives and other requirements (collectively, "**Environmental Laws**") respecting protection of the environment and/or the transport, use, storage, maintenance, generation, manufacture, handling, discharge, release or disposal of Hazardous Materials in, on or about the Premises. To the extent such investigations, cleanup or other response actions referred to below in this sentence result from or are connected with the transport, use, storage, maintenance, generation, manufacture, handling, discharge, release or disposal by Lessee or agents, employees, contractors, assignees, sublessees or invitees of Lessee of Hazardous Materials in or on the Premises or the Business Park or in the groundwater or soils underneath the same occurring at any time prior to the expiration or sooner termination of the term of this Lease and vacation of the Premises by Lessee, then Lessee, at its sole cost, shall perform all investigations, cleanup and other response actions in, on, or about the Premises which may be required of Lessee or Lessor by any governmental authority. All actions by Lessee pursuant to the preceding sentence shall be taken in full compliance with all Environmental Laws. Without limiting the generality of the foregoing, Lessee shall at its sole cost: (1) at all times use, handle, generate, store, transport, and dispose of Hazardous Materials in compliance with all Environmental Laws; (2) make any and all improvements to the Premises necessary to assure the lawful and safe use, handling, generation, storage, transportation, and disposal of Hazardous Materials; and (3) ensure that valid permits have been obtained and maintained as required by all Environmental Laws concerning the activities of Lessee and its agents, employees, contractors, assignees, sublessees and invitees. Lessor represents and warrants to Lessee that Chris Vanni, the managing member of Lessor, has not received written notice from any governmental entity that the Premises are in violation of any Environmental Laws which violation remains uncured.

Section 7.03. No Underground Tanks. Under no circumstances shall Lessee install or permit the installation of, temporarily or permanently, any underground tanks relating to the use, storage or disposal of Hazardous Materials.

Section 7.04. Indemnity. Lessee hereby indemnifies and agrees to protect, defend (by legal counsel selected by Lessee and reasonably approved by Lessor) and hold harmless Lessor, its members, partners, directors, employees, assigns, lenders, successors, agents, representatives and their respective insurers from and against all costs (including, but not limited to, environmental response costs), expenses, claims, judgments, losses, demands, liabilities, causes of action, governmental directives, proceedings and hearings, including attorneys' and experts' fees and costs, relating to the transport, use, storage, maintenance, generation, manufacture, handling, discharge, release or disposal of Hazardous Materials by Lessee or agents, employees, contractors, assignees, sublessees or invitees of Lessee, in or on the Premises or in the groundwater or soils underneath the same occurring at any time prior to the expiration or sooner termination of the term of this Lease and vacation of the Premises by Lessee, and/or relating to the breach of any of the obligations of Lessee under this Article VII. Without limiting the foregoing, the foregoing indemnity shall include (A) the cost of environmental consultants, attorneys, and other consultants as Lessor determines are appropriate to assist Lessor in (1) investigating the source, extent, and composition of such Hazardous Materials, (2) cleaning up or otherwise remediating the same, (3) dealing with any potential or actual liability of Lessor and/or Lessee respecting such Hazardous Materials, and (4) otherwise dealing with such Hazardous Materials, and (B) losses in or reductions to rental income, and (C) any diminution in the fair market value of the Premises or other affected property.

Section 7.05. Notification Responsibility. Lessee shall notify Lessor orally immediately upon becoming aware of, and in writing within 48 hours after becoming aware of: (1) any environmental investigation, cleanup or other environmental response action requested, demanded, instituted or to be instituted by any person, including a governmental entity, relating to the transport, use, storage, maintenance, generation, manufacture, handling, discharge, release, migration or disposal of Hazardous Materials on, in, beneath, about, adjacent to or from the Premises; (2) any claim or demand made or threatened by any person, including but not limited to a governmental entity, against Lessor or Lessee, relating to damages, contribution, cost recovery, compensation, loss or injury relating to, or claimed to result from, any Hazardous Materials that have come to be located on, in, beneath, or about the Premises as the result of the activities of Lessee or of Lessee's agents, employees, contractors, assignees, sublessees or invitees, or (3) any data, workplans, proposals or reports submitted to any governmental entity arising out of or in connection with any Hazardous Materials on, in, about, or beneath the Premises, including but not limited to any complaints, notices, warnings of asserted violations in connection therewith.

Lessee, at its sole cost, shall provide Lessor with copies of all chemical lists it provides to governmental entities regarding Lessee's activities on or about the Premises, as well as any Community Right-to-Know information submitted to governmental entities regarding chemicals used by Lessee on or about the Premises, including without limitation, the information required to be submitted pursuant to California Health and Safety Code, Chapter 6.95, any Hazardous Materials management plan required by the County of Santa Clara, and any other reports submitted by Lessee to any and all governmental entities respecting Hazardous Materials.

Section 7.06. Inspection Rights. Lessor shall have the right, but not the obligation, in its sole discretion, to enter upon the Premises to inspect, sample and/or monitor the Premises regarding Hazardous Materials on, in, beneath or about the Premises. Lessor shall give Lessee twenty four (24) hours advance notice of any such inspection, except in the event of an emergency, in which case no such notice shall be required. When conducting any such inspections, Lessor shall avoid unreasonably disrupting Lessee's activities on the Premises. Lessee shall reasonably cooperate with Lessor to facilitate any such inspection by Lessor. Any such entry and inspection may be conducted by Lessor or by Lessor's designated agents, representatives or contractors. If Lessor discovers that Lessee is not in compliance with the terms of this Article VII, any costs incurred by Lessor in connection with such inspections, sampling and/or monitoring, including attorney's and/or consultants' fees, shall be due and payable by Lessee to Lessor within five (5) days following Lessor's written demand therefor.

Section 7.07. Return of Premises. Prior to the expiration or termination of this Lease, Lessee shall (1) remove all Hazardous Materials which have become located on, in, beneath or about the Premises as the result of, and (2) decontaminate and remove any equipment, improvements or facilities used by Lessee at the Premises in connection with the transport, use, storage, maintenance, generation, manufacture, handling, discharge, release or disposal of Hazardous Materials by Lessee or Lessee's agents, employees, contractors, assignees, sublessees or invitees, on, in, beneath, about or from the Premises, such removal, and decontamination and removal to be performed in full compliance with applicable Environmental Laws. Not later than 180 days prior to the expiration date of the Lease or immediately upon any sooner termination, Lessee shall submit to Lessor for Lessor's approval Lessee's written plan for such removal, decontamination and disposal of Hazardous Materials which plan shall identify (1) the Hazardous Materials to be removed and disposed of, (2) the equipment or other portions of the Premises to be removed, decontaminated and/or disposed of, (3) the method(s) by which such removal, decontamination, and disposal will be accomplished, and (4) the licensed and bonded contractor(s) who will perform such removal, decontamination and disposal. Prior to preparation of such written plan, Lessee at its sole cost shall cause to be performed such tests as Lessor may reasonably require, by an environmental consultant reasonably designated by Lessor, to ascertain whether Hazardous Materials exist in the soils or groundwater underneath the Premises, or in any improvements on the Premises.

Section 7.08. Controlling Provisions; Survival of Covenants. To the extent any of the provisions of this Lease conflict with the provisions of this Article VII, the provisions of this Article VII shall be controlling. The obligations of Lessee under this Article VII shall survive the termination or expiration of the term of this Lease.

ARTICLE VIII

MAINTENANCE, REPAIRS AND ALTERATIONS

Section 8.01. Maintenance - Premises.

(a) Lessor shall at its sole cost and expense keep in good and safe condition, order and repair, and replace as and if necessary the following components of the Premises: (i) the roof structure (but not the roof membrane or other nonstructural components), (ii)structural elements of the exterior walls (but not including windows, doors, painting, or other nonstructural elements thereof), and structural elements of interior load-bearing walls, if any, and (iii) structural elements of the foundation (but not including utility conduits therein or other nonstructural elements thereof). Lessor shall have no obligation to make repairs under this Section 8.01(a) until a reasonable time after Lessor's receipt of notice from Lessee of the need for such repairs; provided that, Lessor shall commence repairs no later than thirty (30) days after Lessor's receipt of notice from Lessee of the need therefor and thereafter diligently continue the same until completion thereof. The preceding sentence shall not be construed to require physical repair work to have commenced within such thirty (30) day period of time, as Lessor shall be deemed to have commenced repairs merely by contacting (by telephone or otherwise) a contractor to perform such work, whether or not such contractor is actually ultimately hired or is able to commence physical work within such thirty (30) period. In connection with all of Lessor's activities under this paragraph, Lessor shall make a reasonable effort to minimize any disruption of Lessee's business, provided that Lessor shall not be obligated to incur overtime costs to employ workers who work after normal business hours and on weekends. Except as otherwise specifically provided in Article X below (damage and destruction), there shall be no abatement of rent or other sums payable by Lessee prior to or during any repairs by Lessee or Lessor, and Lessee waives all claims for loss of business or lost profits relating to any such repairs.

(b) Throughout the term, except as provided in Section 8.01(a) above, Lessee agrees to keep and maintain each and every part of the Premises in good and safe condition, order and repair, reasonable wear and tear and damage due to casualty excepted. Lessee hereby expressly waives the provisions of any law permitting repairs by a tenant at the expense of a landlord, including, without limitation, all rights of Lessee under Sections 1941 and 1942 of the California Civil Code. Lessee agrees to keep the Premises clean and in sanitary condition as required by the health, sanitary and police ordinances and regulations of any political subdivision having jurisdiction. Lessee further agrees to keep the interior of the Premises, such as the windows, floors, walls, doors showcases and fixtures clean and neat in appearance and to remove all trash and debris which may be found in or around the Premises, and to maintain in good operating condition all improvements and appurtenances serving the Premises including all sewer connections, plumbing, heating and cooling appliances, wiring, and glass. If Lessee refuses or neglects to commence such repairs and/or maintenance required under this Lease or does not diligently prosecute same to completion within thirty (30) days after written notice thereof, then Lessor may enter the Premises and cause such repairs and/or maintenance to be made. Lessee agrees that upon demand, it shall pay to Lessor the cost of any such repairs, together with accrued interest from the date of payment at the lower of ten percent per annum or the prime commercial lending rate then in effect at Bank of America. Notwithstanding anything to the contrary above, Lessor may elect to enter into a maintenance contract with a third party for the provision of all or a part of Lessee's maintenance obligations as set forth in this Section 8.01. Upon such election, Lessee shall be relieved from its obligations to perform only those maintenance obligations covered by the maintenance contract, and Lessee shall bear its pro rata share, as set forth in Section 8.02 below, of the costs of such maintenance contract which shall be paid in advance on a monthly basis with Lessee's rent payments.

Section 8.02. Maintenance - Common Areas. Lessor shall maintain the Common Areas, together with all facilities and improvements now or hereafter located thereon, and together with all street improvements or other improvements adjacent thereto as may be required from time to time by governmental authority. The manner in which such areas shall be maintained and the expenditures therefor shall be at the sole discretion of Lessor. Lessor shall at all times have exclusive control of the Common Areas and may at any time temporarily close any part thereof, may exclude and restrain anyone from any part thereof (except the bona fide customers, employees and invitees of Lessee who use the Common Areas in accordance with the rules and regulations that Lessor may from time to time promulgate), and Lessor may change the configuration of the Common Areas or the location of facilities thereon so long as any such change by Lessor does not unreasonably interfere with Lessee's use of the Premises. Lessor shall also be entitled to employ third parties to operate and maintain all or any part of such areas on such terms and conditions as Lessor shall in its sole discretion deem reasonable and proper. The surface parking facilities shall be available for the automobiles of Lessee and Lessee's customers, employees and invitees on a non-assigned, non-exclusive basis. In connection with all of Lessor's activities under this paragraph, Lessor shall make a reasonable effort to minimize any disruption of Lessee's business, provided that Lessor shall not be obligated to incur overtime costs to employ workers who work after normal business hours and on weekends. Except as otherwise specifically provided in Article X below (damage and destruction), there shall be no abatement of rent or other sums payable by Lessee prior to or during any repairs by Lessee or Lessor, and Lessee waives all claims for loss of business or lost profits relating to any such repairs. Lessee shall have the obligation to notify Lessor, in writing, of any repairs or maintenance to the Common Areas which may be required, and Lessor shall have a reasonable time to make repairs; provided that, Lessor shall commence repairs no later than thirty (30) days after Lessor's receipt of notice from Lessee of the need therefor and thereafter diligently continue the same until completion thereof. The preceding sentence shall not be construed to require physical repair work to have commenced within such thirty (30) day period of time, as Lessor shall be deemed to have commenced repairs merely by contacting (by telephone or otherwise) a contractor to perform such work, whether or not such contractor is actually ultimately hired or is able to commence physical work within such thirty (30) period.

Lessee shall pay to Lessor, as additional rent, in the manner and at the time provided below, Lessee's proportionate share, as defined below, of all costs and expenses incurred by Lessor in the operation and maintenance of the Common Areas of the Business Park during the term of this Lease. Such costs and expenses shall include, without limiting the generality of the foregoing, all maintenance, pest control, security, gardening, landscaping, cost of public liability, property damage, vandalism and malicious mischief, earthquake, and other insurance deemed necessary by the Lessor, real property taxes, property taxes, property management costs, including a management fee as determined by Lessor (which shall in no event exceed 3% of the base rent payable for the period of time covered by such fee), painting, lighting, cleaning, trash removal, depreciation of equipment, fire protection, and similar items.

Lessee's proportionate share of such common area expenses shall be 10.28%, which is based on the ratio between the 25,024 square feet within the Premises and the total square footage of buildings within the Business Park which is 243,364 square feet. Such square footage is measured from the exterior surface of all exterior walls, and includes entryways and the area under covered docks. Lessee acknowledges that it has measured the square footage of the Premises, or has had adequate opportunity to do so, and that the square footage of the Premises set forth above shall be conclusive unless the area of the Premises changes subsequent to the Commencement Date.

Lessor shall bill Lessee monthly for Lessee's proportionate share of such common area costs, which proportionate share shall be based upon the previous month's actual costs and expenses. Lessee shall pay such proportionate share within 15 days of receipt of said billing statement from Lessor.

Section 8.03. Alterations and Additions. No alterations or additions shall be made to the Premises by Lessee without the prior written consent of Lessor which Lessor will not unreasonably withhold. Notwithstanding the preceding sentence, Lessee shall be entitled to make alterations and additions to the Premises without first obtaining Lessor's consent thereto if and only if they (i) do not affect the structural elements of the Premises or the roof membrane of the Premises, (ii) cost in the aggregate over any 12 month period of time no more than Fifteen Thousand Dollars ($15,000), and (iii) do not affect the electrical, gas, plumbing, HVAC, or other systems of the Premises. In no event shall any alteration or addition be of such a nature as to reduce or otherwise adversely affect the value of the improvements within the Premises immediately before making such alterations or additions, or to diminish the general utility of the Premises for the permitted uses hereunder. Lessor shall have absolutely no obligation to consider or consent to any request by Lessee to make any alteration or addition that affects the structural elements of the Premises or the roof membrane of the Premises. Lessee acknowledges that Lessor desires the interior of the Premises to remain free of interior hard wall partitions, and Lessor shall not be deemed unreasonable for withholding consent to any hard wall partitions proposed by Lessee, whether to create interior offices, or for a demising wall between Lessee and any entity to whom it may sublease space, or otherwise. As a condition of giving its consent to any proposed alterations or additions, Lessor may require that Lessee agree to remove any such alterations or improvements at the expiration of the term and to restore the Premises to their prior condition. As a further condition to giving such consent, Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, with a lien and completion bond in an amount equal to one and one-half (1-1/2) times the estimated cost of such improvements, to insure Lessor against any liability for mechanic's and materialmen's liens and to insure completion of the work. As to any alterations or additions made by Lessee without Lessor's consent (which Lessee has no right to make except as specifically provided above), Lessee shall, unless otherwise requested in writing by Lessor prior to expiration or sooner termination of the lease term, remove the same from the Premises and restore the Premises, including any building systems affected thereby, to its condition existing immediately prior to such alteration or addition being made (subject to reasonable wear and tear). All changes, alterations, or additions to be made to the Premises shall be under the supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications which have been furnished to and approved by Lessor prior to commencement of work. If the written consent of Lessor to any proposed alterations by Lessee shall have been obtained, Lessee agrees to advise Lessor in writing of the date upon which such alterations will commence in order to permit Lessor to post a notice of non-responsibility. All such alterations, changes and additions shall be constructed in good and workmanlike manner in accordance with all ordinances and laws relating thereto. Lessee shall deliver to Lessor "as built" plans of any improvements or alterations to the Premises made by Lessee during the term of this Lease. Any such changes, alterations or additions to or on the Premises shall remain for the benefit of and become the property of Lessor, unless Lessor requires their removal by giving Lessee written notice at least thirty (30) days before the date Lessee is to vacate the Premises.

Section 8.04. Tenant Improvements. Tenant Improvements to be provided by Lessor, if any, are set forth on **Exhibit "B".** Except as may be set forth on **Exhibit "B"**, Lessor has no obligation to make any improvements or alterations to the Premises.

Section 8.05. Plumbing. Lessee shall not use the plumbing facilities for any purpose other than that for which they were constructed. The expense of any breakage, stoppage or other damage relating to the plumbing and resulting from the introduction by Lessee, its agents, employees, or invitees of foreign substances into the plumbing facilities shall be borne by Lessee.

ARTICLE IX

INSURANCE

Section 9.01. Property/Rental Insurance – Premises. During the term of this Lease, Lessor shall keep the Premises insured against loss or damage by fire and those risks normally included in the term "all risk" including (a) flood coverage, (b) earthquake coverage at the election of Lessor, (c) coverage for loss of up to 12 months of rents (including taxes, insurance, and Common Area costs), and (d) boiler and machinery coverage if the Lessor deems such coverage necessary. Any deductibles shall be paid by Lessee to the extent the deductible relates to damage to the Premises. Payment of deductibles shall be made within fifteen (15) days after written request by Lessor therefor. Notwithstanding the foregoing, the amount of such deductible payable by Lessee upon request therefor by Lessor shall not exceed an amount equal to one's month's base rent based on the monthly rent amount payable under this lease at the time such deductible payment is so requested by Lessor, with any balance of such deductible paid by Lessee in equal installments amortized over the then remaining balance of the lease term, assuming interest thereon at the rate of the lesser of 12% per annum or the highest rate then allowed under law. For purposes of calculating the balance of the lease term pursuant to the preceding sentence, no unexercised options to extend the term shall be taken into consideration (in other words, any option period shall not be included in calculating the remaining balance of the term). The amount of such insurance shall be not less than one hundred percent (100%) of the replacement value of the Premises. Lessor shall be entitled to procure such insurance under a blanket policy of insurance covering one or more buildings in the Business Park owned by Lessor. Any recovery received from said insurance policy or policies shall be paid to Lessor, and Lessee shall have no interest in any such proceeds.

Lessee, in addition to the rent and other charges provided herein, agrees to pay to Lessor its pro rata share of the premiums for all such insurance, which pro rata share is identical to that provided in Section 8.02, above. The insurance premiums shall be paid in accordance with Article IV, within fifteen (15) days of Lessee's receipt of a copy of Lessor's statement therefor.

Section 9.02. Property Insurance – Fixtures and Inventory. During the term, Lessee shall, at its sole expense, maintain insurance with "all risk" coverage on any fixtures, leasehold improvements, furnishing, merchandise, equipment, or personal property in or on the Premises, whether in place as of the date hereof or installed hereafter, for the full replacement value thereof, and Lessor shall not have any responsibility nor pay any costs for maintaining any types of such insurance. Any deductibles under such insurance shall be paid by Lessee. All proceeds from such insurance shall belong to Lessee and shall be used to restore or replace the items damaged.

Section 9.03. Lessor's Liability Insurance. During the term, Lessor may maintain a policy or policies of comprehensive general liability insurance insuring Lessor (and such others as designated by Lessor) against liability for bodily injury, death and property damage on or about the Premises or the Common Area of the Business Park, with combined single limit coverage of not less than Two Million Dollars ($2,000,000).

Lessee, in addition to the rent and other charges provided herein, agrees to pay to Lessor its pro rata share of the premiums for all such insurance, which pro rata share is identical to that provided in Section 8.02 above. The insurance premiums shall be paid in accordance with Article IV, within fifteen (15) days of Lessee's receipt of a copy of Lessor's statement therefor.

Section 9.04. Lessee's Liability Insurance. Lessee shall, at its sole cost and expense, obtain and keep in force during the term of this Lease comprehensive general liability insurance applying to the condition, use, occupancy, and maintenance of the Premises and the business operated by Lessee, or any other occupant, on the Premises. Such insurance shall include broad form contractual liability insurance coverage insuring all of Lessee's indemnity obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of at least Three Million Dollars ($3,000,000). All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned. All such policies shall be endorsed to add Lessor and any lender or other party named by Lessor as an additional insured and to provide that any insurance maintained by Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; and (iii) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. The limits of all insurance described in this Section 9.04 shall not, however, limit the liability of Lessee hereunder. Not more frequently than once each calendar year if, in the reasonable opinion of Lessor, the amount of insurance required hereunder is not adequate, Lessee shall increase said insurance coverage as reasonably required by Lessor; provided that, in no event shall any such increase result in an increase in the premium therefor of greater than twenty percent (20%) of the amount of the premium during the preceding year of the term of this Lease. The failure of Lessor to require any additional insurance coverage at any time shall not relieve Lessee from the obligation to provide increased coverage at any later time or relieve Lessee from any other obligations under this Lease. Lessee shall furnish to Lessor prior to the Commencement Date, and at least thirty (30) days prior to the expiration date of any policy, certificates indicating that the liability insurance required to be carried by Lessee is in full force and effect. Such policy of liability insurance shall specifically provide that such policy shall not be subject to cancellation or reduction of coverage except after at least thirty (30) days prior written notice to Lessor. The insurance shall be with insurers approved by Lessor and with policies in form satisfactory to Lessor, provided however, that such approval shall not be unreasonably withheld.

Section 9.05. Waiver of Subrogation. Lessor hereby releases Lessee, and Lessee hereby releases Lessor, and their respective officers, agents, employees and servants, from any and all claims or demands of damages, loss, expense, or injury to the Premises, or to the furnishings and fixtures and equipment, or inventory or other property of either Lessor or Lessee in, or about or upon the Premises, or claims for bodily injury or death which is caused by or results from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby. Lessor and Lessee shall each obtain such policies of insurance as required hereunder that are not invalidated or prejudiced by the mutual release described in this Section 9.05 so long as such policies are available at commercially reasonable rates. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. If either party is unable to obtain such a waiver of subrogation with respect to the applicable policies of insurance, such party shall so notify the other party hereto in writing of such failure.

Section 9.06. Indemnification. Except in the case of Lessor's own acts or omission, Lessee will indemnify Lessee and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Lessee of the Premises or any part hereof, or caused wholly or in part by acts or omissions of Lessee, its agents, contractors, employees, servants, licensees, or concessionaires or by anyone permitted to be on the Premises by Lessee. In case Lessor shall be made a party to any such litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless from all claims, liabilities, costs and expenses, and shall pay all costs, expenses and reasonable legal fees incurred by Lessor in connection with such litigation, except to the extent caused by the negligence of Lessor.

Section 9.07. Waiver of Claims. Except to the extent caused by the negligence of Lessor, Lessee hereby waives any claims against Lessor for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, or for injury or death of Lessee's agents, employees, invitees, or any other person in or about the Premises or the Business Park from any cause whatsoever, regardless of whether the same results from conditions existing upon the Premises or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee. Notwithstanding the foregoing, Lessee waives all claims against Lessor for loss of business or other consequential damages regardless of the cause thereof, including without limitation Lessor's negligence or willful misconduct.

Section 9.08. Plate Glass Replacement. Lessee shall replace at its sole expense, any and all plate glass and other glass in and about the Premises which is damaged or broken by vandalism. If any plate glass or other glass in and about the Premises is damaged or broken by causes other than vandalism, then Lessor shall replace the same and Lessee shall reimburse Lessor an amount equal to Lessor's cost of replacement, provided that such amount shall not exceed the deductible then in effect on Lessor's insurance policy, if any, covering the damaged glass. Nothing herein shall be construed to require Lessor to cany plate glass insurance.

ARTICLE X

DAMAGE OR DESTRUCTION

Section 10.01. Right to Terminate on Destruction of Premises. Lessor shall have the right to terminate this Lease if, during the term, the Premises are damaged to an extent exceeding thirty-three percent (33%) of the then reconstruction cost of the Premises as a whole. Lessor shall also have the right to terminate this Lease if any portion of the Premises is damaged by an uninsured peril. In either case, Lessor may elect to terminate as provided above by written notice to Lessee delivered within sixty (60) days of the happening of such damage. Both Lessee and Lessor shall have a right to terminate this Lease if, during the term, the Premises are damaged to an extent that the estimated restoration time therefor, including obtaining requisite governmental permits for such restoration and any insurance proceeds necessary to pay for such restoration, as such period of time is reasonably estimated by Lessor, (i) exceeds ninety (90) days from the date of such damage, so long as the term of this Lease is not extended beyond June 30, 2007, and (ii) exceeds two hundred seventy (270) days, if the term of this Lease is extended beyond June 30, 2007. Lessor shall notify Lessee of its estimate of the restoration time promptly after Lessor determines the same. Each party shall exercise its right of termination pursuant to the preceding sentence, if at all, by written notice to the other within ten (10) days after Lessor delivers notice to Lessee of Lessor's estimate of the restoration time. Any such notice of termination shall be effective, and shall result in termination of this Lease, thirty (30) days after delivery thereof. Lessor shall have no further obligation to repair such damage after the date of any such notice of termination by Lessee.

Section 10.02. Repairs by Lessor. If neither Lessor nor Lessee elects to terminate this Lease pursuant to Section 10.01, Lessor shall, immediately upon receipt of insurance proceeds paid in connection with such casualty, but in no event later than one hundred twenty (120) days after such damage has occurred, proceed to repair or rebuild the Premises, on the same plan and design as existed immediately before such damage or destruction occurred and will proceed expeditiously to complete such restoration, subject to such delays as may be reasonably attributable to governmental restrictions or failure to obtain materials or labor, or otherwise due to causes beyond the control of Lessor. Lessee shall be liable for the repair and replacement of all fixtures, leasehold improvements, furnishing, merchandise, equipment and personal property as provided in Section 9.02.

Section 10.03. Reduction of Rent During Repairs. In the event Lessee is able to continue to conduct its business during the making of repairs, the base rent then prevailing under Section 4.01 will be equitably reduced in the proportion that the square footage of the unusable part of the Premises bears to the square footage of the whole thereof for the period that repairs are being made. No base rent shall be payable while the Premises are wholly unusable due to casualty damage.

Section 10.04. Arbitration. Any controversy or claim arising out of or relating to this Article shall be settled by arbitration in accordance with the rules of the American Arbitration Association as then in effect, and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction. The expenses of arbitration shall be borne by the parties as allocated by the arbitrators. The party desiring arbitration shall serve notice upon the other party, together with designation of the first party's arbitrator.

Section 10.05. Lessor's Overriding Right to Terminate. Notwithstanding anything to the contrary herein, if the discounted present value of the rent due hereunder for the balance of the term, using as the discount rate the prime commercial lending rate in effect at the Bank of America as of the date Lessor is to commence repairs pursuant to Section 10.02 hereof, is less than the cost of repairing the damage to the Premises, Lessor may at its option terminate this lease upon thirty (30) days' written notice.

ARTICLE XI

REAL PROPERTY TAXES

Section 11.01. Payment of Taxes. Lessee shall pay the real property tax, as defined in Section 11.02, applicable to the Premises during the term of this Lease. All such payments shall be made at least ten (10) days prior to the delinquency date of such payment. If any such taxes paid by Lessee shall cover any period of time prior to or after the expiration of the term hereof, Lessee's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Lessor shall reimburse Lessee to the extent required. If Lessee shall fail to pay any such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment together with interest at the prime commercial lending rate then in effect at the Bank of America.

Section 11.02. Definition of "Real Property Tax". As used herein, the term "**real property tax**" shall include any form of real estate tax or assessment, general, special, supplemental, ordinary or extraordinary, foreseen and unforeseen, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (excluding in all instances inheritance, federal or state net income, corporate, franchise or estate taxes) imposed on the Premises by any authority having the direct or indirect power to tax, including any improvement district thereof, as against any real property of which the Premises are a part, as against Lessor's right to rent or other income therefrom, and as against Lessor's business of leasing the Premises, and any taxes or levies in substitution of or in lieu of any of the foregoing. The term "real property tax" excludes penalties, late charges, and interest so long as Lessee timely pays in full all taxes required to be paid by Lessee under this Lease.

Section 11.03. Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the real property taxes for all of the land and improvements included within the tax parcel assessed, as reasonably determined by Lessor. Lessee shall pay Lessor said proportionate amount at least ten (10) days prior to the delinquency date of the real property tax.

Section 11.04. Personal Property Taxes.

(a) Lessee shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor.

(b) If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

(c) If Lessee shall fail to pay any such taxes, Lessor shall have the right to pay the same, in which case Lessee shall repay such amount to Lessor with Lessee's next rent installment together with interest at the prime commercial lending rate then charged by the Bank of America.

ARTICLE XII

UTILITIES AND JANITORIAL

Lessee shall pay prior to delinquency throughout the term the cost of water, gas, heating, cooling, sewer, telephone, electricity, garbage, air conditioning and ventilation, janitorial service, and all other materials, utilities, and services supplied to the Premises. If any such services are not separately metered to Lessee, Lessee shall pay its proportionate share of all charges which are jointly metered, as reasonably determined by Lessor, and payment to be made by Lessee within fifteen (15) days of receipt of the statement for such charges.

ARTICLE XIII

ASSIGNMENT AND SUBLETTING

Section 13.01. Lessor's Consent Required. Except as otherwise provided in Section 13.02, Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises, without Lessor's prior written consent which Lessor shall not unreasonably withhold. All of the following shall be deemed an assignment within the meaning of this Article XIII: (i) any transfer resulting from the merger, consolidation or other reorganization of Lessee, or transfer to any Affiliate (as defined below) of Lessee, (ii) any transfer resulting from the sale or other transfer of all or substantially all of Lessee's assets, and (iii) if Lessee is a corporation, partnership, limited liability company, trust or unincorporated association, the sale, issuance or transfer of a controlling interest therein, or the transfer of a majority interest in or a change in the voting control of any corporation, partnership, limited liability company, trust, unincorporated association which is an Affiliate of Lessee, or the transfer of any portion of any general partnership or managing interest in Lessee or in any such Affiliate. "**Affiliate**" shall mean any Entity controlled by, under common control with, or controlling, Lessee. "**Entity**" shall mean any person, corporation, partnership (general or limited), limited liability company, joint venture, association, joint stock company, trust or other business entity or organization. For purposes of this paragraph, "**control**" shall mean (i) with respect to a corporation, the direct or indirect ownership of more than fifty percent (50%) of any class of voting shares, (ii) with respect to a partnership, the ownership of a general partnership interest, or entitlement to more than fifty percent (50%) of the partnership interests in profits or capital, (iii) with respect to any other Entity, the ownership of a majority of the voting rights thereof, or the ability to direct its management decisions. Notwithstanding the foregoing, an "assignment" for purposes of Article XIII shall not include any transfer or issuance of stock over the New York Stock Exchange, the American Stock Exchange, or NASDAQ or by virtue of a private placement with a venture capital firm wherein such venture capital firm receives stock in Lessee.

Section 13.02. Permitted Transfers. Notwithstanding Section 13.01, Lessee shall be entitled to assign this Lease or sublet the Premises or any portion thereof, without Lessor's consent, to any Affiliate and any Entity which results from a merger or consolidation with or other reorganization of Lessee, or to any Entity which acquires substantially all of the stock or assets of Lessee as a going concern with respect to the business that is being conducted in the Premises (each a "**Permitted Transfer**"**),** provided that as to each Permitted Transfer either (i) Lessee survives such transaction and remains fully and primarily liable under this Lease for the performance of all of Lessee's obligations hereunder, or (ii) if Lessee does not survive (for example, it merges into another corporation), then the net worth of such assignee on the effective date of such assignment determined in accordance with GAAP and exclusive of any good will and other intangible assets is at least equal to the lesser of (A) the net worth of Lessee immediately prior to such transfer, or (B) Twenty Million Dollars ($20,000,000).

Section 13.03. Request for Permission to Assign or Sublease. Lessee must make any request for Lessor's approval of a proposed assignment, sublease, or other transfer in writing and by certified mail. Lessee's written request to Lessor for consent to an assignment or subletting shall be accompanied by (a) the name and legal composition of the proposed sublessee; (b) the nature of the proposed sublessee's business to be carried on in the Premises; (c) the terms and provisions of the proposed sublease; and (d) such financial and other reasonable information as Lessor may request concerning the proposed sublessee. Lessor shall respond to Lessee's request for consent hereunder within twenty (20) days after Lessee's request and any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void, and shall constitute a breach of this Lease. Lessor's consent shall not be deemed unreasonably withheld if consent is denied, among other reasons, because the prospective sublessee or assignee will in any way diminish the value of the Premises or increase Lessor's exposure to risk due to the nature of Lessee's proposed use. Each proposed assignment or sublease agreement shall recite that it is and shall be subject and subordinate to the provisions of this Lease, that the assignee or sublessee accepts such assignment or sublease and agrees to perform all of the obligations of Lessee hereunder, and that the termination of this Lease shall, at Lessor's sole election, constitute a termination of every such assignment or sublease.

Section 13.04. No Release of Lessee. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Lessee or any successor Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee. If Lessee shall purport to assign this Lease, or sublease all or any portion of the Premises, or permit any person or persons other than Lessee to occupy the Premises, without Lessor's prior written consent, Lessor may collect rent from the person or persons then or thereafter occupying the Premises and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of Lessor's rights and remedies under this Article XIII or the acceptance of any such purported assignee, sublessee or occupant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained.

Section 13.05. Attorneys' Fees. In the event Lessee shall assign or sublet the Premises or request the consent of Lessor to any assignment or subletting or if Lessee shall request the consent of Lessor for any act Lessee proposes to do, then Lessee shall pay Lessor's reasonable attorneys' fees incurred in connection therewith up to but not exceeding Five Thousand Dollars ($5,000).

Section 13.06. Excess Rent. In the event Lessor shall consent to a sublease or an assignment under the Lease and such sublease or assignment, together with any prior subleases and assignments, results in a sublease or assignment of more than 50% of the space initially leased to Lessee under this Lease, then Lessee shall pay to Lessor with its regularly scheduled rent payments fifty percent (50%) of all sums collected by Lessee from ail sublessees and/or assignees which are in excess of the rent then owing pursuant to Article IV above after first deducting therefrom any real estate brokerage commissions and attorneys' fees reasonably incurred by Lessee in connection with said assignment or subletting, up to but not exceeding Five Dollars ($5.00) per square foot of space subleased or assigned.

Section 13.07. Recapture of Premises. The provisions of this Section 13.07 shall not apply to a sublease which, together with all prior subleases, results in Lessee subleasing less than 50% of the total floor space of Premises initially leased to Lessee under this Lease for less than the full balance of the term, but shall apply to all assignments, and to any sublease which, together with all other subleases then in effect, results in Lessee subleasing 50% or more of the total floor space of Premises initially leased to Lessee under this Lease for the full balance of the term. Any purported assignment of less than all of the Lease shall be deemed a sublease for purposes of this Lease. In the event Lessee requests Lessor's consent to a proposed sublease or assignment pursuant to this Article XIII, then in lieu of giving or denying such consent within the twenty (20) day period of time specified in Section 13.03 therefor, Lessor may instead elect to terminate the Lease with respect to the portion of the Premises Lessee has requested Lessor's consent to sublease, or in the event of an assignment then with respect to the entire Premises (collectively, the "Recapture Space"). Such election shall be made, if at all, by written notice to Lessee thereof within said twenty (20) day period. Such termination shall be effective on the date such sublease would otherwise have been effective, or if no such date is specified in Lessee's request for Lessor's consent to such sublease, then on the date which is thirty (30) days after Lessor's election to terminate. From and after the date of such termination, (i) the Recapture Space shall no longer be deemed part of the Premises, (ii) the amount of rent payable and Lessee's share of common area expenses, insurance, and taxes under this Lease shall be reduced proportionately based on the proportionate reduction of square footage of the Premises resulting from such recapture, and (iii) Landlord at Landlord's sole cost shall erect a demising wall if there is no pre-existing demising wall segregating such Recapture Space from the balance of the Premises. If separate access to areas outside the Premises is not already available to the Recapture Space, then Lessee at no cost or liability to Lessor, shall make access from such outside areas available for any and all occupants of the Recapture Space through Lessee's remaining Premises as reasonably determined by Landlord. Lessor may, but shall not be obligated to, lease the Recapture Space to any entity to whom Lessee requested Lessor's consent to sublease or assign the same, at the same rent, or any higher or lower rent, as was proposed by Lessee in connection with its proposed sublease or assignment.

ARTICLE XIV

DEFAULTS; REMEDIES

Section 14.01. Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The abandonment of the Premises by Lessee;

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of five (5) days after delivery of notice to Lessee that such payment is due; provided that, any such notice shall constitute the notice required under Section 1161 of the California Code of Civil Procedure (and/or any related or successor statutes regarding unlawful detainer actions) so long as such notice is given in accordance with the requirements of such statute; and provided further that, if two or more such failures shall occur in any one year period during the term of this Lease, then, unless applicable law requires otherwise, each and every succeeding failure to pay any sum payable hereunder when due shall constitute a material default and breach of this Lease, and Lessee shall not be entitled to any notice or cure period with respect to any such failure to pay;

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Section 14.01(b) above, where such failure shall continue for a period of 10 days after written notice hereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than 10 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said 10 day period and thereafter diligently prosecutes such cure to completion;

(d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto; (iii) the taking or suffering of any action by Lessee under any insolvency or bankruptcy act; (iv) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, or (v) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease. Provided, however, in the event that any provisions of this Section 14.01(d) is contrary to any applicable law, such provision shall be of no force or effect;

(e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

Section 14.02. Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any other right or remedy which Lessor may have by reason of such default or breach, take any of the following actions:

(a) Lessor shall be entitled to terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In the event of any such termination of this Lease, Lessor shall be entitled to recover from Lessee (i) the worth at the time of award of the unpaid rent which had been earned at the time of termination; plus, (ii) 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 for the same period that Lessee proves could have been reasonably avoided; plus(iii) 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 for the same period that Lessee proves could be reasonably avoided; plus (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) of this Section 14.02(a) shall be computed by allowing interest at the lower of twelve percent (12%) per annum, or the maximum rate then permitted by law. The "worth at the time of award" of the amount referred to in clause(iii) of this Section 14.02(a) shall be computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "time of award" as used in subparagraphs (i), (ii), and (iii) shall mean the date of entry of a judgment or award against Lessee in an action or proceeding arising out of Lessee's breach of this Lease. The term "rent" as used in this paragraph shall include all base rent, taxes, insurance, Common Area costs and other sums required to be paid by Lessee to Lessor pursuant to the terms of this Lease. This Lease may be terminated by a judgment specifically providing for termination, or by Lessor's delivery to Lessee of written notice specifically terminating this Lease. In no event shall any one or more of the following actions by Lessor, in the absence of a written election by Lessor to terminate this Lease, constitute a termination of this Lease or a waiver of Lessor's right to recover damages under this Section 14.02(a): appointment of a receiver in order to protect Lessor's interest hereunder; consent to any subletting of the premises or assignment of this Lease by Lessee, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or any other action by Lessor or Lessor's agents intended to mitigate the adverse effects of any breach of this Lease by Lessee, including without limitation any action taken to maintain and preserve the Premises, or any action taken to relet the Premises or any portion thereof for the account of Lessee and in the name of Lessee.

(b) Lessor shall be entitled to maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Lessor shall be entitled to pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state of California. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the prime rate then charged by Bank of America.

Section 14.03. Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. In the event Lessor does not commence performance within the thirty (30) day period provided herein, or does not diligently prosecute the same to completion, Lessee may perform such obligation and will be reimbursed for its expenses by Lessor together with interest thereon at the prime commercial lending rate then charged by the Bank of America, provided, however, that if the parties are in dispute as to what constitutes Lessor's obligations under this agreement, any such dispute shall be resolved by arbitration in a manner identical to that provided in Section 10.04 above.

Section 14.04. Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designated agent within five (5) days after such amount is due and owing, Lessee shall pay to Lessor a late charge equal to 5% of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of any such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding Section 4.01 or any other provision of this Lease to the contrary.

Section 14.05. Impounds. In the event Lessee fails on two (2) occasions during any consecutive twelve (12) month period to make rental payments within ten (10) days of Lessee's receipt of written notice of such delinquency, or shall on two (2) occasions issue a check which is declined by Lessee's bank for insufficient funds, Lessor may require, by delivery of Notice thereof to Lessee, that Lessee pay all rent, real property taxes, and insurance expenses quarterly in advance for the balance of the Lease term, and that all such payments be made by cash, cashier's check or money order in lieu of Lessee's check. Acceptance of payment by check shall not be construed as a waiver of any such rights. The exercise of any rights under this paragraph shall not limit or otherwise affect Lessor's other rights and remedies under this Lease or by law. Such quarterly advance installment shall be payable on each January 1, April 1, July 1, and October 1 thereafter occurring during the Lease term in the amount of rent, real property tax and insurance expenses as estimated by Lessor which are payable by Lessee under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such rent, real property taxes and insurance premiums. If the amounts paid to Lessor by Lessee under the provisions of this paragraph are insufficient to discharge the obligations of Lessee to pay such real property taxes and insurance premiums as the same become due, Lessee shall pay to Lessor, within three (3) business days after Lessor's demand, such additional sums necessary to pay such obligations. All moneys paid to Lessor under this paragraph may be intermingled with other money of Lessor, shall not bear interest, and shall not create any trust relationship between Lessor and Lessee or any fiduciary duties on the part of Lessor to Lessee. In the event of a default in the obligations of Lessee to perform under this Lease, then any balance remaining from funds paid to Lessor under the provisions of this paragraph may, at the option of Lessor, be applied to the payment of any monetary default of Lessee in lieu of being applied to the payment of rent, real property tax and insurance premiums. Any excess payment by Lessee above the amount of expenses payable by Lessee under this Lease to which Lessor applies amounts in such fund shall be credited against next due installments of real property taxes and insurance premiums.

ARTICLE XV

CONDEMNATION OF PREMISES

Section 15.01. Total Condemnation. If the entire Premises, whether by exercise of governmental power or the sale or transfer by Lessor to any condemnor under threat of condemnation or while proceedings for condemnation are pending, at any time during the term, shall be taken by condemnation such that there does not remain a portion suitable for occupation, this Lease shall then terminate as of the date transfer of possession is required. Upon such condemnation, all rent shall be paid up to the date transfer of possession is required, and Lessee shall have no claim against Lessor for the value of the unexpired term of this Lease.

Section 15.02. Partial Condemnation. If any portion of the Premises is taken by condemnation during the term, whether by exercise of governmental power or the sale or transfer by Lessor to a condemnor under threat of condemnation or while proceedings for condemnation are pending, this Lease shall remain in full force and effect except that in the event such taking leaves the Premises unfit for normal and proper conduct of the business of Lessee, then Lessee shall have the right to terminate this Lease effective upon the date transfer of possession is required. Moreover, Lessor and Lessee shall have the right to terminate this Lease effective on the date transfer of possession is required if more than thirty-three percent (33%) of the total square footage of the Premises is taken by condemnation. Lessee and Lessor may elect to exercise their respective rights to terminate this Lease pursuant to this Section by serving written notice to the other within one hundred twenty (120) days of their receipt of notice of condemnation. All rent shall be paid up to the date of termination, and Lessee shall have no claim against Lessor for the leasehold value, or the value of any unexpired term of this Lease. If this Lease shall not be canceled, the rent after such partial taking shall be that percentage of the adjusted base rent specified herein, equal to the percentage which the square footage of the untaken part of the Premises, immediately after taking, bears to the square footage of the entire Premises immediately before the taking. Any sums owing hereunder which are calculated on the basis of Lessee's pro rata share (as set forth in Section 8.02) shall also be adjusted to reflect the decreased square footage of the Premises due to the condemnation. If Lessee's continued use of the Premises requires alterations and repair by reason of a partial taking, all such alterations and repair shall be made by Lessee at Lessee's expense.

Section 15.03. Award to Lessee. In the event of any condemnation, whether total or partial, Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee for loss of its business fixtures, or equipment belonging to Lessee immediately prior to the condemnation. The balance of any condemnation award shall belong to Lessor and Lessee shall have no further right to recover from Lessor or the condemning authority for any additional claims arising out of such taking.

ARTICLE XVI

ENTRY BY LESSOR

Lessee shall permit Lessor and its agent to enter the Premises at all reasonable times upon written or oral notice from Lessor to Lessee of Lessor's entry no less than 24 hours prior to such entry, for any of the following purposes: to inspect the Premises; to maintain the building in which the Premises are located; to make such repairs, alterations, and additions to the Premises as Lessor is obligated or may elect to make; to show the Premises and post "To Lease" signs for the purposes of reletting during the last ninety (90) days of the term; to show the Premises as part of a prospective sale by Lessor or prospective loan to Lessor or to post notices of non-responsibility. Lessor shall have such right of entry without any rebate of rent to Lessee for any loss of occupancy or quiet enjoyment of the Premises thereby occasioned.

ARTICLE XVII

ESTOPPEL CERTIFICATE

(a) Lessee shall at any time upon not less than ten (10) days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (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 date to which the rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed, and (iii) certifying such other information regarding this Lease as Lessor or a prospective purchaser or lender of Lessor may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's rent has been paid in advance; or such failure may be considered by Lessor as a default by Lessee under this Lease.

ARTICLE XVIII

LESSOR'S LIABILITY, SUBORDINATION AND ATTORNMENT

Section 18.01. Transfer of Ownership. The term "**Lessor**" as used herein shall mean only the owner or owners at the time in question of the fee title or a Lessee's interest in a ground lease of the Premises. In the event of any transfer of such title or interest, Lessor herein named (and in case of any subsequent transfers then the grantor) shall be relieved from and after the date of such transfer of all liability as respects Lessor's obligations thereafter to be performed, provided that any funds in the hands of Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall, subject as aforesaid, be binding on Lessor's successors and assigns, only during their respective periods of ownership.

Section 18.02. Attornment. Lessee shall attorn to any third party purchasing or otherwise acquiring the premises at any sale or other proceeding, or pursuant to the exercise of any rights, powers or remedies under any mortgages or deeds of trust or ground leases now or hereafter encumbering all or any part of the premises, as if such third party had been named as Lessor under this Lease. Lessee shall execute a new lease with such new Lessor on the same terms of this Lease if so required by such new Lessor.

Section 18.03. Subordination. Lessee agrees that this Lease shall be subject and subordinate to any mortgage, deed of trust, or other instrument of security (each, a "**Mortgage**") now of record. Lessor shall exercise its best efforts to obtain a nondisturbance agreement within the thirty (30) day period immediately following the execution of this Lease with respect to the Mortgage currently of record as of the date of execution of this Lease, which nondisturbance agreement is substantially in the form of **Exhibit "C"** attached hereto. In the event Lessor does not obtain such nondisturbance agreement after exercising best efforts to do so within said thirty (30) day period of time, this Lease shall not be voidable or terminable by Lessee as a consequence thereof, nor shall Lessor be deemed in default hereunder as a result thereof, but this Lease shall instead continue in full force and effect. In addition, Lessee agrees that this Lease shall be subject and subordinate to any Mortgage which is recorded after the date of this Lease affecting the Premises, and such subordination is hereby made effective without any further act of Lessee; provided that, no such subordination shall be effective unless Lessor first obtains from a lender a written subordination, nondisturbance and attornment agreement substantially in the form of **Exhibit "C"** attached hereto. Lessee shall execute in recordable form and return to Lessor said subordination, nondisturbance and attornment agreement within seven (7) days after delivery thereof to Lessee, and the failure of Lessee to so execute and return the same shall constitute a default hereunder. Notwithstanding anything to the contrary set forth above, the lender under any Mortgage may at any time subordinate its Mortgage to this Lease, without any need to obtain Lessee's consent, by execution of a written document subordinating such Mortgage to this Lease and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery and/or recording.

Section 18.04. No Recourse. The obligations of Lessor under this Lease shall be without recourse to any partner, officer, trustee, beneficiary, shareholder, director, member, unit holder or employee of Lessor or to any of their respective assets. It is expressly agreed that if Lessee obtains a money judgment against Lessor resulting from a default by Lessor under this Lease, that judgment shall be satisfied only out of the rents, issues, profits and other income actually received on account of Lessor's right, title and interest in the Premises and no other real, personal or mixed property of Lessor shall be subject to levy, attachment or execution, or otherwise used to satisfy any such judgment. Lessee hereby waives any right to satisfy a judgment against Lessor except from the rents, issues, profits and other income actually received on account of Lessor's right, title and interest in the Premises.

ARTICLE XIX

EXPIRATION ON TERMINATION

Section 19.01. Surrender of Possession. Lessee agrees to deliver up and surrender to Lessor possession of the Premises and all improvements thereon, in as good order and condition as when possession was taken by Lessee, excepting only ordinary wear and tear or any permitted alterations. Upon termination of this Lease, Lessor may reenter the Premises and remove all persons and property therefrom. If Lessee shall fail to remove any effects which it is entitled to remove from the Premises upon the termination of this Lease, for any cause whatsoever, Lessor, at its option, may remove the same and store or dispose of them, and Lessee agrees to pay to Lessor on demand any and all expenses incurred in such removal and in making the Premises free from all dirt, litter, and debris, including all storage and insurance charges. If the Premises are not surrendered at the end of the Lease term, Lessee shall indemnify Lessor against loss or liability resulting from delay by Lessee in so surrendering the Premises, including, without limitation, actual damages for lost rents.

Section 19.02. Holding Over. If Lessee, with or without Lessor's consent, remains in possession of the Premises after expiration of the term and if Lessor and Lessee have not executed an express written agreement as to such holding over which provides other than as set forth in this Section, then such occupancy shall be a tenancy from month to month, at a monthly rental equivalent to 150% of the monthly rental in effect immediately prior to such expiration, such payments to be made as herein provided. In the event of such holding over all of the terms of this Lease including the payment of all charges owing hereunder other than rent shall remain in full force and effect on said month to month basis.

ARTICLE XX

MISCELLANEOUS PROVISIONS

Section 20.01. Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

Section 20.02. Interest on Past-due Obligations. Except as expressly herein provided, any amount due to Lessor not paid when due shall bear-interest at the lesser of ten percent (10%) per annum or the prime commercial lending rate then in effect at Bank of America. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

Section 20.03. Time. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL OBLIGATIONS UNDER THIS LEASE. All references to days contained in this Lease shall be deemed to mean calendar days, unless otherwise specifically stated.

Section 20.04. Additional Rent. Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be rent.

Section 20.05. Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither Lessor nor any employees or agents of the Lessor has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety Health Act, the Americans With Disabilities Act, and the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

Section 20.06. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be given by personal delivery or facsimile (provided confirmation of receipt is obtained from the recipient), overnight courier, or certified mail, and if given personally or by mail, shall be deemed sufficiently given if addressed to Lessee or to Lessor at the address noted below the signature line of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee. Any notice delivered in accordance with the foregoing (i) by commercial courier of other personal delivery shall be deemed delivered on the date of actual receipt (as evidenced by signed receipt), or upon refusal of receipt, (ii) by facsimile shall be deemed delivered on the date of receipt (as evidenced by written confirmation of receipt by the recipient), or (iii) if delivered by United States mail on the date of receipt evidenced by the return receipt, or upon refusal of receipt. No notice shall be deemed effective under this Lease unless delivered in compliance with the provisions of this Section 20.06.

Section 20.07. Waivers. No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provisions. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

Section 20.08. Recording. Either Lessee or Lessor shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes. If any such short form memorandum of this Lease is recorded in the public records, then upon expiration or sooner termination of the term of this Lease, Lessee shall within ten (10) days after request by Lessor therefor execute in recordable form and deliver to Lessor a quitclaim deed or such other documentation as Lessor shall reasonably request in order to evidence the termination of this Lease.

Section 20.09. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 20.10. No Jury Trial. Each party waives any rights it may have to a jury trial respecting any dispute or other matter arising under or relating to this Lease.

Section 20.11. Binding Effect; Choice of Law; Venue. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of Article XVIII, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California. Venue for any action or proceeding brought to enforce or defend this agreement, and for any other purpose hereunder, shall be Santa Clara County.

Section 20.12. No Accord and Satisfaction. No payment by Lessee, or receipt by Lessor, of an amount which is less than the full amount of rent and all other sums payable by Lessee hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest rent due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of rent or such other sums shall be deemed an accord and satisfaction, and Lessor may accept any such check or payment without prejudice to Lessor's right to receive payment of the balance of such rent and/or the other sums, or Lessor's right to pursue any remedies to which Lessor may be entitled to recover such balance.

Section 20.13. Attorneys' Fees.

(a) Lessor Made party to Litigation. If Lessor becomes a party to any litigation brought by someone other than Lessee and concerning this lease, or the Lessee's use or occupancy of the Premises or the condition thereof, based upon any real or alleged act or omission of Lessee or its authorized agents or representative, Lessee shall be liable to Lessor for reasonable attorneys' fees and court costs incurred by Lessor in the litigation.

(b) Certain Litigation Between the Parties. If any action or proceeding in law or in equity or any arbitration proceeding is instituted by Lessor for damages or possession of the Premises or both, for an alleged breach of any obligation of Lessee under this Lease, to recover rent, to terminate the tenancy of Lessee at the Premises, to enforce, protect, or establish any right or remedy of Lessor, or to enforce any other right of either party under this Lease or interpret any provision of this Lease, the prevailing party in such action or proceeding its attorneys' fees, expert witness fees, and court costs are incurred, or as may be fixed by the court or jury, but this provision shall not apply to any cross-complaint filed by anyone other than Lessor in such action or proceeding.

Section 20.14. Interpretation. The captions and headings of the numbered paragraphs of this Lease are inserted solely for the convenience of the parties hereto, and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. When required by the context of this Lease, the neuter includes the masculine, the feminine, a partnership, a corporation, or a joint venture, and the singular shall include the plural. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee, and without regard to which party prepared this Lease.

Section 20.15. Signs. Lessee shall not place any sign upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. Any and all signs shall be in accordance with standards generally observed for signage throughout the Business Park.

Section 20.16. Voluntary Surrender or Merger. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, or a termination by Lessor, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all of such subtenancies.

Section 20.17. Guarantor. In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Lessee under this Lease.

Section 20.18. Quiet Possession. Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

Section 20.19. Rules and Regulations. Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, care and cleanliness of the Premises and Common Areas, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the Business Park. The violations of any such rules and regulations shall be deemed a material breach of this Lease. Lessee, however, shall not be bound by any future rules or regulations, unless it shall approve same, which approval shall not be unreasonably withheld.

Section 20.20. Easements. Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee.

Section 20.21. Authority to Sign. The individuals executing this Lease on behalf of each party represent and warrant to the other party that they are fully authorized and legally capable of executing this Lease on behalf of such party and that such execution is binding upon such party. Each individual executing this Lease on behalf of a corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation, and that this Lease is binding upon said corporation in accordance with its terms.

Section 20.22. Delays for Cause. In any case where either party hereto is required to do any act, delays caused by or resulting from Acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortages of labor, materials or equipment, government regulations, unusually severe weather, or other causes beyond such party's reasonable control (other than financial inability) shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time or "a reasonable time", and such time shall be deemed to be extended by the period of such delay.

Section 20.23. Brokers. Lessor and Lessee each represent and warrant to the other that it has not dealt with any broker in connection with this transaction and that no real estate broker, salesperson or finder has the right to claim a real estate brokerage, salesperson's commission or finder's fee by reason of contact between the parties brought about by such broker, salesperson or finder. Each party shall hold and save the other harmless of and from any and all liability, loss, cost, damage, injury or expense arising out of or in any way related to claims for real estate broker's, salesperson's or finder's commissions or fees based upon allegations made by the claimant that it is entitled to such a fee from the indemnified party arising out of contact with the indemnifying party or alleged introductions of the indemnifying party to the indemnified party.

Section 20.24. Joint and Several Liability. If Lessee is more than one person or entity, each such person or entity shall be jointly and severally liable for the obligations of Lessee hereunder.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

[TEXT CONTINUED ON NEXT PAGE]

The Parties hereto have executed this Lease at the place and on the dates specified immediately adjacent to their respective signatures.

Executed at Gilroy, California, as of September 1, 2005.

Lessor:

VANNI BUSINESS PARK, LLC,
a Delaware limited liability company

By: /s/ Chris Vanni
Chris Vanni, Manager

Address:

c/o Chris Vanni
8080 Santa Teresa Blvd., Ste 210
Gilroy, California 95020

Lessee:

PROGENITOR CELL THERAPY, LLC,
a New Jersey limited liability company

By: /s/ George S. Goldberger

Its: Chief Business & Financial Officer

Attn: _____
_____
_____

ADDENDUM TO LEASE.

This Addendum is an integral part of the Lease dated September 1, 2005 between Vanni Business Park, LLC, a Delaware limited liability company ("**Lessor**"), and Progenitor Cell Therapy, LLC, a New Jersey limited liability company ("**Lessee**"). The Paragraph(s) below are hereby incorporated into such lease and made a part thereof.

Section 21. Option to Extend.

21.1 Option. Subject to the remaining provisions of this Section 21, Lessee shall have one option (the "**Option**") to extend the term of this Lease for a period of sixty (60) months (such extension period herein called an "**Extended Term**").

Such Option shall be exercised, if at all, only by written notice delivered by Lessee to Lessor at least one hundred eighty (180) days prior to the then-scheduled expiration of the term hereof, but in no event earlier than two hundred ten (210) days prior to the then-scheduled expiration of the term hereof. TIME IS OF THE ESSENCE WITH RESPECT TO THE TIME OF LESSEE'S EXERCISE OF THE OPTION. Notwithstanding the foregoing, Lessee shall not have the right to exercise the Option if (a) Lessee is in default under this Lease at the time of the purported Option exercise, or (b) two or more events have occurred during the one year period of time immediately preceding the date of such purported exercise which constitute events of default. The Extended Term shall be upon all of the terms and conditions hereof, except that the monthly rent for the Extended Term shall be determined in accordance with Section 21.2. Upon commencement of the Extended Term, all references herein to the "term" of this Lease shall be deemed to include the Extended Term. The option rights of Lessee under this Section 21 are granted for Lessee's personal benefit and may not be assigned or transferred by Lessee, except pursuant to a transfer which is deemed a Permitted Transfer in accordance with Section 13.02 above.

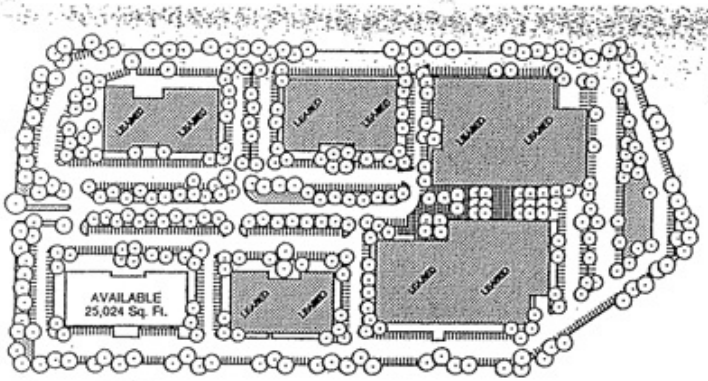
21.2 Extended Term Rent. Within thirty (30) days after Lessor's receipt of Lessee's notice of exercise of an Option, Lessor shall deliver to Lessee a proposal setting forth the monthly base rent for the upcoming Extended Term. If Lessee within ten (10) days after receipt of such proposal agrees to such proposal, or fails to notify Lessor of its acceptance or rejection of such proposal (in which event Lessee shall be deemed to have agreed thereto), the amount of monthly base rent set forth in such proposal shall be binding on Lessor and Lessee. Should Lessee object in writing to Lessor's proposal within ten (10) days after receipt thereof, then during the ten (10) day period following Lessee's objection to Lessor's proposal, Lessor and Lessee shall negotiate in good faith for the purpose of reaching an agreement regarding the amount of the monthly base rent during the Extended Term. In the event the parties fail to agree in a written instrument signed by both parties upon the amount of the monthly base rent for the Extended Term within such ten (10) day period, the monthly base rent for the Extended Term shall be determined in the manner hereafter set forth.

If the parties have not reached agreement on the amount of monthly rent for the Extended Term by the end of the ten (10) day period of good faith negotiation referred to in the immediately preceding paragraph, then the fair market monthly rent for the Premises shall be determined as follows. Within five (5) days after such ten (10) day period, Lessor and Lessee each shall appoint a broker. Each broker appointed under this Section 21 shall be a California licensed real estate broker having at least 5 years experience in leasing commercial properties within a ten (10) mile radius of the Premises. Such brokers so appointed shall each determine the fair market monthly base rent for the Premises as of the commencement of the Extended Term, taking into account the value of the Premises and prevailing comparable rentals in the area including the value of any improvements installed in the Premises. Such brokers shall, within twenty (20) business days after their appointment, complete their determinations and submit their reports thereof to Lessor and Lessee. If the fair market monthly base rent of the Premises set forth in the two (2) broker reports varies by less than five percent (5%) of the higher rental, then the fair market monthly base rent of the Premises shall be deemed to be the average of such two determinations. If the fair market monthly base rent of the Premises set forth in the two (2) broker reports varies by five percent (5%) or more of the higher rental, said brokers, within ten (10) days after submission of the last report, shall appoint a third broker meeting the broker qualifications set forth above. Such third broker shall, within twenty (20) business days after his appointment, determine the fair market monthly base rent of the Premises as of the commencement of the Extended Term, taking into account the same factors referred to above, and submit his report thereof to Lessor and Lessee. The fair market monthly base rent determined by the third broker for the Premises shall be controlling, unless it is less than that set forth in the lower determination previously obtained, in which case the rental set forth in said lower determination shall be controlling, or unless it is greater than that set forth in the higher determination previously obtained, in which case the rental set forth in said higher determination shall be controlling. If either Lessor or Lessee fails to appoint an broker, or if a broker appointed by either of them fails, after his appointment, to submit a report of his determination within the required period in accordance with the foregoing, the determination in the report submitted by the broker properly appointed and timely submitting his report shall be controlling. If the two brokers appointed by Lessor and Lessee are unable to agree upon a third broker within the required period in accordance with the foregoing, application shall be made within twenty (20) days thereafter by either Lessor or Lessee to a local court of law having jurisdiction which shall appoint a broker having the qualifications specified above. The cost of all broker determinations under this subparagraph shall be borne equally by Lessor and Lessee. The amount of monthly rent for the Premises determined as set forth above in this paragraph shall be applicable during the first year of the Extended Term, and thereafter, on the first and each succeeding annual anniversary of the commencement of the Extended Term, shall be increased to an amount which is 1.05 times the amount of monthly rent payable during the month preceding such increase. The intent of the parties is to increase the monthly rent amount each year during the Extended Term by 5% of the immediately preceding rent amount.

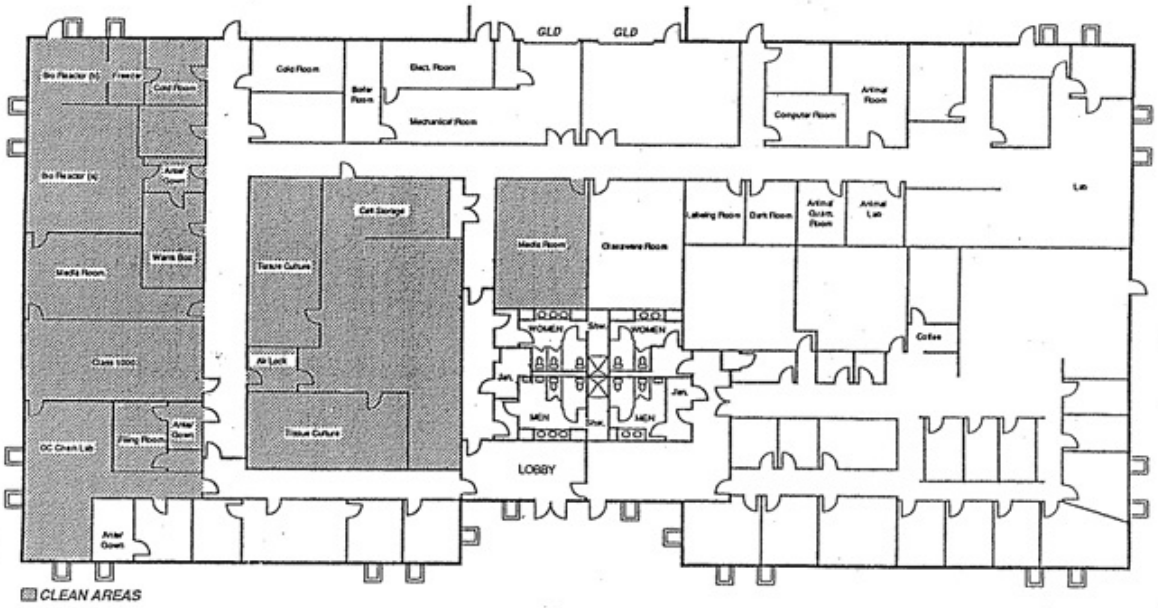
Notwithstanding anything to the contrary contained in this Section 21.2, in no event shall the monthly base rent for the Extended Term be less than the monthly base rent payable hereunder for the last full month of the term of this Lease immediately preceding commencement of the Extended Term. For purposes of the preceding sentence, the amount of monthly base rent for the last month of the Lease term shall not be reduced to reflect any abatement of rent which may then be in effect.

EXHIBIT “A

(Site Plan)



Site Plan



Floor Plan

EXHIBIT A

291 N. Bernardo Avenue, Mountain View

The information contained herein has been given to us by the owner of the property or other sources we deem reliable. We have no reason to doubt its accuracy, but we do not guarantee it. All information should be verified prior to purchase or lease.

EXHIBIT “B”

(TENANT IMPROVEMENTS)

NONE.

EXHIBIT "C

RECORDING REQUESTED
BY AND WHEN
RECORDED RETURN TO:

_____
_____
_____
_____

SUBORDINATION,
NONDISTURBANCE
AND ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

DEFINED TERMS

Execution Date:
Beneficiary & Address: with a copy to:
Tenant & Address:
Landlord & Address:
Loan: A first mortgage loan in the original principal amount of $ from Beneficiary to Landlord.
Note: A Promissory Note executed by Landlord in favor of Beneficiary in the amount of the Loan dated as of
Deed of Trust: A Deed of Trust, Security Agreement and Fixture Filing dated as of executed by Landlord, to _____ as Trustee, for the benefit of Beneficiary securing repayment of the Note to be recorded in the records of the County in which the Property is located.
Lease and Lease Date: The lease entered into by Landlord and Tenant dated as of _____ covering the Premises. [Add amendments]
Property: [Property Name] [Street Address 1] [City, State, Zip] The Property is more particularly described on Exhibit A.

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made by and among Tenant, Landlord, and Beneficiary and affects the Property described in Exhibit A. Certain terms used in this Agreement are defined in the Defined Terms. This Agreement is entered into as of the Execution Date with reference to the following facts:

A. Landlord and Tenant have entered into the Lease covering certain space in the improvements located in and upon the Property (the "Premises").

B. Beneficiary has made or is making the Loan to Landlord evidenced by the Note. The Note is secured, among other documents, by the Deed of Trust.

C. Landlord, Tenant and Beneficiary all wish to subordinate the Lease to the lien of the Deed of Trust.

D. Tenant has requested that Beneficiary agree not to disturb Tenant's rights in the Premises pursuant to the Lease in the event Beneficiary forecloses the Deed of Trust, or acquires the Property pursuant to the trustee's power of sale contained in the Deed of Trust or receives a transfer of the Property by a conveyance in lieu of foreclosure of the Property (collectively, a "Foreclosure Sale") but only if Tenant is not then in default under the Lease and Tenant attorns to Beneficiary or a third party purchaser at the Foreclosure Sale (a "Foreclosure Purchaser").

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

1. Subordination. The Lease and the leasehold estate created by the Lease and all of Tenant's rights under the Lease are and shall remain subordinate to the Deed of Trust and the lien of the Deed of Trust, to all rights of Beneficiary under the Deed of Trust and to all renewals, amendments, modifications and extensions of the Deed of Trust.

2. Acknowledgments by Tenant. Tenant agrees that: (a) Tenant has notice that the Lease and the rent and all other sums due under the Lease have been or are to be assigned to Beneficiary as security for the Loan. In the event that Beneficiary notifies Tenant of a default under the Deed of Trust and requests Tenant to pay its rent and all other sums due under the Lease to Beneficiary, Tenant shall pay such sums directly to Beneficiary or as Beneficiary may otherwise request; (b) Tenant shall send a copy of any notice or statement under the Lease to Beneficiary at the same time Tenant sends such notice or statement to Landlord; (c) this Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement.

3. Foreclosure and Sale. In the event of a Foreclosure Sale,

(a) So long as Tenant complies with this Agreement and is not in default under any of the provisions of the Lease, the Lease shall continue in full force and effect as a direct lease between Beneficiary and Tenant, and Beneficiary will not disturb the possession of Tenant, subject to this Agreement. To the extent that the Lease is extinguished as a result of a Foreclosure Sale, a new lease shall automatically go into effect upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease. Tenant agrees to attorn to and accept Beneficiary as landlord under the Lease and to be bound by and perform all of the obligations imposed by the Lease, or, as the case may be, under the new lease, in the event that the Lease is extinguished by a Foreclosure Sale. Upon Beneficiary's acquisition of title to the Property, Beneficiary will perform all of the obligations imposed on the Landlord by the Lease except as set forth in this Agreement; provided, however, that Beneficiary shall not be: (i) liable for any act or omission of a prior landlord (including Landlord); or (ii) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord); or (iii) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other sum that Tenant may have paid in advance to any prior landlord (including Landlord); or (iv) bound by any amendment, modification, assignment or termination of the Lease made without the written consent of Beneficiary; (v) obligated or liable with respect to any representations, warranties or indemnities contained in the Lease; or (vi) liable to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property which is not entered into by Beneficiary.

(b) Upon the written request of Beneficiary after a Foreclosure Sale, the parties shall execute a lease of the Premises upon the same provisions as contained in the Lease between Landlord and Tenant, except as set forth in this Agreement, for the unexpired term of the Lease.

(c) Notwithstanding any provisions of the Lease to the contrary, from and after the date that Beneficiary acquires title to the Property as a result of a Foreclosure Sale, (i) Beneficiary will not be obligated to expend any monies to restore casualty damage in excess of available insurance proceeds; (ii) tenant shall not have the right to make repairs and deduct the cost of such repairs from the rent without a judicial determination that Beneficiary is in default of its obligations under the Lease; (iii) in no event will Beneficiary be obligated to indemnify Tenant, except where Beneficiary is in breach of its obligations under the Lease or where Beneficiary has been actively negligent in the performance of its obligations as landlord; and (iv) other than determination of fair market value, no disputes under the Lease shall be subject to arbitration unless Beneficiary and Tenant agree to submit a particular dispute to arbitration.

4. Subordination and Release of Purchase Options. Tenant represents that it has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Borrower. To the extent Tenant has or acquires any such right or option, these rights or options are acknowledged to be subject and subordinate to the Mortgage and are waived and released as to Beneficiary and any Foreclosure Purchaser.

5. Acknowledgment by Landlord. In the event of a default under the Deed of Trust, at the election of Beneficiary, Tenant shall and is directed to pay all rent and all other sums due under the Lease to Beneficiary.

6. Construction of Improvements. Beneficiary shall not have any obligation or incur any liability with respect to the completion of the tenant improvements located in the Premises at the commencement of the term of the Lease.

7. Notice. All notices under this Agreement shall be deemed to have been properly given if delivered by overnight courier service or mailed by United States certified mail, with return receipt requested, postage prepaid to the party receiving the notice at its address set forth in the Defined Terms (or at such other address as shall be given in writing by such party to the other parties) and shall be deemed complete upon receipt or refusal of delivery.

8. Miscellaneous. Beneficiary shall not be subject to any provision of the Lease that is inconsistent with this Agreement. Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien or the provisions of the Deed of Trust. This Agreement shall be governed by and construed in accordance with the laws of the State of in which the Property is located.

9. Liability and Successors and Assigns . In the event that Beneficiary acquires title to the Premises or the Property, Beneficiary shall have no obligation nor incur any liability in an amount in excess of $10,000,000 and Tenant's recourse against Beneficiary shall in no extent exceed the amount of $10,000,000. This Agreement shall run with the land and shall inure to the benefit of the parties and, their respective successors and permitted assigns including a Foreclosure Purchaser. If a Foreclosure Purchaser acquires the Property or if Beneficiary assigns or transfers its interest in the Note and Deed of Trust or the Property, all obligations and liabilities of Beneficiary under this Agreement shall terminate and be the responsibility of the Foreclosure Purchaser or other party to whom Beneficiary's interest is assigned or transferred. The interest of Tenant under this Agreement may not be assigned or transferred except in connection with an assignment of its interest in the Lease which has been consented to by Beneficiary.

IN WITNESS WHEREOF, the parties have executed this Subordination, Nondisturbance and Attornment Agreement as of the Execution Date.

IT IS RECOMMENDED THAT THE PARTIES CONSULT WITH THEIR ATTORNEYS PRIOR TO THE EXECUTION OF THIS SUBORDINATION NONDISTURBANCE AND ATTORNMENT AGREEMENT.

BENEFICIARY: _____

a _____

By: _____

Its: _____

TENANT: _____

a _____

By: _____

Its: _____

LANDLORD: _____

a _____

By: _____

Its: _____

FIRST AMENDMENT OF LEASE
(Progenitor Cell Therapy — Building F, 291 North Bernardo Ave.)

This Agreement is made effective as of July 1, 2006 (the "**Effective Date**"), by and between the Vanni Business Park, LLC, a Delaware limited liability company ("**Lessor**"), and Progenitor Cell Therapy, LLC, a New Jersey limited liability company ("**Lessee**").

RECITALS:

A. By lease (the "**Lease**") dated for reference purposes September 1, 2005, Lessee leased from Lessor certain premises (the "**Premises**") consisting of the entire building commonly known as Building F located at 291 North Bernardo Avenue in the City of Mountain View, County of Santa Clara, State of California (the "**Building**") arid containing approximately 25,024 rentable square feet of floor space. The term of the Lease is scheduled to expire on June 30, 2007.

B. Lessor and Lessee now desire to extend the Lease term to June 30, 2012, and to make certain other changes to the Lease as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

AGREEMENT:

1. Term. Section 3.01 of the Lease is hereby amended such that the term of the Lease is extended to June 30, 2012.

2. Rent. Section 4.01 of the Lease is hereby amended such that the monthly rent for the Premises shall be the following amounts during the following periods of time:

Period of Time:	Amount of Monthly Rent:
July 1, 2007 through June 30, 2008	$ 33,782.40
July 1, 2008 through June 30, 2009	$ 37,536.00
July 1, 2009 through June 30, 2010	$ 40,038.40
July 1, 2010 through June30, 2011	$ 42,540.80
July 1, 2011 through June 30, 2012	$ 46,294.40

3. Extended Term Rent. The fourth sentence of the second paragraph of Section 21.2 of the Lease (as set forth in the Addendum to the Lease) is hereby amended in its entirety to read as follows:

Such brokers so appointed shall each determine the fair market monthly base rent for the Premises as of the commencement of the Extended Term, taking into account the value of the Premises and prevailing comparable rentals in the area including the value of any improvements installed in the Premises as of October 20, 2005, but disregarding any demolition or other changes to such improvements subsequent to such date, and further disregarding any additional improvements installed in the Premises by Lessee subsequent to such date.

The penultimate sentence of Section 21.2 of the Lease is hereby amended in its entirety to read as follows:

Notwithstanding anything to the contrary contained in this Section 21.2, in no event shall the beginning monthly base rent for the Extended Term be (i) less the monthly base rent payable hereunder for the last full month of the term of this Lease immediately preceding commencement of the Extended Term multiplied by 1.03, or (ii) more than Seventy Five Thousand Seventy Two Dollars ($75,072).

4. Security Deposit. Article V of the Lease is modified to provide that as of July 1, 2006, the amount of the Security Deposit shall be increased to Fifty Thousand Dollars ($50,000).

5. Assignment and Subletting. Section 13.06 of the Lease is hereby amended in its entirety to read as follows:

In the event Lessor shall consent to a sublease or an assignment under the Lease, then Lessee shall pay to Lessor with its regularly scheduled rent payments one hundred percent (100%) of all sums collected by Lessee from all sublessees and/or assignees which are in excess of the rent then owing pursuant to Article IV.

Section 13.04 of the Lease is hereby amended to add the following sentence at the end of said Section 13.04:

Lessee shall not enter into any sublease or assignment of the Premises or any portion thereof for less than the then fair market rental value thereof, and shall not cause or permit any amendment of any sublease or assignment of the Premises or any portion thereof that would result in payment to Lessee by the sublessee or assignee of less than the fair market rental value of the premises so subleased or assigned as of the date of the original sublease or assignment. The immediately preceding sentence shall not be operative with respect to any sublease of the entire Premises the term of which begins no sooner than July 1, 2008 and ends no later than June 30, 2012.

Section 13.07 of the Lease is hereby amended to add the following sentence at the end of said Section 13.07:

The provisions of this Section 13.07 shall not apply to a sublease which, together with all prior subleases, results in Lessee subleasing less than 12,512 square feet of floor space of the Premises for less than two (2) years, but shall apply to all assignments, and to any sublease which, together with all other subleases then in effect, results in Lessee subleasing 12,512 square feet of floor space of the Premises for at least two (2) years.

6. No Brokers. Lessor and Lessee each represent and warrant to the other that it has not dealt with any broker in connection with the extension of the Lease term or any other aspect of this Agreement and that no real estate broker, salesperson or finder has the right to claim a real estate brokerage, salesperson's commission or finder's fee by reason of contact between the parties brought about by such broker, salesperson or finder. Each party shall hold and save the other harmless of and from any, and all liability, loss, cost, damage, injury or expense arising out of or in any way related to claims for real estate broker's, salesperson's or finder's commissions or fees based upon allegations made by the claimant that it is entitled to such a fee from the indemnified party.

7. Lessee Estoppel. Lessee acknowledges that as of the Effective Date, (i) Lessor is not in default under the Lease, and (ii) Lessor has not taken any action or made any omission which with the passage of time or the giving of notice, or both, would be a default by Lessor under the Lease.

8. Ratification of Lease. Lessor and Lessee hereby ratify the Lease as modified by this Agreement.

[TEXT AND SIGNATURE BLOCKS CONTINUED ON NEXT PAGE]

1stAmdLse.6.28.06

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

Lessor:

VANNI BUSINESS PARK, LLC,
a Delaware limited liability company

By: /s/ Christopher Vanni
Christopher Vanni, Manager

Lessee:

PROGENITOR CELL THERAPY, LLC,
a New Jersy limited liability company

By: /s/ George S. Goldberger

Its: Chief Business & Financial Officer

1stAmdLse.6.28.06

BOND AGREEMENT

By and Among

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

and

PCT ALLENDALE, LLC

and

COMMERCE BANK/NORTH
as Purchaser

Dated as of October 1, 2007

BOND AGREEMENT

(PCT Allendale, LLC - 2007 Project)

TABLE OF CONTENTS

ARTICLE XII

MISCELLANEOUS

BOND AGREEMENT

THIS BOND AGREEMENT dated as of the 1st day of October, 2007 by and among the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey, **PCT ALLENDALE, LLC** (the "Borrower"), a New Jersey limited liability company and **COMMERCE BANK/NORTH** (the "Purchaser"), a New Jersey banking corporation organized and existing under the laws of the State of New Jersey.

WHEREAS, the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State of New Jersey, approved on August 7, 1974, as amended and supplemented, (the "Act") declares it to be in the public interest and to be the policy of the State of New Jersey (the "State") to foster and promote the economy of the State, increase opportunities for gainful employment and improve living conditions, assist in the economic development or redevelopment of political subdivisions within the State, and otherwise contribute to the prosperity, health and general welfare of the State and its inhabitants by inducing manufacturing, industrial, commercial, recreational, retail, service and other employment promoting enterprises to locate, remain or expand within the State by making available financial assistance; and

WHEREAS, the Authority, to accomplish the purposes of the Act, is empowered to extend credit to such employment promoting enterprises in the name of the Authority on such terms and conditions and in such manner as it may deem proper for such consideration and upon such terms and conditions as the Authority may determine to be reasonable; and

WHEREAS, the Borrower has applied to the Authority for financial assistance in the principal amount of $3,120,000 for the purpose of refinancing a loan used for the acquisition of condominium units in an existing building located in the Borough of Allendale, County of Bergen in the State of New Jersey (the "Project"), and the Authority has, by resolution duly adopted in accordance with the Act on August 14, 2007, accepted the application of the Borrower for assistance in financing the Project; and

WHEREAS, the Authority has by resolution, duly adopted in accordance with the Act on September 11, 2007, also authorized the issuance of its Economic Development Bonds (PCT Allendale, LLC - 2007 Project) in the aggregate principal amount of $3,120,000 to be executed, delivered and sold to the Purchaser for the purpose of making a loan to the Borrower in order to finance the Project; and

WHEREAS, the execution and delivery of this Bond Agreement have been duly authorized by the parties and all conditions, acts and things necessary and required by the Constitution or statutes of the State of New Jersey or otherwise to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Bond Agreement do exist, have happened and have been performed.

NOW THEREFORE, in consideration of the premises and the mutual covenants and representations herein, and intending to be legally bound the parties hereto hereby mutually agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. As used herein, the following terms shall have the following meanings unless a different meaning clearly appears from the context:

"Act" shall mean the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State, approved on August 7, 1974, as amended and supplemented;

"Affirmative Action Program" shall mean the provisions of the Act, and the resolution, rules and regulations of the Authority, as adopted, amended and supplemented from time to time, requiring that the Borrower and all Contractors make every effort to hire minority workers or to cause minority workers to be hired for employment in performance of Construction Contracts in fulfillment of the minority employment goals fixed by the Authority, and that the Borrower and all Contractors file such certificates, reports and records and do other prescribed acts as are necessary to demonstrate or assure compliance;

"Application" shall mean the Borrower's application to the Authority, dated June 19, 2007, as amended in writing, directed to the Authority, seeking financial assistance for the Project, and all attachments, exhibits, correspondence and modifications submitted in writing to the Authority in connection with said application;

"Article" shall mean a specified article hereof, unless otherwise indicated;

"Assignment of Certificate of Deposit" shall mean the Assignment of Certificate of Deposit from the Borrower to the Authority and the Purchaser assigning a Certificate of Deposit representing the Pledged Funds to the Purchaser;

"Assignment of Leases" shall mean the Assignment of Leases and Rents from the Borrower to the Authority and the Purchaser in connection with the Premises, as amended and/or restated from time to time;

"Authority" shall mean the New Jersey Economic Development Authority, a public body corporate and politic constituting an instrumentality of the State, exercising public and essential governmental functions;

"Authority's Assignment" shall mean the assignment dated the Closing Date which is made part of the Record of Proceedings, wherein the Authority assigns to the Purchaser its right, title and interest in and to the Loan Documents (subject to the Authority's Reserved Rights) and pledges the revenues payable to the Authority in connection with the Project;

"Authorized Authority Representative" shall mean any individual or individuals duly authorized by the Resolution and the by-laws of the Authority to act on its behalf;

"Authorized Borrower Representative" shall mean any individual or individuals duly authorized by the Borrower to act on its behalf;

"Authorized Purchaser Representative" shall mean any individual or individuals duly authorized by the Purchaser to act on its behalf;

"Bank" shall mean Commerce Bank/North, as Purchaser, and/or its successors and assigns;

"Bond" or "Bonds" shall mean the Economic Development Bonds (PCT Allendale, LLC - 2007 Project) in the aggregate principal amount of $3,120,000 dated the Closing Date;

"Bond Agreement" shall mean this Bond Agreement;

"Bond Counsel" shall mean the law firm of Wolff & Samson PC, One Boland Drive, West Orange, New Jersey, or any other attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds;

"Bond Proceeds" shall mean the amount paid to the Authority by the Purchaser as the purchase price of the Bonds, and interest income earned thereon prior to the Completion Date;

"Bond Year" when used in the context of the rebate requirement imposed under Section 148(f) of the Code means, with respect to the first Bond Year, the period beginning on the date of issuance of the Bonds, i.e., the date of initial delivery of the Bonds in exchange for the issue price from the Purchaser, and ending on the date one (1) year later or the close of business of such earlier date selected by the Authority at the direction of the Borrower which is the last day of a compounding interval used in computing the Yield on the Bonds. Each subsequent Bond Year begins on the day after the expiration of the preceding Bond Year;

"Borrower" shall mean PCT Allendale, LLC, a New Jersey limited liability company validly existing and in good standing under the laws of the State and authorized to do business under the laws of the State;

"Borrower's Completion Certificate" shall mean the certificate described in Section 5.06, executed by the Borrower in form and substance acceptable to the Authority, wherein the Borrower certifies as to such matters as the Authority shall require;

"Business Day" shall mean any day other than (i) Saturday or Sunday or, (ii) a day on which commercial banks in New Jersey, or the city in which are located the principal office of the Purchaser are authorized by law or executive order to close;

"Cancellation Date" shall have the meaning specified therefor in Section 11.03;

"Closing Date" shall mean October 31, 2007;

"Code" shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder from time to time in effect;

"Collateral" shall mean the Pledged Funds, the Premises and a security interest in all personal property, fixtures and building materials owned by the Borrower in which the Authority and/or the Purchaser are granted a security interest herein and in the Mortgage;

"Commitment Letter" shall mean the Commitment Letter from the Purchaser to the Borrower dated August 15, 2007, as amended in writing;

"Completion Date" shall mean the date of completion of the Project as stated in the Borrower's Completion Certificate described in Section 5.06;

"Construction Contract" shall mean, for purposes of the Prevailing Wage Rate Provision, any contract or subcontract in the amount of $2,000 or more for construction, reconstruction, demolition, alteration, repair, or maintenance work, including painting and decorating, undertaken in connection with the Premises and shall mean, for purposes of the Affirmative Action Program, any contract or subcontract for construction, reconstruction, renovation or rehabilitation undertaken in connection with the Premises;

"Construction Proceeds" shall mean the proceeds from any insurance award or condemnation award, which are to be used pursuant to the terms of this Agreement to restore or rebuild the premises;

"Contractor" shall mean the principal or general contractor or contractors engaged by the Borrower in the performance of a Construction Contract;

"Contractor's Certificate and Agreement" shall mean the instrument executed by the Contractor in form and substance acceptable to the Authority, wherein the Contractor agrees to undertake or perform such obligations and certifies as to such matters as the Authority shall require, including, without limitation, that for purposes of the Prevailing Wage Rate Provision all workers engaged in the performance of Construction Contracts shall be paid a wage rate not less than the Prevailing Wage Rate and that all Construction Contracts will so provide and that for purposes of the Affirmative Action Program the Contractor will make every effort to hire or cause to be hired minority workers so as to meet the minority employment goals of the Affirmative Action Program and that all Construction Contracts will so provide;

"Contractor's Completion Certificate" shall mean the certificate or certificates executed by the Contractor and any Subcontractors, upon substantial completion of Project construction, in form and substance acceptable to the Authority, wherein the Contractor certifies as to such matters as the Authority shall require, including, without limitation, that the Contractor has made every effort to satisfy the minority employment goals established in the Affirmative Action Program and that the Contractor has submitted all certificates, reports, and records required by the Authority;

"Corporate Guarantors" or "Guarantors" shall mean Progenitor Cell Therapy, L.L.C. and DomaniCell, LLC;

"Corporate Guaranty" or "Guaranty" shall mean the Corporate Guaranty dated the Closing Date which is made a part of the Record of Proceedings, executed by the Corporate Guarantors and delivered to the Authority unconditionally guarantying any payments due to the Authority and the Purchaser by the Borrower's obligations under the Loan Documents;

"Counsel for the Borrower" shall mean the law firm of Epstein, Becker & Green, P.C., New York, New York;

"Counsel for the Purchaser" shall mean the law firm of Harwood Lloyd, LLC, Hackensack, New Jersey;

"Debtor" shall mean the Borrower and the Corporate Guarantors.

"Debt Service" shall mean the scheduled amount of interest and amortization of principal payable for any Bond Year with respect to the Bonds as defined in Section 148(d)(3)(D) of the Code, and for the purposes of the Debt Service Coverage Ratio in Section 9.17 shall mean the amount of interest and amortization of principal payable during any fiscal year;

"Determination of Taxability" shall be deemed to have occurred upon the happening of any of the following:

(1) if a Borrower shall:

(i) file with the Internal Revenue Service any statement, supplemental statement or other tax schedule, return or document, or

(ii) be advised in writing by the Commissioner or any district director of the Internal Revenue Service of a final, nonappealable administrative determination, or

(iii) make an admission in writing to the Purchaser,

to the effect that there have been incurred capital expenditures, as such term is used in Section 144(a)(4) of the Code, in excess of those permitted in order for the interest on the Bonds to retain tax-exempt status under the Code; or

(2) if there shall occur:

(i) the issuance of a published or private ruling of the Internal Revenue Service, or

(ii) a final, nonappealable determination by a court of competent jurisdiction in the United States, or

(iii) the enactment of legislation of the Congress of the United States,

to the effect that the interest payable on the Bonds is wholly includable in the gross income of one or more Holders thereof (other than a Holder who is a Substantial User or a Related Person) within the meaning of Section 103 of the Code;

"Environmental Agreement" shall mean the Environmental Indemnity and Responsibility Agreement dated the Closing Date from the Borrower and the Guarantors to the Authority and the Purchaser;

"ERISA" shall mean the federal Employee Retirement Income Security Act;

"Escrow Account" shall mean the special account entitled "Commerce Bank/North -PCT Allendale, LLC" maintained by the Escrow Agent at its offices and established for the deposit of the proceeds of the Bonds and proceeds resulting from damage to or condemnation of the Project, as described in Article IV;

"Escrow Agent" shall mean Commerce Bank/North;

"Event of Default" shall mean any event of default as defined in Section 11.01;

"Financing Statements" shall mean the Uniform Commercial Code financing statements which are made part of the Record of Proceedings, delivered by the Borrower, as Debtor;

"Future Value" means, with respect to any payment or receipt paid or received on any date (or treated as paid or received), the value of the payment or receipt on that date increased by interest assumed to be earned and compounded at the end of each compounding interval over any specified future period using a compounding rate equal to the Yield on the Bonds and the compounding interval and financial conventions used to compute Yield on the Bonds;

"GAAP" or "Generally Accepted Accounting Principles" shall mean those principles of accounting set forth in pronouncements of the Financial Accounting Standard Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting which have other substantial authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented or amended;

"General Certificate of the Authority" shall mean the certificate of the Authority which is made a part of the Record of Proceedings;

"Gross Proceeds" shall have the meaning given it in Section 148(f)(6)(b) of the Code, presently including, without limitation, the original proceeds of the Bonds, investment proceeds, amounts held in a sinking fund, amounts invested in a Reasonably Required Reserve or Replacement Fund (as defined in Section 148(d) of the Code), any amounts used to pay Debt Service on the Bonds and any amounts received as a result of investing any of the foregoing. Gross Proceeds shall not include Gross Proceeds held in a bona fide Debt Service fund to the extent that the earnings on such fund do not exceed $100,000 in any one Bond Year;

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof”, and any similar terms, refer to this Bond Agreement; the term “heretofore” means before the date of execution of this Bond Agreement; and the term “hereafter” means after the date of execution of this Bond Agreement;

“Holder” shall mean the Purchaser or each other Person to whom the Bond is transferred pursuant to Section 3.02 or, if there is an Indenture, the Holders of the Indentured Bonds, as provided in the Indenture;

“Indebtedness” shall mean (i) all items (other than capital stock, capital surplus, retained earnings and general contingencies) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as at the date on which Indebtedness is to be determined; and (ii) whether or not so reflected, all indebtedness, obligations and liabilities, whether unsecured or secured by any lien, and all capitalized lease obligations;

“Indemnified Parties” shall mean the State, the Authority, the Purchaser, the Escrow Agent, any person who “controls” the State, the Authority, the Purchaser or the Escrow Agent within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, officer, official, employee or attorney of the Authority, the State, the Escrow Agent or the Purchaser;

“Indenture” shall have the meaning specified therefor in Section 3.03;

“Indentured Bonds” shall have the meaning specified therefor in Section 3.03;

“Investment Obligations” shall mean any of the following: (a) obligations of or guarantied by the State or the United States of America; (b) obligations of or guarantied by any instrumentality or agency of the United States of America, whether now existing or hereafter organized; (c) obligations of or guarantied by any state of the United States or the District of Columbia; (d) repurchase agreements fully secured by obligations of the kind specified in (a), (b) or (c) above; (e) interest-bearing deposits and certificates of deposit in the Escrow Agent or any other bank or trust company which has combined capital, surplus and undivided profits of at least $50,000,000; (f) commercial paper with one of the two highest ratings from a nationally accepted rating service; and (g) a money market fund consisting of United States Treasury securities;

“Loan” shall mean the loan from the Authority to the Borrower in the aggregate principal amount of $3,120,000, which is being made under the terms and conditions provided for herein and in the manner set forth in Section 2.06 hereof;

“Loan Documents” shall mean any or all of this Bond Agreement, the Note, the Mortgage, the Assignment of Leases, the Financing Statements, the Guaranty, the Authority’s Assignment, the Environmental Agreement, the Assignment of Certificate of Deposit, the Commitment Letter and all documents and instruments executed by the Borrower or the Guarantors and delivered to the Authority and/or the Purchaser in connection with the Loan;

"Mortgage" shall mean the Mortgage and Security Agreement from the Borrower to the Authority and the Purchaser, as amended and/or restated from time to time;

"Net Proceeds" shall mean the Bond Proceeds less any amounts placed in a reasonably required reserve or replacement fund (as defined in Section 148(d) of the Code);

"Non-Purpose Obligations" shall mean any "investment property" (within the meaning of Section 148(b)(2) of the Code) which is (i) acquired with the Gross Proceeds of the Bonds and (ii) not acquired in order to carry out the governmental purpose of the Bonds;

"Note" shall mean the Note dated the Closing Date, from the Borrower to the Authority in the aggregate principal amount of $3,120,000 and made part of the Record of Proceedings;

"Obligations" shall mean the obligations of the Borrower created pursuant to the Loan Documents;

"Obligated Parties" shall mean the Borrower, the Guarantors and any Person, other than the Borrower and/or the Guarantors, providing collateral pursuant to, or obligated to perform under any, loan document given to the Authority or the Purchaser;

"Paragraph" shall mean a specified paragraph of a Section, unless otherwise indicated;

"Permitted Encumbrances" shall mean, as of any particular time: (i) liens for taxes and assessments not then delinquent or which are being contested in good faith and for which adequate reserves have been deposited with the Purchaser; (ii) the liens created by this Bond Agreement and the Mortgage; (iii) utility access and other easements and rights of way, restrictions and exceptions that are reflected in the title commitment of First American Title Insurance Company #219141 delivered by the Borrower on the Closing Date, including without limitation the Master Deed and other documents on record with the Bergen County Clerk's office pertaining to the Four Pearl Court Condominium; (iv) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property similar in character to the Project; (v) any liens from the Borrower or the Corporate Guarantors in favor of the Purchaser to secure any other indebtedness from the Borrower or the Corporate Guarantors to the Purchaser; (vi) any liens which are subordinate to the lien of the Mortgage; and (vii) all other liens and encumbrances expressly permitted under this Bond Agreement and the other Loan Documents;

"Person" or "Persons" shall mean any individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a governmental agency or any political subdivision thereof;

"Pledged Funds" shall mean the time deposit of the Borrower maintained in an account pledged to the Purchaser in an amount approved by the Purchaser, which may be up to eighteen (18) months Debt Service;

"Premises" shall mean the premises located at 4 Pearl Court, Borough of Allendale, Bergen County, New Jersey which are more particularly described in and are subject to the Mortgage, together with all improvements thereon and which are also described in Schedule B hereto;

"Prevailing Wage Rate Provision" shall mean the provisions of the Act and the resolutions, rules and regulations of the Authority, as adopted, amended and supplemented from time to time, requiring that workers engaged in Construction Contracts be paid a wage rate not less than the Prevailing Wage Rate, and that the Borrower and all Contractors file such certificates, reports and records and do other prescribed acts as are necessary to demonstrate or assure compliance;

"Prevailing Wage Rate" shall mean the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor and Industry from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located;

"Principal User" shall mean any principal user within the meaning of the proposed amendments to Treas. Reg. Sec. 1.103-10 published by the Internal Revenue Service in the Federal Register on February 21, 1986 or any Related Person to a Principal User within the meaning of Section 144(a) of the Code;

"Project Municipality" shall mean the Borough of Allendale, County of Bergen, in the State of New Jersey;

"Proper Charge" shall mean: (i) issuance costs of the Bonds, including, without limitation, certain attorneys' fees, printing costs, initial agent's fees and similar expenses, which shall at no time exceed two per centum (2%) of the face amount of the Bonds; (ii) an expenditure for the Project, paid and incurred after the date which is sixty days prior to August 14, 2007, used for (A) the acquisition or improvement of land or the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation or (B) to redeem part or all of a prior loan which was issued for purposes described in subparagraph (A) or this subparagraph; or (iii) expenditures for the Project which, after taking into account all expenditures under (i) above, will not result in more than five per centum (5%) of the Net Proceeds being expended for expenditures other than those referred to in (ii) above;

"Purchaser" shall mean Commerce Bank/North, 1100 Lake Street, Ramsey, New Jersey and its successors and/or assigns;

"Qualified Administrative Costs" means all reasonable, direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions, but not legal and accounting fees, record keeping, custody and similar costs. General overhead costs and similar indirect costs of the Borrower such as employee salaries and office expenses and costs associated with computing the Rebate Amount are not Qualified Administrative Costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same Investment or a reasonably comparable Investment if acquired with a source of funds other than gross proceeds of Tax-Exempt bonds;

"Rebate Account" shall mean the special account maintained by the Escrow Agent at its offices and established for the deposit of the amounts to be paid to the United States on behalf of the Authority pursuant to Section 9.03, as described in Section 5.09 hereof;

"Rebate Amount" shall have the meaning set forth in Section 9.03(f) of this Agreement;

"Rebate Expert" means any of the following chosen by the Borrower and acceptable to the Purchaser: (a) Bond Counsel, (b) any nationally recognized firm of certified public accountants, (c) any reputable firm which offers to the tax-exempt bond industry rebate calculation services and holds itself out as having expertise in that area, or (d) such other person as is approved by Bond Counsel;

"Record of Proceedings" shall mean the Loan Documents, certificates, affidavits, opinions and other documentation executed in connection with the sale of the Bonds and the making of the Loan;

"Related Person" shall mean a related person within the meaning of Section 144(a) or Section 147(a) of the Code as is applicable;

"Requisition Form" shall mean the form of requisition required by Section 5.02(a) as a condition precedent to the disbursement of moneys from the Escrow Account, in the form of Exhibit D hereto;

"Reserved Rights" means the rights of the Authority under the Environmental Agreement and the rights of the Authority to receive payments and notices under this Bond Agreement or any other Loan Document, to consent to any amendments, modifications or supplements to this Bond Agreement or any other Loan Document, to enforce pursuant to Article XI hereof the Defaults and Remedies herein and the covenants or other provisions in this Bond Agreement under the following Sections of this Bond Agreement: 5.02(c), (d) and (e) (Disbursements from the Escrow Account), 5.04 (No Liability of Authority), 5.05 (Furnishing Documents to the Authority), 5.06 (Establishment of Completion Date), 5.07 (Borrower Required to Pay if Escrow Account Insufficient), 5.09 (Rebate Account), 5.12 (Duties of the Escrow Agent), 7.01 (Purchaser Representations), 7.03 (Filing of Other Documents), 7.04 (Notice of Events of Default), 8.09 (No Action), 8.22 (Environmental Representation), 9.01 (Insurance Required), 9.03 (Compliance with Code and Arbitrage Regulations), 9.05 (Environmental Covenant), 9.06 (Financial Statements), 9.07 (Mergers), 9.08 (Assignment of Bond Agreement), 9.09 (Indemnification), 9.12 (Brokerage Fee), 10.01 (Inducement), 10.02 (No Untrue Statements), 10.03 (Project Users), 10.04 (Maintain Existence, Merge, Sell, Transfer), 10.05 (Relocate Project), 10.06 (Operate Project), 10.07 (Annual Certification), 10.08 (Affirmative Action and Prevailing Wage Regulations), 10.09 (Preservation of Project), 10.10 (Access to the Project and Inspection), 10.11 (Additional Information), 10.12 (Project Sign), 11.01 (Events of Default), 11.03 (Authority's Remedies), 11.04 (Effect of Cancellation of the Bonds), 11.05 (No Remedy Exclusive), 11.06 (Waiver of Event of Default), 11.07 (Agreement to Pay Attorneys' Fees and Expenses), 11.08 (Immunity of Authority), 12.03 (Costs and Expenses), 12.06 (Failure to Exercise Rights), 12.07 (Assignment of Loan Documents), 12.08 (Further Assurances and Corrective Instruments) and 12.09 (Authority May Rely On Certificates). These Reserved Rights have been assigned to the Purchaser but are also held and retained by the Authority concurrently with the Purchaser and may be exercised and enforced whether or not the Purchaser shall have exercised or shall have purported to exercise such rights and remedies, without limiting the obligation of the Purchaser to do so;

"Resolution" shall mean, collectively, the resolutions of the Authority dated August 14, 2007, accepting the Application and making certain findings and determinations and the resolution of the Authority dated September 11, 2007 authorizing the issuance and sale of the Bonds and determining other matters in connection with the Project;

"Section" shall mean a specified section hereof, unless otherwise indicated;

"State" shall mean the State of New Jersey;

"Subcontractor" shall mean any Person engaged by a Contractor or a Subcontractor in the performance of any Construction Contract;

"Substantial User" shall mean a substantial user of the Project or any Related Person to a Substantial User within the meaning of Section 147(a) of the Code;

"Taxable Rate" shall have the same meaning set forth in the Note;

"Tax Certificate" shall mean the certificate executed by the Borrower in form and substance acceptable to the Authority, wherein the Borrower certifies as to such matters as the Authority shall require;

"Test Period Beneficiary" shall mean any Person who was an owner or Principal User of any facilities being financed by any issue of tax-exempt related-facility bonds (as defined in Section 144(a)(10)(B) of the Code) at any time during the three-year period beginning on the later of the date such facilities were placed in service or the date of such issue;

"Yield" shall mean a yield as shall be determined under Section 1.103-13(c) of the Regulations and Section 1.148-3 of the Regulations, as applicable;

"Yield Reduction Payments" means payments made to the United States with respect to any Nonpurpose Investment allocated to the Bonds that (i) are paid at the same time and the same manner as Rebate Amounts are required to be paid and (ii) are paid with respect to Investments that are allocable to Gross Proceeds that previously qualified for a temporary investment period that has since expired.

ARTICLE II

THE FINANCING

The Authority's obligations to make the Loan and issue the Bonds are subject to the following conditions precedent:

Section 2.01. Opinion of Counsel for the Borrower. The Authority shall have received the opinion of Counsel for the Borrower dated the date of the Loan, addressed to the Authority, and satisfactory in form and substance to the Authority, Bond Counsel and Counsel for the Purchaser:

(a) to the effect that each of the Loan Documents to be executed by the Borrower and the Corporate Guarantors have been duly executed and delivered by the Borrower and the Corporate Guarantors in accordance with the provisions hereof, and each such Loan Document constitutes a legal, valid and binding obligation of the Borrower and the Corporate Guarantors, enforceable in accordance with its terms, subject to bankruptcy laws, creditors' rights laws and equitable rights and remedies; and

(b) to the effect that the Authority has a valid mortgage lien upon the Premises based upon the title commitment of First American Title Insurance Company #219141_ and perfected security interests in the Collateral.

(c) to the effect that there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Borrower, threatened against or affecting it, the Corporate Guarantors or any of their properties or rights which, if adversely determined, would (i) affect the transactions contemplated by the Loan Documents, (ii) affect the validity or enforceability of the Loan Documents, (iii) affect the ability of the Borrower or the Corporate Guarantors to perform their respective obligations under the Loan Documents, (iv) materially impair the value of the Collateral, (v) materially impair the Borrower's or the Corporate Guarantors' right to carry on their businesses substantially as now conducted (and as now contemplated by the Borrower or the Corporate Guarantors) or (vi) have a material adverse effect on the Borrower's or the Corporate Guarantors' financial condition; and

(d) covering the matters set forth in the Commitment Letter and such additional matters as may be reasonably required by Counsel for the Purchaser and Bond Counsel.

Section 2.02. Opinion of Bond Counsel. The Authority shall have received the opinion of Bond Counsel that interest income on the Bonds is exempt from inclusion as gross income under the Code (subject to the limitations set forth in Section 7.02 hereof); that the offering of the Bonds is not required to be registered under the Securities Act of 1933, as amended, or under the rules and regulations promulgated thereunder; that the offering of the Bonds is exempt from Rule 15c2-l2; and that the Bonds have been duly authorized and issued under the provisions of the Act.

Section 2.03. Loan and Other Documents. The Authority and the Purchaser shall have received:

(a) the Loan Documents duly executed by all parties thereto;

(b) certificates, in form and substance acceptable to the Authority, evidencing the insurance required to be maintained by this Bond Agreement;

(c) a capital expenditures certificate, in form and substance satisfactory to Bond Counsel, completed by the Borrower, setting forth the amounts of all expenditures described in Section 8.12. One such certificate shall be delivered for the Borrower and each Principal User;

(d) the Tax Certificate, in form and substance satisfactory to Bond Counsel; and

(e) all other documents reasonably required by the Authority and the Purchaser.

Section 2.04. Legal Matters. Legal matters in connection with the making of the Loan shall be satisfactory to the Authority, the Purchaser, the Borrower and their respective counsel.

Section 2.05. Bond Issuance Fee/Bond Purchase Fee. The Authority shall have received from the Borrower the bond issuance fee of $15,600.00 and the Purchaser shall have received from the Borrower the $20,000.00 commitment fee for the Loan, plus all other fees, if any, set forth in the Commitment Letter.

Section 2.06. The Loan. The Purchaser has agreed with the Authority to purchase the Bonds and the Authority has agreed to make the Loan to the Borrower from the proceeds received from the sale of the Bonds. To accomplish this financing, the following acts will be deemed to occur simultaneously and concurrently with the execution and delivery of this Bond Agreement and all of the other Loan Documents:

(i) The Authority will sell, issue and deliver the Bonds to the Purchaser;

(ii) The Purchaser shall deposit the purchase price of the Bonds, $3,120,000, in the Escrow Account;

(iii) The Borrower will execute and deliver the Loan Documents to the Authority and the Purchaser;

(iv) The Corporate Guarantors will execute and deliver the Corporate Guaranty and the other Loan Documents to the Authority; and

(v) The Authority will assign the Loan Documents to the Purchaser in accordance with the Authority's Assignment.

Section 2.07. Findings of Authority. The Authority is making the Loan to the Borrower under this Bond Agreement in order to promote the purposes and objectives of the Act. In the Resolution, the Authority has made certain findings and determinations with regard to the Project. The Authority has determined that the Project would: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State; or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State; or (iii) maintain or increase the tax base of the State or of any political subdivision of the State; or (iv) maintain or diversify and expand employment promoting enterprises within the State.

The Authority made the above findings and determinations based on the Application received by the Authority. The Borrower represented in the Application that the Project will increase employment in the State by approximately 20 jobs.

ARTICLE III

THE BONDS

Section 3.01. The Bonds. **The State of New Jersey is not obligated to pay, and neither the faith and credit nor taxing power of the State of New Jersey is pledged to the payment of, the principal or redemption price, if any, of or interest on the Bonds. The Bonds are a special, limited obligation of the Authority, payable solely out of the revenues or other receipts, funds or moneys of the Authority pledged under this Bond Agreement and from any amounts otherwise available hereunder for the payment of the Bonds. The Bonds do not now and shall never constitute a charge against the general credit of the Authority. The Authority has no taxing power.**

Pursuant to the Act, neither the members of the Authority nor any person executing bonds for the Authority shall be liable personally on said bonds by reason of the issuance thereof.

Subject to the terms and conditions and upon the basis of the representations hereinafter set forth, the Authority hereby agrees to sell the Bonds to the Purchaser, and the Purchaser hereby agrees to purchase the Bonds from the Authority and to deposit the purchase price thereof in the Escrow Account.

The Bonds shall be issued in typewritten form as a registered Bond without coupons. The Bonds shall be signed by or executed with the manual or facsimile signature of the members or officers of the Authority authorized to execute the Bonds pursuant to the Resolution and the official seal or a facsimile thereof of the Authority shall be impressed thereon and attested by the manual or facsimile signature of Authorized Authority Representatives. Payment for the Bonds by the Purchaser and delivery thereof by the Authority shall be made at the offices of the Authority in Trenton, New Jersey or at such other place as the Authority and Purchaser mutually agree.

The offering of the Bonds has not been registered under the Securities Act of 1933, as amended, and this Bond Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Bonds may not be offered or sold by the Purchaser in contravention of said acts.

Section 3.02. Transfer of Bonds; Restriction on Transfer. The Bonds shall be transferable only upon the records of the Authority maintained by the Authority at the principal office of the Authority by a Holder in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Authority and duly executed by the Holder or its duly authorized attorney. No transfer of the Bonds shall be valid unless (i) made on such books and similarly noted by endorsement of the Holder on the Bonds or, at the expense of the Holder, the Authority shall execute and deliver a new Bond registered in the name of the transferee; and (ii) the Holder requesting the transfer shall assign to the transferee all of the rights of the Authority assigned to the Holder pursuant to Section 12.07 and the Authority's Assignment and, in that connection, will execute and deliver all such instruments and documents as may be deemed necessary or appropriate by counsel for the Authority and by such independent counsel as shall be designated by the Holder. Notwithstanding any other provision of this Bond Agreement or any other Loan Document, the Bonds shall be transferable only as a whole to a single purchaser and may not be transferred in part except after full compliance with the provisions of this Article III.

Section 3.03. Execution of Indenture. (a) If the Holder at any time proposes to sell, pledge, assign or otherwise transfer the Bonds so that thereafter there will be or may be more than one Holder, the Authority will, as soon as reasonably possible after the receipt of a written request from the Holder, execute and deliver to a bank or trust company, as trustee, having a capital and surplus of at least $10,000,000 (if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms), an Indenture of Trust (the "Indenture"), providing for the execution and delivery thereunder of new Economic Development Bonds (PCT Allendale, LLC - 2007 Project) of the Authority (herein called the "Indentured Bonds"), equal in aggregate principal amount to the outstanding and unpaid principal amount of the Bonds at the time of such authorization and in all other respects substantially similar to, and having substantially all the rights and privileges carried by, the Bonds.

(b) Any action taken by the Authority pursuant to this Section 3.03 shall be taken by the Authority as soon as practicable (as determined by the Authority) after such written request from the Holder; provided however, no such action under this Section 3.03 shall be taken (i) without the approval of counsel chosen by the Authority, (ii) without an approving legal opinion of Bond Counsel and (iii) if it shall constitute an Event of Default.

(c) In connection with the execution of the Indenture, the Holder shall assign to the trustee under the Indenture, to be held by such trustee for the benefit of all the Holders of the Indentured Bonds, all of the rights of the Authority assigned to such Holder pursuant to Section 12.07 and the Authority's Assignment and, in that connection, will execute and deliver all such instruments and documents as may be deemed necessary or appropriate by counsel for the Authority and by such independent counsel as shall be designated by such Holder. The terms and provisions of the Indentured Bonds shall be set forth in the Indenture which shall also embody the substance of all covenants, conditions and provisions set forth in the Loan Documents.

(d) Prior to taking any of the foregoing actions, the Authority shall have received indemnification satisfactory to it for any costs and expenses it may bear, including the costs of counsel.

(e) Prior to a proposed sale of 100% of the Bonds outstanding, provided no Event of Default has occurred and is continuing, the holder/seller shall provide the Borrower with fifteen (15) days notice of the terms of the proposed sale and the opportunity to purchase or cause the purchase of the Bonds on the proposed sale date for the same terms. In the event the Borrower intends to purchase or cause the purchase of the Bonds, it shall provide notice to the holder/seller within such fifteen (15) day period and at least two (2) days prior to the proposed sale date.

Section 3.04. Replacement of Mutilated, Destroyed, Lost or Stolen Bonds . In case any Bond shall become mutilated or be destroyed, lost or stolen, the Authority shall cause to be executed a new Bond of like series, tenor and, upon the cancellation of the mutilated Bond or, in lieu of and in substitution for the Bond destroyed, lost or stolen, upon the Holder's paying the expenses and charges of the Authority in connection therewith and, in the case of a Bond being destroyed, lost or stolen, his filing with the Authority evidence satisfactory to it that the Bond was destroyed, lost or stolen, and of his ownership thereof, and his furnishing to the Authority indemnity satisfactory to it.

Section 3.05. Cancellation of Bonds Upon Payment in Full . Upon the Cancellation Date or payment in full of the principal of, premium, if any and interest on the Bonds, the Holder shall provide timely notice to the Authority that the Bonds have been paid or cancelled and shall surrender the Bonds to the Authority.

Section 3.06. Election of Section 144(a)(4) . The Authority hereby elects that the provisions of Section 144(a)(4) of the Code (the $10,000,000 election) be applicable to the issuance of the Bonds.

ARTICLE IV

THE LOAN

Section 4.01. The Loan. The Authority agrees, upon the terms and subject to the conditions hereinafter set forth, to make the Loan to the Borrower for the purposes set forth in the recitals hereinabove. The Loan amount ($3,120,000) shall be disbursed in accordance with Section 5.02 hereof.

Section 4.02. The Note. To evidence its obligation to repay the Loan, the Borrower shall execute the Note. The Loan and the Note shall be secured by the Collateral, subject only to the Permitted Encumbrances. The Loan shall be repaid as provided in the Note.

Section 4.03. Security. The Loan shall be secured by the Collateral, which includes without limitation a mortgage lien in the Premises, arising by reason of the Mortgage which, when recorded in the appropriate recording office, shall constitute a first lien on the Premises. In addition, the Borrower hereby grants the Authority a security interest in (i) the Pledged Funds and (ii) all cash, certificates and other instruments evidencing Investment Obligations and the proceeds thereof in the Escrow Account and all proceeds of any or all of the foregoing and all property which is within the definition of proceeds as it is defined in the Uniform Commercial Code, including without limitation, whatever is received upon the use, lease, sale, exchange, collection, any other utilization or any disposition of any of the foregoing property described in this Section 4.03, whether cash or non-cash, substitutions, additions, accessions, replacements, products, and renewals of, for, or to such property and all insurance therefor, including insurance proceeds and products thereof and all funds deposited from time to time in the Escrow Account. In addition to the foregoing, the Loan shall also be secured by the Guaranty and by the Collateral described in the Security Agreement. It is the intention of the parties hereto that the Collateral secure the Loan. It is the intention of the parties hereto that this Bond Agreement constitute a security agreement pursuant to the Uniform Commercial Code as enacted into law in the State for the purpose of creating the security interests granted herein.

Section 4.04. Incorporation of Terms. The other Loan Documents shall be made subject to all the terms and conditions contained in this Bond Agreement to the same extent and effect as if this Bond Agreement were fully set forth in and made a part of the other Loan Documents. This Bond Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in the other Loan Documents to the same extent and effect as if the other Loan Documents were fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions in the other Loan Documents are inconsistent with this Bond Agreement, this Bond Agreement shall control.

Section 4.05. Payments. Payments to be made under this Bond Agreement or the Note which are stated to be due on a Saturday, Sunday or public holiday under the laws of the State shall be made on the next succeeding day which is not a Saturday, Sunday or public holiday under the laws of the State. Payments hereunder shall be made by direct charge to the demand deposit accounts maintained by the Borrower with the Purchaser. The Borrower hereby consents to Purchaser making such charge.

Section 4.06. Method of Payment. Not later than the close of business on the day of any installment due pursuant to the terms of the Note, the Borrower agrees to tender payment to the Purchaser in immediately available funds. All payments of the Borrower on the Note shall be credited against corresponding payments due from the Authority on the Bonds.

Section 4.07. Prepayment of the Note. The Borrower may prepay the Loan, in whole or in part, at any time upon the giving of a minimum of thirty (30) days irrevocable prior express written notice to the Purchaser of its intention to prepay the Loan, subject to the following conditions. Any principal prepayment made by the Borrower shall be accompanied by any prepayment penalty due under the Note, any late fees due under the Note, any other outstanding charges due hereunder or due under the Note and any accrued interest. Any partial prepayment of principal shall be applied in the inverse order of maturity. Upon the payment of any sum in reduction of the amount of the Loan which exceeds the amount the Borrower is required to pay under any term or provision of the Note or any other Loan Document, including prepayment of the entire debt, the Purchaser shall be entitled to charge and the Borrower shall be obligated to pay, in addition to interest and all other charges then properly due, a prepayment premium as follows:

(i) 5% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the first year following the date of the Note;

(ii) 4% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the second year following the date of the Note;

(iii) 3% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the third year following the date of the Note;

(iv) 2% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the fourth year following the date of the Note;

(v) 1 % of the amount of principal which is being prepaid shall accompany any principal prepayment made in the fifth year following the date of the Note; and

(vi) no prepayment penalty shall be due with respect to any amount of principal which is being prepaid at any time after the fifth year following the date of this Note.

Section 4.08. Late Charge. A late charge of five percent (5%) may be assessed against the Borrower in accordance with the terms of the Note for any payment due under the Note which is not received within fifteen (15) days of its due date.

Section 4.09. No Abatement of Payments. If any of the Collateral shall be damaged or either partially or totally destroyed, or if title to, or the temporary use of the whole or any part of the Collateral shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable by the Borrower hereunder or under the Note, and the Borrower shall continue to be obligated to make such payments.

Section 4.10. Application of Net Proceeds of Insurance or Condemnation . The net proceeds from any insurance or condemnation award with respect to the Collateral shall be deposited with the Escrow Agent in the Escrow Account and subject to the provisions of Section 4.11 hereof either (i) applied to pay for the cost of making repairs, restorations or relocations, or to reimburse the Borrower for payment therefor or (ii) if the Borrower determines, or because of an Event of Default, is required to prepay the Note, applied against payment of the Note, said payments to be applied against outstanding principal amounts in inverse order of their maturity, without premium.

Section 4.11. Repair, Restoration and Relocation. (i) In the event of any damage, destruction, taking or condemnation of any of the Collateral (each an "Event"), provided that no Event of Default shall have occurred and then be continuing or with the passage of time or giving of notice, would be existing on the date the proceeds are received, the Borrower shall be permitted to apply the proceeds to the reduction of the Loan or to repair, restore or relocate such Collateral. In all such events where the Borrower determines to repair, restore or relocate the Collateral, the Borrower shall restore the Collateral to an economic unit not less valuable than the same was prior to such Event. The proceeds in respect of such Event shall be made available to reimburse the Borrower on such terms as the Purchaser may specify, as work progresses and costs are incurred, for the sole purpose of restoring or replacing the portion of the Premises provided that no Event of Default shall have occurred and then be continuing or with the passage of time or giving of notice, would be existing, on any date proceeds are requested to be disbursed in accordance with Section 5.02 hereof. The Borrower shall first apply its funds to such restoration or replacement. The Borrower shall proceed diligently after such damage, destruction or taking to repair, restore or relocate such Collateral. For the purposes of this Section 4.11, the Collateral shall be deemed to be in a condition substantially equivalent to its condition or value immediately prior to the Event, if the Purchaser determines, in its reasonable discretion, that the Collateral can be utilized effectively for substantially the same operational purposes for which it was utilized immediately prior to such damage, destruction or taking.

(ii) If required by the Purchaser for the restoration of the Premises, the Borrower shall submit plans for the restoration of the Project to the Purchaser as set forth in Section 5.03(a)(v) hereof (the "Plans"), which shall have been prepared by a licensed New Jersey architect. The Plans shall be a true and accurate reflection of the Project when restored and shall have been approved as required by all governmental bodies or agencies having jurisdiction. The budget for the construction costs required for the restoration of the Project shall be submitted by the Borrower to the Purchaser (the "Budget"), which shall be an accurate current estimate of all costs necessary to reconstruct the Project in accordance with the Plans. If the cost of any item for the reconstruction of the Project or any portion thereof exceeds the cost therefor set forth in the Budget, the Borrower shall deposit the amount of the excess in the Escrow Account in accordance with the terms of Section 5.07 hereof, unless the Borrower submits evidence satisfactory to the Purchaser of savings in any other line item which can then be applied to the line item for which the cost exceeds the cost set forth in the Budget.

ARTICLE V

ESCROW ACCOUNT, REBATE ACCOUNT AND ESCROW AGENT

Section 5.01. Creation of the Loan, Sale of the Bonds, Deposits in the Escrow Account . In order to create the Loan, the Authority, concurrently with the execution and delivery of this Bond Agreement, will sell, issue and deliver the Bonds to the Purchaser in consideration for which the Purchaser is hereby directed by the Authority to deposit the purchase price of the Bonds in the Escrow Account.

Section 5.02. Disbursements from the Escrow Account. (a) All of the proceeds of the Loan shall be utilized for the purpose of refinancing a loan used for the acquisition of condominium units by the Borrower and to pay costs related to the issuance of the Bonds. Subject to the provisions of Section 5.07, the Borrower agrees as a condition precedent to the disbursement from the Escrow Account of any portion of the Bond proceeds or insurance proceeds or condemnation award, if any, to furnish the Escrow Agent with the following:

(i) a Requisition Form signed by an Authorized Borrower Representative and approved by an Authorized Purchaser Representative accompanied by the applicable invoices and/or proofs of payment. The Requisition Form shall state: (A) the requisition number; (B) the name and address of the Person to whom payment is to be made by the Escrow Agent or, if the payment is to be made to the Borrower for a reimbursable advance, the name and address of the Person to whom such advance was made together with proof of payment by the Borrower; (C) the amount to be paid; (D) that each obligation for which payment is sought is a Proper Charge against the Escrow Account, is unpaid or unreimbursed, and has not been the basis of any previously paid requisition; (E) if such payment is a reimbursement to the Borrower for costs or expenses incurred by reason of work performed or supervised by officers or employees of the Borrower or any of its affiliates, that the amount to be paid does not exceed the actual cost thereof to the Borrower or any of its affiliates; (F) that no Event of Default has occurred under this Bond Agreement; and (G) the Borrower has received no written notice of any lien, right to lien or attachment upon, or other claim affecting the right to receive payment of, any of the moneys payable under such Requisition Form to any of the Persons named therein or, if any of the foregoing has been received, it has been released or discharged or will be released or discharged upon payment of the Requisition Form;

(ii) with respect to any requisition for Bond proceeds from the Escrow Account to be applied toward the renovation of the Premises, no funds shall be disbursed by the Escrow Agent until the Borrower has met the requirements of subparagraph (iv) of this Section 5.02(a);

(iii) except for costs of issuance, such additional documents, affidavits, certificates and opinions as the Authority or the Purchaser may reasonably require, including, as applicable, to insure compliance with the above section;

(iv) prior to the first disbursement from the Escrow Account for any Construction Contract, the Borrower shall deliver either (i) a certificate of an Authorized Borrower Representative stating that, for purposes of the Prevailing Wage Rate Provision and the Affirmative Action Program, none of the moneys disbursed at any time from the Escrow Account will be used to pay or reimburse a payment for work done in performance of any Construction Contract unless prior thereto there shall be submitted to the Escrow Agent an executed Contractor's Certificate and Agreement or (ii) a Contractor's Certificate and Agreement executed by the Contractor. Nevertheless, prior to the initial disbursement from the Escrow Account for payment of any Construction Contract, if not theretofore furnished, a Contractor's Certificate and Agreement shall be submitted; and

(v) with respect to any requisition for the acquisition of equipment, such requisition shall be accompanied by Financing Statements in such form and substance as the Purchaser may require to perfect a security interest in such equipment.

(b) There shall be retained in the Escrow Account an amount equal to ten per centum (10%) of each sum requisitioned for payment or reimbursement for payment of a Construction Contract for purposes of the Affirmative Action Program (a "holdback"); provided, however, if any such requisitioned sum is for payment or reimbursement of a payment by the Borrower, which payment itself is or was for only ninety per centum (90%) of the payment requested by the Contractor or Subcontractor pursuant to such Construction Contract, then such requisitioned sum may be paid or reimbursed without regard to the aforementioned holdback, but the remaining ten per centum (10%), when requisitioned by the Borrower, shall only be disbursed upon the holdback conditions set forth in paragraph (c) below.

(c) The holdback shall be disbursed from the Escrow Account upon compliance with the Affirmative Action and Prevailing Wage Rate Provision of this Bond Agreement and (i) the execution and filing of the Contractor's Completion Certificate, (ii) the execution and filing of the Borrower's Completion Certificate, (iii) receipt by the Borrower of a written notice issued by the Authority's Office of Affirmative Action that the Contractor has complied with the requirements of the Affirmative Action Program and (iv) certification to the Escrow Agent by an Authorized Borrower Representative of compliance with the conditions stated in clauses (i) through (iii) above.

Section 5.03. Disbursements of Construction Proceeds from the Escrow Account.

(a) The Purchaser's obligation to approve any advance of Construction Proceeds shall be subject to satisfaction of the following conditions precedent:

(i) The Borrower shall be in compliance with all terms and conditions of this Agreement and there shall have occurred no Event of Default hereunder;

(ii) No order or notice shall have been given by any governmental agency stopping construction or stating that the work or construction is in violation of any law, ordinance, code or regulation;

(iii) The mortgagee's title insurance policy obtained by the Borrower for the benefit of the Purchaser shall have been continued to the date of the advance and shall confirm that the Purchaser has a continued lien on the Premises, subject only to Permitted Encumbrances;

(iv) The Borrower shall have submitted to the Escrow Agent a requisition for an advance in form acceptable to the Purchaser and a Certification signed by the Borrower and Borrower's counsel in the form attached hereto as Exhibit D;

(v) The Plans and Budget (as both terms are defined in Section 4.1 l(ii) hereof) have been submitted to the Purchaser and found acceptable;

(vi) The Borrower shall have provided to the Bank original prepaid insurance policies as required herein;

(vii) Completion of a satisfactory inspection of the Property and the Project by the Purchaser or its designee, the cost to be paid by the Borrower;

(viii) The Borrower shall have submitted such additional documents as the Purchaser may require.

(b) No advance will be made for the commencement of the construction of the Project. Each advance of Construction Proceeds by the Escrow Agent shall reimburse the Borrower for construction costs incurred and paid for by the Borrower.

(c) Disbursements of Construction Proceeds shall be made upon the Borrower's compliance with the terms hereof in such proportion of the total cost of that part of the work acceptably completed as determined by the Purchaser, so that at all times the undisbursed portion of the Construction Proceeds shall be sufficient, in the Purchaser's sole discretion, to complete the Project. The Purchaser shall have the right to make the final determination as to the amount of each advance. The Purchaser may, in its sole discretion, determine the number of and frequency of disbursement of Construction Proceeds, which shall in no event be made more frequently than monthly.

(d) There shall be no material revisions to the Plans without the consent of the Purchaser.

Section 5.04. No Liability of Authority or Escrow Agent . Nothing contained herein or in any documents and agreements contemplated hereby or in any other Loan Document shall impose upon the Escrow Agent or the Authority any obligation to see to the proper application of such disbursements by the Borrower or any other recipient thereof, and, in making such disbursements from the Escrow Account, the Escrow Agent may rely on such Requisition Forms and proof delivered to it. The Escrow Agent and the Authority shall be relieved of any liability with respect to making such disbursements in accordance with the foregoing.

Section 5.05. Furnishing Documents to the Authority. The Escrow Agent agrees that it shall hold all documents, affidavits, certificates and opinions delivered to the Escrow Agent pursuant to Section 5.02 for a period of at least two (2) years after the Completion Date. The Authority shall have the right to inspect such documents, affidavits, certificates and opinions at the principal corporate trust office of the Escrow Agent at reasonable times and upon reasonable notice. The Escrow Agent shall provide copies of such documents, affidavits, certificates and opinions to the Authority at its request.

Section 5.06. Establishment of Completion Date. Completion of the Project shall be evidenced by delivery to the Authority and to the Purchaser of the Borrower's Completion Certificate signed by an Authorized Borrower Representative stating the date of completion of the Project and that, as of such date, except for amounts retained by the Escrow Agent at the Borrower's direction for any cost of the Project not then due and payable or, if due and payable not then paid: (i) the Project has been completed; (ii) the cost of all labor, services, materials and supplies used in the Project have been paid, or will be paid from amounts retained by the Escrow Agent at the Borrower's direction for any cost of the Project not then due and payable or, if due and payable, not then paid; (iii) the Project is being operated as an authorized "project" under the Act and substantially as proposed in the Application; (iv) the Borrower has reviewed the Contractor's Completion Certificate and the Borrower has no knowledge or information that the representations contained therein are false or misleading; and (v) the Borrower has required in all Construction Contracts that wages paid to workers employed in the performance of Construction Contracts be paid at a rate not less than the Prevailing Wage Rate. Notwithstanding the foregoing, the Borrower's Completion Certificate may state that it is given without prejudice to any rights against third parties which exist at the date of the Borrower's Completion Certificate or which may subsequently come into being. Any amount remaining in the Escrow Account on the Completion Date (except for amounts therein sufficient to cover costs of the Project not then due and payable or not then paid) shall be used upon the written instructions of the Borrower or the Authority by the Escrow Agent to make prepayments of principal only on the Note in accordance with its terms, without premium or penalty, and following such date the Borrower shall not permit such funds to be invested at a yield materially higher than the yield on the Bonds.

Section 5.07. Borrower Required to Pay if Escrow Account Insufficient. In the event the moneys in the Escrow Account available for payment of the costs of the Project are not sufficient to pay all costs of the Project in full, whether upon the initial acquisition of the Premises or upon the occurrence of a Land Condemnation or a Casualty Event under Section 4.11 hereof, the Borrower agrees to complete the Project and to pay that portion of the cost in excess of the moneys available therefor in the Escrow Account. The Authority, the Purchaser and the Escrow Agent make no warranty, either express or implied, that the moneys paid into the Escrow Account and available for payment of the costs of the Project will be sufficient to pay all of such costs. The Borrower agrees that if, after disbursement of all the money in the Escrow Account available for payment of costs of the Project, the Borrower shall pay any portion of the costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Authority, the Purchaser or the Escrow Agent.

Section 5.08. Escrow Account in Event of Default or Cancellation . If the Purchaser should, because of the occurrence of an Event of Default, declare the entire principal amount of the Note due and payable, or if the Authority should cancel the Bonds pursuant to Section 11.03 then any moneys in the Escrow Account shall, after payment to the Authority of any fees or expenses incurred by it in connection with the cancellation of the Bonds, be paid over to the Purchaser to satisfy the amount of the Obligations due and payable and any other amounts due and payable pursuant to the Loan Documents. Any excess moneys available in the Escrow Account, after the Obligations and the obligations due and payable under any Loan Document have been paid in full, shall, upon the written concurrence of the Purchaser and the Authority, be paid over to the Borrower.

Section 5.09. Rebate Account. A special fund is hereby created and designated as the Rebate Account. The Borrower shall transfer or cause to be transferred by the Escrow Agent from the Rebate Fund at such times and to such person as required by Section 148 of the Code an amount equal to the Rebate Amount. Amounts in the Rebate Account shall be exempt from the lien of this Bond Agreement. To the extent such amounts on deposit in the Rebate Account are not sufficient to meet the Rebate Amount, the amount of the deficiency shall be immediately paid by the Borrower to the Escrow Agent for deposit in the Rebate Account. Notwithstanding anything contained in this Bond Agreement to the contrary, neither the Authority nor the Escrow Agent shall be responsible or liable for any loss, liability, or expense incurred to the extent incurred as a result of the failure of the Borrower to fulfill its obligations with respect to the calculation and payment of the Rebate Amount. The Authority and Escrow Agent shall be entitled to rely conclusively upon the calculations provided by the Borrower.

The Escrow Agent, at the direction of the Borrower given in accordance with this Bond Agreement, shall apply or cause to be applied the amounts in the Rebate Account at the times and in the amounts required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

Moneys held in the Rebate Account shall be invested and reinvested upon the written direction of the Borrower by the Escrow Agent in Investment Obligations that mature at such times specified in such written direction, which times shall be not later than such times as shall be necessary to provide moneys when needed for the payments to be made from such Rebate Account and in accordance with the provisions hereof. The interest earned on any moneys or investments in the Rebate Account shall be retained in such Account.

Notwithstanding the final payment of the Loan, moneys held in the Rebate Account shall be held by the Escrow Agent until the Rebate Amount has been paid or until the Borrower has provided the Escrow Agent with a report of a Rebate Expert as required by Section 9.03 of this Agreement showing that no Rebate Amount is owed.

Section 5.10. Investment of the Escrow Account. Any moneys held as a part of the Escrow Account shall be invested and reinvested by the Escrow Agent, only as directed in writing by the Borrower, in Investment Obligations. The Escrow Agent may make any and all such investments through its own investment department or its branch(es). Absent written directions from the Borrower to the Escrow Agent to invest moneys in other Investment Obligations, the Escrow Agent is hereby directed by the Borrower to invest monies held in the Escrow Account in a money market fund maintained with the Purchaser.

The Borrower shall direct investments of amounts in the Escrow Account so that such Investment Obligations shall mature in such amounts and at such times or shall be redeemable by the Escrow Agent at such times as may be necessary to provide funds when, at the time of the investment, it is anticipated the same will be needed to make payments from the Escrow Account in accordance with the provisions of Section 5.02. To the extent required for payments from the Escrow Account, the Escrow Agent may, at any time, sell any of such Investment Obligations. The proceeds of any such sale, all payments at maturity and all payments upon redemption of such Investment Obligations shall be held in the Escrow Account or the Rebate Account, as applicable, and, as to the Escrow Account, accounted for separate and apart from the proceeds from the sale of the Bonds. Interest and other income shall be held in the respective subaccounts within the Escrow Account and accounted for on a separate basis.

Interest and other income received on Investment Obligations in the Escrow Account shall, within the later of (i) three (3) years from the date of issue of the Bonds or (ii) one (1) year after receipt of such investment income, upon written instruction from the Borrower be used to pay interest accruing on the Bonds during the construction period or otherwise spent on other costs of the Project. In making such investments as described in this Section, the Escrow Agent shall rely upon the written direction of the Borrower as to the investment purchased and shall be and hereby is relieved of all liability with respect to making, redeeming and selling such investments in accordance with the foregoing.

The Escrow Agent shall furnish the Borrower annually and at such other times as the Borrower may reasonably request, and shall furnish the Authority upon its request, a statement of account of any moneys held in the Escrow Account and the Rebate Account by the Escrow Agent.

Section 5.11. The Escrow Agent. Commerce Bank/North is hereby appointed by the Authority under the direction of the Borrower to serve as Escrow Agent hereunder. The Escrow Agent, shall act on behalf of the Authority under this Bond Agreement as specifically provided for herein only insofar as its duties are expressly set forth and shall not have any implied duties but may exercise such additional powers as are reasonably incidental thereto. Neither the Escrow Agent nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own gross negligence or willful misconduct. The Escrow Agent shall not be under a duty to examine or pass upon the validity, effectiveness or genuineness of any Loan Document or any direction, report, affidavit, certificate, opinion or other instrument, document or agreement related thereto, and shall be entitled to assume that the same are valid, effective, genuine and what they purport to be. The Escrow Agent may consult with legal counsel selected by it, and any action taken or suffered by it in accordance with the opinion of such counsel shall be full justification and protection to it. The Escrow Agent shall have the same rights and powers as any other bank or lender and may exercise the same as though it were not the Escrow Agent; and it may accept deposits from, lend money to and generally engage in any kind of business with the Borrower as though it were not the Escrow Agent.

The Borrower shall be responsible for the fees and costs of the Escrow Agent. The Escrow Agent shall not be obliged to act or perform hereunder or to incur any expenses in connection herewith unless and until the Escrow Agent has been properly indemnified by the Borrower for all actions to be taken or expenses to be incurred in connection with its duties as Escrow Agent hereunder.

Section 5.12. Duties of the Escrow Agent with Respect to this Bond Agreement . The Escrow Agent agrees to act and do the following on behalf of the Authority:

(a) establish and maintain the Escrow Account, to receive and make disbursements of proceeds of the Bonds or insurance proceeds and condemnation awards as provided in Article IV hereof;

(b) upon receipt of notice by or actual knowledge of any officer responsible for the administration of the Escrow Account, report to the Authority any breach of any covenant or any Event of Default by the Borrower under this Bond Agreement or any fact or circumstance which, except for any grace period permitted by this Bond Agreement, would result in any breach of a covenant or Event of Default by the Borrower hereunder. The Escrow Agent shall report such breach, Event of Default or information to the Authority immediately after the Escrow Agent becomes aware of such breach, Event of Default, fact or circumstance;

(c) furnish the Borrower and the Authority with written notice of the Borrower's obligation to file its report with the Authority in accordance with Section 9.03 hereof and to file its rebate calculation and make its rebate payment, if any, to the Internal Revenue Service. Such reminder notice shall be furnished to the Borrower and the Authority at least 90 days prior to each fifth anniversary of the issuance of the Bonds as set forth in Section 9.03 hereof and within 30 days following the redemption or final payment of the Bonds. The Escrow Agent shall have no further obligation for the computation of the Rebate Amount or the filing or payment thereof;

(d) upon the written request of the Authority, the Escrow Agent shall furnish the Authority with a record of the requisitions and disbursements from the Escrow Account; and

(e) provide timely notice to the Authority that some or all of the Bonds have been redeemed or paid in full.

The Borrower hereby acknowledges that it is familiar with all of the duties of the Escrow Agent as set forth herein and agrees to be bound by the provisions hereof. The Borrower further agrees that the Escrow Agent, the Authority and their respective employees shall not be liable for, and agrees to hold the Escrow Agent, the Authority, their respective employees and the Authority's members, officers, directors, agents and attorneys harmless against, any loss or damage suffered by the Borrower as a result of the Escrow Agent's good faith performance hereunder except loss or damage to the Escrow Agent or its employees suffered as a result of the gross negligence or willful misconduct of the Escrow Agent or its employees.

Section 5.13. Resignation of the Escrow Agent. The Escrow Agent or any successor thereto may at any time resign and be discharged of its duties and obligations created by this Bond Agreement by giving not less than sixty (60) days prior written notice to the Authority and the Borrower specifying the date when such resignation shall take effect. Such resignation shall take effect upon the day specified in such notice if a successor Escrow Agent has been duly appointed and qualified; but if a successor shall have been previously appointed by the Authority as herein provided, such resignation shall take effect immediately on the appointment of such successor; provided, however, that subsequent to the Completion Date the Escrow Agent may resign and such resignation shall be effective without the necessity of the appointment of a successor Escrow Agent, subject to reappointment in the event condemnation or insurance proceeds are received pursuant to Article IV hereof. In the event a successor Escrow Agent is not appointed within the 60 day period set forth above, the Escrow Agent shall have the right to pay any remaining proceeds of the Bond into, and to seek the appointment of a Successor Escrow Agent by, a court of competent jurisdiction.

Section 5.14. Removal of the Escrow Agent. The Escrow Agent or any successor thereto may be removed at any time by the Authority by an instrument in writing signed and duly acknowledged by the Authority, and upon a sale of the entire principal outstanding amount of the Bonds by the Purchaser, the Borrower shall have the right to remove the Escrow Agent by an instrument signed and duly acknowledged by the Borrower.

Section 5.15. Appointment of Successor Escrow Agent. In case at any time the Escrow Agent or any successor thereto shall resign, be removed, become incapable of acting, or be adjudicated a bankrupt or insolvent, or if a custodian, receiver, liquidator or conservator of the Escrow Agent or of its property shall be appointed, or if any public officer shall take charge or control of the Escrow Agent or of its property or affairs, a successor may be appointed by the Borrower by an instrument or concurrent instruments in writing signed by the Authority and the Borrower and delivered to the successor Escrow Agent, notification thereto being given to the predecessor Escrow Agent and the Borrower. An Escrow Agent appointed under the provisions of this Section shall be a bank, trust company or a national banking association, having capital and surplus aggregating at least ten million dollars ($10,000,000), willing and able to accept the office on reasonable and customary terms, and authorized by law to perform all the duties imposed upon it by this Bond Agreement.

Section 5.16. Transfer of Rights and Property to Successor Escrow Agent. Any successor Escrow Agent appointed shall execute, acknowledge and deliver to its predecessor Escrow Agent, the Purchaser, the Borrower and the Authority an instrument accepting such appointment, and thereupon such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Escrow Agent, with like effect as if named herein as such Escrow Agent. Nevertheless, on the written request of the Authority or of the successor Escrow Agent, the predecessor Escrow Agent shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Escrow Agent all the right, title and interest of the predecessor Escrow Agent in and to any property held by it under the Loan Documents, and shall pay over, assign and deliver to the successor Escrow Agent any money or other property subject to the trust and conditions herein or set forth in the other Loan Documents. Should any deed, conveyance or instrument in writing from the Authority be required by such successor Escrow Agent for more fully and certainly vesting in and confirming to such successor Escrow Agent any such moneys, estates, properties, rights, powers and duties, then all such deeds, conveyances and instruments in writing shall be prepared by the successor Escrow Agent at the expense of the Borrower and shall be executed, acknowledged and delivered by the Authority, but only upon written request and so far as may be authorized by law.

Section 5.17. Merger or Consolidation. Any entity into which the Escrow Agent may be merged or converted, or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which it shall be a party, or any entity to which the Escrow Agent may sell or transfer all or substantially all of its business, shall be the successor to the Escrow Agent without the execution or filing of any paper or the performance of any further act except to notify the Authority, the Borrower and the Purchaser within thirty (30) days of such merger, conversion or consolidation, provided such entity shall be a bank, trust company or national banking association which is qualified to be a successor to the Escrow Agent under Section 5.15 and shall be authorized by law to perform all the duties imposed upon it by this Bond Agreement.

Section 5.18. Conflicts. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions with respect to the Escrow Fund which, in its sole discretion, are in conflict either with other instructions received by it or with any provision of this Agreement, the Escrow Agent shall have the absolute right to suspend all further performance under this Escrow Agreement (except for the safekeeping of the Escrow Account) until the resolution of such uncertainty or conflicting instructions. In the event the Escrow Agent believes that there is a conflict as defined herein that warrants the Escrow Agent's suspension of all further performance, the Escrow Agent shall immediately notify all of the parties in writing of that conflict, and further, shall convene a meeting of all interested parties within ten (10) days of the receipt of such notice in which meeting the parties shall confer in good faith to try to resolve such conflicts. In the event the conflicts are not resolved as a result of that meeting, the parties agree that they will submit the matters in dispute to arbitration to be addressed on an expedited basis.

ARTICLE VI

REPRESENTATIONS OF THE AUTHORITY

Section 6.01. Authority Representations. The Authority represents to and agrees with the Purchaser that as of date hereof and as of the date of the Closing:

(a) The Authority is a public body corporate and politic, duly created and existing as a political subdivision of the State, with the power and authority set forth in the Act, including the power and authority to authorize the issuance of the Bonds under the Act.

(b) The Authority has the requisite authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Authority and, assuming the due authorization, execution and delivery by the other parties hereto, will constitute a valid and binding obligation of the Authority, enforceable in accordance with its terms (subject to any applicable bankruptcy, insolvency, moratorium or the similar laws or equitable principles affecting creditors' rights or remedies generally.)

(c) The Authority has the requisite authority to execute the Bonds and when delivered to and paid for by the Purchaser at the Closing in accordance with the provisions of this Agreement, and the Resolution, the Bonds will have been duly authorized, executed and issued and will constitute valid and binding limited obligations of the Authority enforceable in accordance with their respective terms and entitled to the benefits and security of this Agreement (subject to any applicable bankruptcy, insolvency, moratorium or other similar laws or equitable principles affecting creditors' rights or remedies generally).

(d) The adoption of the Resolution and the execution of this Agreement, and the Bonds and compliance by the Authority with the provisions thereof and hereof, under the circumstances contemplated thereby and hereby, to the knowledge of the Authority, do not and will not in any material respect conflict with or constitute on the part of the Authority a breach of or default under any indenture, deed of trust, mortgage, agreement, or other instrument to which the Authority is a party, or conflict with, violate, or result in a breach of any existing law, public administrative rule or regulation, judgment, court order or consent decree to which the Authority is subject.

(e) The Resolution and the forms of this Agreement, and the Bonds were adopted or approved at a duly convened meeting of the Authority, with respect to which all legally required notices were duly given, and at which meetings quorums were present and acting at the time of adoption thereof.

(f) The State of New Jersey is not obligated to pay, and neither the faith and credit nor taxing power of the State of New Jersey is pledged to the payment of, the principal or redemption price, if any, of or interest on the Bond. The Bond is a special, limited obligation of the Authority, payable solely out of the revenues or other receipts, funds or moneys of the Authority pledged under this Agreement and from any amounts otherwise available under this Agreement for the payment of the Bond. The Bond does not now and shall never constitute a charge against the general credit of the Authority. The Authority has no taxing power.

(g) The Authority makes no representation as to (i) the financial position or business condition of the Borrower or (ii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Borrower in connection with the sale or transfer of the Bonds, the execution and delivery of this Bond Agreement or the consummation of the transactions contemplated hereby.

(h) Pursuant to Section 9.03 hereof, the Borrower has covenanted to comply with the provisions of Sections 103 and 141 through 150 of the Code. The Authority hereby covenants not to take or omit to take any action so as to cause interest on the Bonds to be no longer excluded from gross income for the purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Code, and all applicable regulations promulgated with respect thereto, throughout the term of the Bonds. Pursuant to this Bond Agreement all investments of the proceeds of the Bonds will be at the direction of the Borrower.

ARTICLE VII

REPRESENTATIONS AND DUTIES OF THE PURCHASER

Section 7.01. Purchaser Representations.

(a) The Purchaser has made an independent investigation and evaluation of the financial position and business condition of the Borrower and the value of the Project, or has caused such investigation and evaluation of the Borrower and the Project to be made by persons it deems competent to do so. The Purchaser has not relied on the Authority for any information regarding the Borrower or the Project and the Purchaser expressly relieves the Authority and its agents, representatives and attorneys of any liability for failure to provide such information or for any untrue fact or material omission in any information regarding the Borrower or the Project that may have been provided by the Borrower or the Authority, and their agents, representatives and attorneys.

(b) The Purchaser is purchasing the Bonds for its own account, with the purpose of investment and not with the intention of distribution or resale thereof. The Bonds will not be sold unless registered in accordance with the rules and regulations of the Securities and Exchange Commission or the Authority is furnished with an opinion of counsel or a "No Action" letter from the Securities and Exchange Commission that such registration is not required.

Section 7.02. Tax Consequences. The Purchaser hereby acknowledges the following tax consequences arising under the Code including, but not limited to:

(a) interest on specified private activity bonds within the meaning of Section 57(a)(5) of the Code may be included as a tax preference item for purposes of calculating any alternative minimum tax for individuals and corporations under Section 57 of the Code. It is further acknowledged that such interest may also be included in calculating the modified adjusted gross income, defined in Section 86(b) of the Code, of a taxpayer who is a recipient of social security benefits;

(b) the alternative minimum taxable income of any corporation shall be adjusted for "net book income", as provided under Section 56(c) of the Code, the calculation of which may include interest on tax-exempt obligations for any taxable year beginning in 1987, 1988, or 1989, and shall be adjusted for earnings and profits for taxable years beginning after 1989; and

(c) the Bonds are not "bank qualified," accordingly no deduction may be allowed for interest incurred by financial institutions to carry tax-exempt obligations acquired after August 7, 1986 under Section 265(b) of the Code.

Section 7.03. Filing of Other Documents. The parties hereto shall execute, at the request of the Borrower, and the Borrower shall file financing statements, continuation statements, notices and such other documents necessary to perfect all security interests created pursuant to the terms of this Agreement, the other Loan Documents and to preserve and protect the rights of the Purchaser in the Collateral, under this Agreement and the Note and the granting by the Authority of certain rights of the Authority pursuant to this Bond Agreement and the Authority's Assignment, and the Authority shall have no responsibilities for such filings whatsoever, other than executing the documents requested by the Borrower.

Section 7.04. Notice of Events of Default. The Purchaser, the Escrow Agent and the Authority shall each notify the other parties promptly in writing of any event of which it has notice which constitutes an Event of Default or which, with the passage of time, will become an Event of Default.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

The Borrower and Corporate Guarantors (to the extent applicable) each hereby represents and warrants to the Authority and to the Purchaser that:

Section 8.01. Organization, Powers, etc. The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey. The Corporate Guarantors are limited liability companies duly organized, validly existing and in good standing under the laws of the State of Delaware. Each has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by the Borrower) and has the power to perform all the undertakings of the Loan Documents, to borrow hereunder and to execute and deliver the Loan Documents.

Section 8.02. Execution of Loan Documents. The execution, delivery and performance of the Loan Documents and other instruments required by this Bond Agreement:

(a) have been duly authorized by all requisite member or corporate action, as the case may be;

(b) to the best of its knowledge, do not and will not contravene any provision of law, governmental rule, regulation or order of any court or other agency of government applicable thereto;

(c) do not and will not conflict with or violate any provision of any charter document, operating agreement or other governing documents;

(d) do not and will not violate or result in a default under any provision of any indenture, mortgage, contract or other instrument to which it is a party or any order, writ, injunction or decree to which it is a party or by which it or its properties or assets are bound;

(e) to the best of its knowledge, do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents and the Permitted Encumbrances.

Section 8.03. Title to Collateral. Each has or will have good and marketable title to the Collateral and other assets free and clear of any lien or encumbrance, except for the Permitted Encumbrances. Based upon the title commitment of First American Title Insurance Company #219746, upon filing the Mortgage and the financing statements the Authority will have a first lien upon the Premises. The Borrower and the Corporate Guarantors have all of the trademarks and licenses necessary for the conduct of their businesses.

Section 8.04. Litigation. To its knowledge, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending against or affecting it or any of its properties or rights which, if adversely determined, would (i) materially adversely affect the transactions contemplated hereby, (ii) affect the validity or enforceability of the Loan Documents, (iii) affect its ability to perform its obligations under the Loan Documents, (iv) materially impair the value of the Collateral, (v) materially impair its right to carry on its business substantially as now conducted (and as now contemplated by it) or (vi) have a material adverse effect on its financial condition.

Section 8.05. Payment of Taxes. It has filed or caused to be filed all Federal, State and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

Section 8.06. No Defaults. To the best of its knowledge, it is not in default in the performance, observance or fulfillment of any order, arbitrator or governmental or non-governmental body; and to the best of its knowledge is not subject to or a party to any order of any court or governmental or non-governmental body arising out of any action, suit, or proceeding under any statute or other law respecting antitrust, monopoly, restraint of trade, unfair competition or similar matters.

Section 8.07. No Material Adverse Change. There has been no material adverse change in its financial condition since the date of the financial statements submitted to the Purchaser in connection with this transaction.

Section 8.08. Obligations of the Borrower and Guarantors. The Loan Documents have been duly executed and delivered and are legal, valid and binding obligations of each of the Borrower and the Guarantors and are enforceable against each in accordance with their respective terms, subject to bankruptcy laws, creditors' rights laws and equitable rights and remedies.

Section 8.09. No Action. To the best of its knowledge, the Borrower has not taken and will not take any action and knows of no action that any other Person has taken or intends to take, which would cause interest income on the Bonds to be includable in the gross income of the recipients thereof under the Code (subject to the limitations set forth in Section 7.02 hereof).

Section 8.10. Design of the Project. Except as set forth in Schedule A hereto, to its knowledge, the present operation of the Project and the operation as presently contemplated and as described in the Application does not and will not conflict with any current building, zoning, health, safety, water, air pollution or other ordinances, orders, laws or regulations applicable thereto.

Section 8.11. Commencement of Project; Proper Charges. No cost of the Project for which the Borrower intends to seek reimbursement was incurred prior to the sixtieth day prior to August 14, 2007. The proceeds of the Bonds are only to be used to pay Proper Charges.

Section 8.12. Limitation on Expenditures; Principal User. (a) The sum of the following does not exceed $10,000,000:

(i) the aggregate face amount of any outstanding issues of obligations (other than the Bonds) exempt from taxation under Section 144(a)(4) of the Code, the proceeds of which were or will be used primarily with respect to facilities (A) located within the Project Municipality or "contiguous" or "integrated" facilities located in any adjacent political jurisdiction and (B) the Principal User of which is or will be the Borrower or any other Principal User of the Project or any Related Person; and

(ii) the aggregate principal amount of the Bonds.

(b) The sum of the foregoing and the sum of the following does not exceed $20,000,000:

the aggregate amount of all capital expenditures paid or incurred by the Borrower or any Related Person (other than those financed out of the Bond Proceeds or the proceeds of any other bond or bonds, if any, referred to in paragraph (a)(ii) above) within the meaning of Treas. Reg. §§1.103-10(b)(2)(ii) and (iii) for the three year period prior to the Closing Date with respect to facilities located within the Project Municipality.

(c) As of the date hereof, the Borrower and the Corporate Guarantors are the only Principal Users of the Project.

Section 8.13. Outstanding Tax-Exempt Bonds.

(a) Except for the Bonds there is outstanding no issue of tax-exempt bonds (including industrial development bonds), as defined in Section 103 of the Code, the proceeds from the sale of which have been or will be used with respect to facilities, the Test-Period Beneficiary of which is or will be the Borrower or any Test-Period Beneficiary of the Project and which are or will be wholly or partially located in the Project Municipality; and

(b) The aggregate face amount of the Bonds when added to the tax-exempt facility-related bonds (as defined in Section 144(a)(10)(B) of the Code) allocated to the Borrower or any other Test Period Beneficiary which are outstanding at the time of the issuance of the Bonds (not including any bond which is to be redeemed from the Net Proceeds), does not exceed $40,000,000.

Section 8.14. Project Municipality. The Project is located wholly within the borders of the Project Municipality and the Premises are not contiguous with the borders of any portion of the Project Municipality. The operation of the Project is not integrated with any other facility in any neighboring municipality operated by any Principal User of the Project. All of the facilities financed by the Bond Proceeds are located within one state, and neither the Borrower nor any Related Person is a user of any facility financed by the proceeds of the Bonds other than the Project.

Section 8.15. No Tenancies. No Principal User of the Project is a tenant in any facility in the Project Municipality, the landlord of which is a Person other than a Principal User of the Project.

Section 8.16. Substantial Users. No Person (or any Related Person within the meaning of Section 144(a)(3) of the Code) who was a substantial user of the Project, within the meaning of Treas. Reg. Sec. 1.103-8(a)(5)(iv), at any time during the five (5) year period immediately preceding the date hereof, and who will receive, directly or indirectly, Bond Proceeds of the Bonds in an amount equal to five per centum (5%) or more of the face amount of the Bonds in payment for such user's interest in the Project, will be a Substantial User of the Project or a Related Person at any time during the five (5) year period beginning on the date of issuance of the Bonds.

Section 8.17. Placement in Service. The Project was not acquired or placed in service by the Borrower (determined in accordance with the provisions of Section 103 of the Code and applicable regulations thereunder) more than one (1) year prior to the date of issuance of the Bonds.

Section 8.18. No Common Plan of Financing. Subsequent to fifteen (15) days prior to the date hereof, the Borrower or any Related Person (or group of related persons which includes the Borrower) has not guarantied, arranged, participated in, assisted with, borrowed the proceeds of, or leased facilities financed by obligations issued under Section 103 of the Code by any state or local governmental unit or any constituted authority empowered to issue obligations by or on behalf of any state or local governmental unit other than the Authority. During the period commencing on the date of issuance of the Bonds and ending fifteen (15) days thereafter, there will be no obligations issued under Section 103 which are guarantied by the Borrower or any Related Person (or group of related persons which includes the Borrower) or which are issued with the assistance or participation of, or by arrangement with, the Borrower or any Related Person (or group of related persons which includes the Borrower) without the written opinion of Bond Counsel to the effect that the issuance of such obligation will not adversely affect their opinion as to exemption from present Federal income taxes of interest on the Bonds. Other than the Borrower or any Related Person (or group of related persons including the Borrower), no person has (i) guarantied, arranged, participated in, assisted with the issuance of, or paid any portion of the cost of the issuance of the Bonds, or (ii) provided any property or any franchise, trademark or trade name (within the meaning of Code Section 1253) which is to be used in connection with the Project.

Section 8.19. Use of Proceeds. (a) Less than twenty-five per centum (25%) of the Net Proceeds will be used directly or indirectly to acquire land or an interest therein.

(b) No more than twenty-five per centum (25%) of the Net Proceeds will be used to provide facilities the primary purpose of which is: (i) retail food and beverage services, (ii) automobile sales or service and (iii) the provision of recreation or entertainment.

(c) No portion of the Bond Proceeds will be used to provide any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, racetrack, airplane, skybox (or other private luxury box), any health club facility, gambling facility or liquor store.

(d) The proceeds will be used to acquire the Premises and to pay costs of issuance.

Section 8.20. Economic Life. The information contained in the Tax Certificate, setting forth the respective cost, economic life, ADR midpoint life, if any, under Rev. Proc. 72-10, 1972-1 C.B. 721, as supplemented and amended from time to time, and guideline life, if any, under Rev. Proc. 62-21, 1962-2 C.B. 118, as supplemented and amended from time to time, of each asset constituting the Project to be financed with the proceeds of the Bonds is true, accurate and complete.

Section 8.21. Aggregation of Issues for Single Project. The Project does not share "substantial common facilities", within the meaning of Section 144(a)(9) of the Code, with any other facility financed by an outstanding tax-exempt bond.

Section 8.22. Environmental Representation. The provisions of the Environmental Agreement are incorporated herein by reference as if set forth at length.

Section 8.23. Rehabilitation Requirement. The Borrower covenants and agrees that (a) it shall incur Rehabilitation Expenditures in an amount equal to or exceeding fifteen percent (15%) of that portion of the proceeds of the Bonds used to acquire Existing Property and (b) it shall not use any of the proceeds of the Bonds to acquire any equipment as to which the Borrower is not the initial user, all terms being used within the meaning of Code Section 147(d)(2) and (3).

ARTICLE IX

COVENANTS OF THE BORROWER

The Borrower covenants and agrees, so long as this Bond Agreement shall remain in effect or the Note and Guaranty shall be outstanding, as follows:

Section 9.01. Insurance Required.

(a) The Borrower agrees to insure the Project and Collateral and other business assets or cause such to be insured with insurance companies qualified to do business in the State, financially responsible, and of recognized standing, in such amounts, in such manner and against such loss, damage and liability (including liability to third parties), as is customary with companies in the same or similar business and located in the same or similar areas; and pay the premiums thereon and shall be in such form and have such provisions as are generally considered standard provisions for the type of insurance involved and as required by the Commitment Letter and herein.

(b) Each insurance policy issued pursuant to this Section 9.01 shall name both the Borrower and the Purchaser as a loss payee, as their interests may appear, and the Purchaser as first mortgagee/lender loss payee. In addition, the public liability insurance shall also name the Authority and the Purchaser as additional insureds.

(c) Such insurance coverage shall include:

(i) general comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Project or the Project site (such coverage to include provisions waiving subrogation against the Authority and the Purchaser) in amounts not less than $1,000,000 with respect to bodily injury to any one person, $3,000,000 aggregate with respect to bodily injury to two or more persons in any one accident and $1,000,000 aggregate with respect to property damage resulting from any one occurrence, naming the Authority and the Purchaser, as additional insureds;

(ii) commercial casualty insurance insuring loss by reason of casualty of any kind (except only as limited by the standard form of extended coverage endorsement used in the State) to the Project or the Collateral in a minimum amount equal to the greater of (x) the outstanding principal amount of the Bonds and (y) the replacement value thereof, naming the Authority and the Purchaser as additional insureds;

(iii) during any period of construction “Special Perils” builders’ all risk insurance written in “100% builders risk completed value, non-reporting form”, including coverage therein for “completion and/or premises occupancy”, such insurance to be in the amounts specified in paragraph (ii) above;

(iv) such other insurance in such amounts and against such insurable hazards as the Authority or the Purchaser from time to time may reasonably request.

(d) At all times during the term of this Agreement, the Borrower shall comply with the laws of the State relating to workers' compensation with respect to the Project.

(e) At all times during the term of this Agreement, the Borrower shall keep in effect a policy of flood insurance for any part of the Premises and any improvements upon the Premises lying or being within a designated flood-plain in the amount and with the insurer specified in subsection (a) above.

(f) Each insurance policy obtained in satisfaction of the requirements of this section:

(i) shall be by such insurer (or insurers) as shall be financially responsible, qualified to do business in the State and of recognized standing, which shall be companies which have an A.M. Best Stability Rating of A or better and a financial rating of VII or better;

(ii) shall be in such form and have such provisions as are generally considered standard provisions for the type of insurance involved;

(iii) as provided in (g)(v) below, shall prohibit cancellation or substantial modification, termination or lapse in coverage by the insurer without at least 30 days prior written notice to the Authority and the Purchaser;

(iv) without limiting the generality of the foregoing, policies carried on the Project and the Project site shall name the Authority and the Purchaser as additional insureds;

(v) as provided in (h) below, prior to expiration of any such policy, the Borrower shall furnish the Authority and the Purchaser with evidence satisfactory to the Authority and the Purchaser that the policy or certificates has been renewed or replaced in compliance with this Agreement.

(g) Each of the policies or binders evidencing the insurance required above to be obtained shall:

(i) provide that all insurance proceeds with respect to loss or damage to the property of the Project or the Collateral be endorsed and made payable to the Purchaser and shall name the Purchaser as lender loss payee with respect to business personal property coverage, additional insured as to all liability coverage and mortgagee under a standard mortgagee clause with respect to building and plant coverage, which insurance proceeds shall be paid over to the Purchaser;

(ii) provide that there shall be no recourse against the Authority or the Purchaser for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the respective interests of the Authority and the Purchaser in such policies, the insurance shall not be invalidated by any action or inaction of the Borrower or any other person and shall insure the Authority and the Purchaser regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Authority or the Purchaser to the extent that such other insurance provides the Authority or the Purchaser, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there shall be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Authority or the Purchaser until at least thirty (30) days after receipt by the Authority and the Purchaser, respectively, of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) provide a waiver of any right of subrogation of the insurers thereunder against any person insured under such policy, and a waiver of any right of the insurers to any set off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy; and

(vii) provide such other terms and provisions as any owner or operator of facilities similar to the Borrower's would, in the prudent management of its properties, require to be provided in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

(h) Concurrently with the original issuance of the Bonds, the Borrower shall deliver or cause to be delivered to the Authority and the Purchaser duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section. At least thirty (30) days prior to the expiration of any such policy, the Borrower shall furnish the Authority and the Purchaser with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(i) The Borrower shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Authority or the Purchaser to collect from insurers for any loss covered by any insurance required to be obtained by this Section 9.01. The Borrower shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 9.01 would or might be suspended or impaired.

(j) The Authority and the Purchaser shall each be supplied with an annual certificate, within thirty (30) days after the close of the Borrower's Fiscal Year, certifying that the Borrower is in compliance with this Section 9.01 and that the insurance policies required to be maintained by the Borrower under this Section are still in force and effect.

(k) In the event the Borrower shall fail to maintain the insurance coverage required by this Agreement, the Authority or the Purchaser may (but shall be under no obligation to), after ten (10) days written notice to the Borrower unless cured within such ten (10) days contract, for the required policies of insurance and pay the premiums on the same and the Borrower agrees to reimburse the Authority or the Purchaser to the extent of the amounts so advanced with interest thereon at the maximum rate permitted by law.

(l) The Authority is not under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Borrower, or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Authority shall have no responsibility in respect of the sufficiency of the security provided by this Agreement. The Authority shall not be under any obligation to see that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Authority shall not be under any liability for failure to see that any such duties or covenants are so done or performed. The immunities and exemptions from liability of the Authority hereunder shall extend to its directors, members, attorneys, officers, employees and agents.

Section 9.02. Payment of Taxes, etc. It will promptly pay and discharge or cause to be promptly paid and discharged all taxes, assessments and governmental charges or levies imposed upon it or in respect of any of its property and assets before the same shall become in default, as well as all lawful claims which, if unpaid, might become a lien or charge upon such property and assets or any part thereof, except such that are contested in good faith in an appropriate forum and for which it has set aside adequate reserves.

Section 9.03. Compliance with Code and Arbitrage Regulations . (a) The Borrower shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the Bonds shall, for the purposes of Federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation, except in the event that such recipient is a Substantial User or Related Person to a Substantial User. To that end, the Borrower covenants that it: (i) will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code; (ii) will not directly or indirectly cause the Project to exceed the $10,000,000 bond limitation or the $20,000,000 capital expenditure limitation, as set forth in Section 144(a) of the Code, for the three years following the issue date of the Bonds, as such requirement may be amended from time to time, including any prohibition on transferring equipment into the Project Municipality; (iii) shall pay the Rebate Amounts set forth in this Section 9.03; and (iv) shall direct the Escrow Agent to make investments of amounts in the Escrow Account only at market prices within the meaning of Treasury Regulations Section 1.148-1.

For purposes of this Section, any and all actions of any Principal User of the Project or any Related Person to any such Principal User shall be deemed to be actions of the Borrower. In addition, any and all actions to be undertaken by the Borrower or by any other Person as to which the Authority or the Purchaser must, pursuant to the terms hereof, consent or approve in advance, shall be deemed to be the actions of the Borrower or such other Person (and not the actions of the Authority or the Purchaser).

(b) The Borrower shall not permit at any time or times any of the Gross Proceeds to be used, directly or indirectly, to acquire any Investment Property (within the meaning of Section 148(b)(2) of the Code) the acquisition of which would cause the Bonds to be an "arbitrage bond" for the purposes of Section 148 of the Code. The Borrower shall utilize the Bond Proceeds so as to satisfy the reasonable expectations of the Borrower set forth in the arbitrage certificate of the Borrower delivered as part of the Record of Proceedings.

(c) The Borrower shall use the Bond Proceeds to acquire, construct and equip the Project in the manner and as specifically set forth in the Tax Certificate furnished to Bond Counsel and the Authority. The Borrower shall not expend the Bond Proceeds on assets other than those listed in the Tax Certificate without the express written consent of Bond Counsel.

(d) Six months after closing or eighteen months after the closing, as the case may be, the Borrower will provide a written certification to the Authority and the Escrow Agent indicating whether the Borrower complied with the six-month exception to the arbitrage rebate requirement set forth in Section 148(f)(4) of the Code or the eighteen-month exception to the arbitrage rebate requirement set forth in Section 1.148-7(d) of the Treasury Regulations promulgated under the Code.

(e) The Borrower will retain a person or firm having expertise to calculate the amount of rebate, if any, due to the United States pursuant to Section 148(f) of the Code, as set forth in paragraph (f) below (the "Rebate Expert"), on or no later than 30 days before the initial rebate Computation Date (as defined below) and on each rebate Computation Date thereafter, (A) to compute the Rebate Amount with respect to the Bonds for the period ending on such rebate Computation Date, (B) to deliver an opinion to the Authority and Escrow Agent concerning its conclusions with respect to the amount (if any) of such Rebate Amount together with a written report providing a summary of the calculations relating thereto, and (C) to deliver an opinion to the Authority and Escrow Agent that all of the Gross Proceeds of the Bonds (within the meaning of Section 148(f) of the Code), other than Gross Proceeds of the Bonds on deposit in a Bona Fide Debt Service Fund (within the meaning of Section 148(F)(4) of the Code), have been expended on or prior to the initial rebate Computation Date. The Computation Date shall include (i) maturity of the Bonds, (ii) if the Bonds are redeemed prior to maturity, the date on which the Bonds are redeemed, (iii) on the first day of each fifth anniversary date of the Bond Year, and (iv) any other date that may be required by the Code.

(f) The Borrower shall direct the Escrow Agent in writing to pay the Rebate Amount to the United States on behalf of the Authority in accordance with paragraphs (h), (i) and (j) below. The Rebate Amount as of any Computation Date is defined as the excess of the Future Value of all receipts on Nonpurpose Investments ("Nonpurpose Receipts") over the Future Value of all payments on Nonpurpose Investments ("Nonpurpose Payments"). To the extent amounts received from Nonpurpose Investments are reinvested, these amounts may be netted against each other and not taken into account in the computation of the Rebate Amount. Nonpurpose Receipts and Nonpurpose Payments shall be determined as described below.

(i) Nonpurpose Payments. Nonpurpose Payments include actual payments (amounts of Gross Proceeds actually or constructively paid to acquire a Nonpurpose Investment including Qualified Administrative Costs); "allocation" payments (for a Nonpurpose Investment that is allocated to the Bonds after already having been acquired by the Borrower (e.g., sinking fund proceeds), an amount equal to the Value of the Investment on the allocation date); Computation Date payments (for a Nonpurpose Investment allocated to the Bonds at the end of the preceding Computation Period, the Value of the Investment at the beginning of the Computation Period); Yield Reduction Payments, if any; and the Computation Date credit equal to $1,000.

(ii) Nonpurpose Receipts. Nonpurpose Receipts include actual receipts (amounts actually or constructively received with respect to a Nonpurpose Investment, such as earnings and return of principal, reduced by Qualified Administrative Costs); "deallocation" receipts (for a Nonpurpose Investment that ceases to be allocated to the Bonds or subject to rebate, the Value of the Investment on the "deallocation" date); Computation Date receipts (the Value of any Nonpurpose Investment held at the end of any Computation Period); and rebate receipts (any recovery of an overpayment of rebate).

Investments of amounts held in a Bona Fide Debt Service Fund for the Bonds will be excepted from the rebate requirement but only if the gross earnings on such fund for such Bond Year do not exceed $100,000.

(g) For each investment of Gross Proceeds in a Non-Purpose Investment, the Borrower shall direct the Escrow Agent to record, without limitation, the following information: purchase date, purchase price, fair market value, face amount, stated interest rate, any accrued interest due on its purchase date, frequency of interest payments, disposition date, disposition price, any accrued interest due on the disposition date and Yield to maturity. The Yield to maturity for an investment presently means that discount rate, based on a compounding frequency the same as the Bond's (or such other compounding permitted by the Code), which when used to determine the present value, on the purchase date of such investment or the date on which the investment becomes a Non-Purpose Investment, whichever is later, of all payments of principal and interest on such investment gives an amount equal to the fair market value of such investment including accrued interest due on such date. The Escrow Agent shall have no responsibility to calculate "yield" or to make any calculation with respect to the rebate requirements under the Code.

(h) In the event the amount in the Escrow Account is insufficient to fund the Rebate Account, the Borrower shall within ten (10) days of receipt of the report furnished by the Rebate Expert pursuant to paragraph (e) above, pay or cause to be paid to the Escrow Agent for deposit into the Rebate Account the difference between the amount required to fund the rebatable arbitrage. If the Borrower fails to make, or causes to be made, any payment required pursuant to this paragraph (h) when due, the Authority shall have the right, but shall not be required, to make such payment to the Escrow Agent on behalf of the Borrower. Any amount advanced by the Authority pursuant to this paragraph (h) shall be added to the moneys owing by the Borrower under this Agreement and shall be payable on demand with interest at the Default Rate (as defined in the Note).

On each Computation Date, if such Rebate Amount payable exceeds the amount then on deposit in the Rebate Account, the Borrower shall promptly pay to the Escrow Agent, the amount necessary to make up such deficiency and direct the Escrow Agent to pay the same to the United States within sixty (60) days of the Computation Date. The Borrower shall, in a timely fashion, give all written notices and directions to the Escrow Agent as are called for hereunder for the payment of the Rebate Amount. Any sums remaining in the Rebate Account following such payments shall be returned to the Borrower.

(i) The rebate shall be paid in installments which shall be made at least once every five (5) years from the date of issuance of the Bonds. The first such installment shall be due to the United States on behalf of the Authority not later than thirty (30) days after the end of the fifth (5 th) year following the date of issuance of the Bonds and shall be in an amount which ensures the Rebatable Arbitrage required under the Code with respect to the Bonds, as of the current Rebate Computation Date, will have been paid to the United States. Each subsequent payment shall be made not later than five (5) years after the date the preceding payment was due. Within sixty (60) days after the retirement of the Bonds, the Borrower shall direct the Escrow Agent in writing to pay to the United States on behalf of the Authority all of the Rebatable Arbitrage required under the Code with respect to the Bonds not theretofore paid.

(j) Each payment of the Rebate Amount to be paid to the United States shall be filed with the Internal Revenue Service, Ogden Submission Processing Center, Ogden, Utah 84201, or such other address that may be specified by the Internal Revenue Service. Each payment shall be accompanied by Form 8038-T (or such other form required by the Internal Revenue Service furnished by the Borrower or the Authority) and a statement identifying the Authority, the date of the issue, the CUSIP number for the Bonds with the longest maturity and a copy of the applicable Form 8038.

(k) The Borrower acknowledges that the Authority shall have the right at any time and in the sole and absolute discretion of the Authority to obtain from the Borrower and the Escrow Agent the information necessary to determine the Rebate Amount required to be paid to the United States pursuant to Section 148(f) of the Code. Additionally, the Authority may, with reasonable cause, (i) review or cause to be reviewed any determination of the amount to be paid to the United States made by or on behalf of the Borrower and (ii) make, or retain a Rebate Expert to make, the determination of the amount to be paid to the United States. The Borrower hereby agrees to be bound by any such review or determination, absent manifest error, to pay the costs of such review, including without limitation the reasonable fees and expenses of counsel or a Rebate Expert retained by the Authority, and to pay to the Escrow Agent any additional amounts for deposit in the Rebate Account required as the result of any such review or determination.

(l) Except as may be permitted pursuant to Section 148(c) of the Code (relating to certain temporary periods for investment), at no time during the term of the Bonds shall the amount invested by the Borrower in Non-Purpose Obligations with a Yield higher than the Yield on the Bonds exceed 10% of the proceeds of the Bonds. The aggregate amount invested in Non-Purpose Obligations shall be promptly and appropriately reduced as the outstanding principal of the Bonds is reduced.

(m) Notwithstanding any provision of this Section 9.03 to the contrary, the Borrower shall be liable, and shall indemnify and hold the Authority and the Escrow Agent harmless against any liability, for payments due to the United States pursuant to Section 148(f) of the Code. Further, the Borrower specifically agrees that neither the Authority nor the Escrow Agent shall be held liable, or in any way responsible, and the Borrower shall indemnify and hold harmless the Escrow Agent and Authority against any liability, for any mistake or error in the filing of the payment or the determination of the Rebate Amount due to the United States or for any consequences resulting from any such mistake or error. The provisions of this paragraph shall survive termination of this Agreement. In the event of any conflict between the provisions of this Section 9.03 and the provisions of Code, the provisions of the Code shall control.

(n) The Authority, the Purchaser and the Borrower acknowledge that the provisions of this Section 9.03 are intended to comply with Section 148(f) of the Code and the regulations promulgated thereunder and if as a result of a change in such Section of the Code or the promulgated regulations thereunder or in the interpretation thereof, a change in this Section 9.03 shall be permitted or necessary to assure continued compliance with Section 148(f) of the Code and the regulations promulgated thereunder, then with written notice to the Purchaser, the Authority and the Borrower shall be empowered to amend this Section 9.03 and the Authority may require, by written notice to the Borrower and the Purchaser, the Borrower to amend this Section 9.03 to the extent necessary or desirable to assure compliance with the provisions of Section 148 of the Code and the regulations promulgated thereunder; provided that either the Authority or the Purchaser shall require, prior to any such amendment becoming effective, at the sole cost and expense of the Borrower, an opinion of Bond Counsel satisfactory to the Authority to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Bonds or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of the interest paid or payable on the Bonds.

(o) The Borrower shall give immediate telephonic notice, promptly confirmed in writing, to the Authority and the Purchaser of a Determination of Taxability whether the Borrower is on notice of such Determination of Taxability by its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Determination of Taxability shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Determination of Taxability shall have occurred, or otherwise.

Section 9.04. Compliance with Applicable Laws. The Borrower agrees to comply, in all material respects with all applicable Federal, State, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter pertaining to the operation, conduct and maintenance of the Project and its existence and business including, without limitation, all federal, state and local laws relating to benefit plans, environmental, safety, or health matters, and hazardous or liquid waste or chemicals or other liquids (including use, sale, transport and disposal thereof).

Section 9.05. Environmental Covenant. The Borrower shall not permit any action to occur which would be in direct violation of any and all applicable Federal, State, county and municipal laws, ordinances, rules and regulations now in force or hereinafter enacted, including the regulations of the Authority and the regulations of the Department of Environmental Protection.

The Borrower shall give immediate written notice to the Authority and the Purchaser of any notices of investigation or any similar communication from the Department of Environmental Protection or other governmental authorities regarding potential violations of I.S.R.A. and/or the Spill Compensation and Control Act.

Within five (5) Business Days of receipt, the Borrower shall give the Authority and the Purchaser notice or copies if written of all claims, complaints, orders, citations or notices, whether formal or informal, written or oral, from any governmental body or private person or entity, relating to air emissions, water discharge, noise emission, solid or liquid waste disposal, hazardous waste or materials, or any other environmental, health or safety matter, if alleged to be a violation of applicable law. Such notices shall include, among other information, the name of the party who filed the claim, the potential amount of the claim, and the nature of the claim.

Section 9.06. Financial Statements. (a) The Borrower and the Corporate Guarantors shall furnish the Purchaser (and the Authority upon its request) with "audited" financial statements, including a balance sheet, income statement and statement of cash flows and any other financial statements as requested by the Purchaser, within one hundred fifty (150) days after the end of each fiscal year during the term of the Loan. All such statements will be prepared by a certified public accountant reasonably acceptable to the Purchaser and in accordance with generally accepted accounting principles, consistently applied.

(b) The Borrower and the Corporate Guarantors shall furnish the Purchaser (and the Authority upon its request) with quarterly financial statements, including a balance sheet, income statement and statement of cash flows and any other financial statements as requested by the Purchaser, within forty-five (45) days after the end of each quarterly period during the term of the Loan. All such statements will be prepared by management of the Borrower and the Corporate Guarantors and in accordance with generally accepted accounting principles, consistently applied.

The Borrower and the Guarantors shall each furnish their filed tax returns within 15 days of filing same, or, in the event, any such tax return is on extension, then a copy of such extension within 120 days of the end of the fiscal year or calendar year, as the case may be, and a copy of the extended filed tax return within 15 days of filing same.

At the time of the delivery of any of the financial or other statements provided for herein, the Borrower and the Corporate Guarantors shall each furnish to the Purchaser (and the Authority upon its request) a certificate of their respective chief financial officers stating that it has no knowledge that an Event of Default, or an event of which, with notice or lapse of time, or both, would constitute an Event of Default, has occurred and is continuing, or if such an Event of Default has occurred, a statement as to the nature thereof and the action which the Borrower propose to take with respect thereto.

Section 9.07. Mergers, etc. The Borrower will not permit a change in the persons who control the Borrower, merge into or consolidate with or into, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) any of its assets (whether now owned or hereafter acquired) to any Person without the prior express written consent of the Authority and the Purchaser.

Without limiting the effect of the first paragraph of Section 9.07, if at any time during the period the Bonds are outstanding, the Borrower, any Principal User of the Project or any Related Person thereto proposes (i) to merge or consolidate with any person, firm or corporation owning or occupying facilities located wholly or partly within the Project Municipality, or (ii) to gain control of any such person, firm or corporation, or (iii) to acquire a greater than 50% ownership interest of any such person, firm or corporation (whether by ownership of stock or otherwise), or (iv) to assume or guarantee liabilities incurred in connection with any facility located wholly or partly within the Project Municipality owned or occupied by any such person, firm or corporation, or (v) to enter into any exchange of property for stock or stock for property pursuant to a plan of reorganization with any such person, firm or corporation, or (vi) to enter into any transaction with any such person, firm or corporation the result of which shall be to cause such person, firm or corporation to become a Principal User of the Project or a Related Person to the Borrower or any such Principal User, the Borrower shall, prior to the taking of any of the foregoing proposed actions, deliver to the Authority and the Purchaser an opinion of nationally recognized bond counsel to the effect that the proposed action will not violate the provisions of Sections 9.10 and 9.11 hereof nor in any way cause the interest on the Bonds to become includable in the gross income of the Holders of the Bonds for Federal income tax purposes except in the event such holder is a Substantial User or a Related Person thereto. In addition to the foregoing, the Borrower will comply with the provisions of Section 10.04 of this Agreement.

Section 9.08. Assignment of Bond Agreement. The Borrower may not assign or transfer the whole or any part of this Bond Agreement without the prior express written consent of the Authority and the Purchaser. Any assignment of this Bond Agreement by the Borrower without the prior express written consent of the Authority and the Purchaser shall be void.

Section 9.09. Indemnification. (a) The Borrower agrees to and does hereby indemnify and hold harmless the Authority, the Purchaser or the Escrow Agent any person who "controls" the Authority, the Purchaser or the Escrow Agent (within the meaning of Section 15 of the Securities Act of 1933, as amended), and any member, officer, director, official, agent, employee, and attorney of the Authority or the State, the Purchaser or the Escrow Agent (collectively called the "Indemnified Parties") against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected with (a) the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing or sale of the Project or any part thereof or the payment of rebate to the federal government; (b) any untrue statement of a material fact contained in information provided by the Borrower with respect to the transactions contemplated hereby; (c) any omission of a material fact necessary to be stated therein in order to make such statement not misleading or incomplete; or (d) the acceptance or administration by the Authority of its duties under this Agreement. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower in writing, and except where the Borrower is the claimant the Borrower shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Borrower's expense in any such action and to participate in the defense thereof if, in the opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without Borrower's consent, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Notwithstanding anything in this Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section shall control the Borrower's obligations and shall survive repayment of the Bond.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Bonds by the Internal Revenue Service ("IRS"). In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel at the Borrower's expense. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS, but shall inform the Indemnified Parties of the status of the investigation. In the event Borrower fails to respond adequately and promptly to the IRS, the Authority shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which Borrower shall be liable.

(c) The Borrower further agrees to indemnify, protect, defend and hold harmless the Indemnified Parties against any and all losses, claims, damages, liabilities or expenses whatsoever, including reasonable counsel fees, caused by, or which arise out of or relate to, any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement, of a material fact contained or incorporated in any material supplied by the Borrower in connection with the placement of the Bonds (the "Disclosure Materials"), or which arise out of or relate to, any omission or alleged omission from such Disclosure Materials of any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading This indemnity agreement is in addition to any other liability which the Borrower may otherwise have.

(d) Notwithstanding anything in this Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section shall control the Borrower's obligations and shall survive repayment of the Bond.

Section 9.10. Capital Expenditures.

(a) The Authority has elected that the provisions of Section 144(a)(4) of the Code shall be applicable with respect to the Bonds. In order to effectuate and to continue such election in full force and effect so long as the Bonds shall remain outstanding, the Borrower agrees to take such actions as may from time to time be required by applicable law or regulation in connection therewith.

(b) During the period commencing on the issue date of the Bonds and continuing for three (3) years thereafter, the Borrower or any person shall not pay or incur, with respect to any facility located wholly or partly within the Project Municipality and a Principal User of which is or will be the Borrower, any Principal User of the Project or any Related Person thereto, any capital expenditure which would cause the sum of all amounts listed in Section 8.12 to exceed $20 million during the six (6) year period beginning three (3) years prior to the issue date of the Bonds and ending three (3) years after such date.

(c) The Borrower shall, during the period commencing on the issue date of the Bonds and continuing for three (3) years thereafter, maintain or cause to be maintained separate books and records with respect to the Project and any and all other facilities located wholly or partly within the Project Municipality of which the Borrower, any Principal User of the Project or any Related Person thereto is a Principal User, which books and records shall be sufficient to indicate the nature of any and all capital expenditures with respect to the Project and such other facilities.

(d) The Borrower shall cause any Principal User of the Project and any Related Person thereto to comply with all of the provisions of this Section as to its own operations or space at the Project site or in the Project Municipality.

Section 9.11. Aggregate Limit. The Borrower shall not allow the aggregate face amount of any outstanding issue or issues of tax-exempt facility-related bonds within the meaning of Section 144(a)(10)(B) of the Code (including the face amount of the Bonds) allocable to any Test-Period Beneficiary (not including as outstanding any issue which is to be redeemed from the Net Proceeds of any such issue) to exceed $40,000,000.

Section 9.12. Brokerage Fee. The Authority and the Purchaser shall not be liable to the Borrower for any brokerage fee, finders fee, or loan servicing fee and the Borrower shall jointly and severally hold the Authority and the Purchaser harmless from any such fees or claims.

Section 9.13. Cost Recovery. To the extent that any property is financed by Bond Proceeds, the cost recovery deduction allowed for such property shall be determined by using the alternative depreciation system determined in accordance with Section 168(g) of the Code.

Section 9.14. Publicity. The Purchaser, in its sole discretion, shall have the right to announce and publicize the source of financing made pursuant to this Bond Agreement, as it deems appropriate, by means and media selected by the Purchaser. Such publication shall include all pertinent information relating to such financing, including without limitation, the term, purpose, pricing, loan amount, name of borrowing entity and location of property.

Section 9.15. Operating Accounts. The Borrower and the Corporate Guarantors shall each maintain its operating accounts with the Purchaser for the life of the Loan. Payments hereunder shall be made by direct charge to the demand deposit account maintained by the Borrower with the Purchaser. Borrower hereby consents to Purchaser making such charge.

Section 9.16. No Secondary Financing. Except for Permitted Encumbrances, there shall be no secondary financing encumbering the Premises nor shall there be any encumbrances or security interests conveyed in any fixture or fixtures, nor in any personal property intended to be incorporated in the Premises whether affixed to the realty or otherwise.

Section 9.17. Financial Covenants. Progenitor Cell Therapy, L.L.C. shall maintain the following ratios:

(a) a minimum Debt Service Coverage Ratio of 1.35x. The covenant is to be tested semi-annually, beginning December 31, 2007. Debt Service Coverage Ratio to be defined as Net Income plus Depreciation and Amortization plus Interest Expense Less distributions Divided by the Current Portion of Long Term Debt, including Current Portion of Leases, plus Interest Expense.

(b) a total debt to tangible net worth ratio not to exceed 2x, to be tested annually beginning December 31, 2007. Debt shall be defined as total liabilities less any debt specifically subordinated to the Lender. Tangible net worth shall be defined as Net Worth plus any debt specifically subordinated to the Lender, less tangible assets as defined by GAAP less assets due from or notes receivable due from officers, directors, shareholders, employees or affiliates.

For purposes of calculating the Financial Covenants, non-refundable deferred revenue will be subtracted from Total Liabilities, and it will be included in Gross Revenue. When subsequently recognized, amounts of previously included deferred revenue will be subtracted from Gross Revenue.

Section 9.18. Appraisals. In the event that during the term of the Loan or any extension thereof, the Purchaser shall deem it necessary to obtain a current appraisal of the Premises, the Purchaser shall engage the services of any appraiser acceptable to it. The Borrower agrees to pay the fee charged by such appraiser in providing the current appraisal if the Borrower is in default under this Agreement or if the appraisal is sought under any regulatory or governmental requirement. In any case, the Borrower agrees to permit entrance to the Premises and access to information regarding the Premises in order to facilitate the appraisal.

ARTICLE X

BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS TO THE AUTHORITY

The Borrower hereby represents, warrants and covenants to the Authority that:

Section 10.01. Inducement. The availability of financial assistance from the Authority as provided for herein has been an important inducement to the Borrower to undertake the Project and to locate the Project in the State.

Section 10.02. No Untrue Statements. The Borrower covenants that the representations, statements and warranties of the Borrower set forth in the Application, this Agreement, or any other Loan Document (1) are true, correct and complete, (2) do not contain any untrue statement of a material fact, and (3) do not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete. The Borrower understands that all such statements, representations and warranties have been relied upon as an inducement by the Authority to issue the Bond.

Section 10.03. Project Users. (a) Prior to leasing, subleasing or consenting to the subleasing or assignment of any lease of all or any part of the Project, during the period commencing on the date hereof and terminating three years after the Borrower has completed the acquisition, renovation and construction of all or substantially all of the Project, and

(b) upon the request of the Authority from time to time thereafter, the Borrower shall cause a Project Occupant Information Form to be submitted to the Authority by every prospective lessee, sublessee or lease assignee of the Project. The Borrower shall not permit any such leasing, subleasing or assigning of leases that would impair the excludability of interest paid on the Bond from the gross income of the Purchaser thereof for purposes of federal income taxation, or that would impair the ability of the Borrower to operate the Project or cause the Project not to be operated as an authorized project under the Act.

Section 10.04. Maintain Existence, Merge, Sell, Transfer. The Borrower shall maintain its existence as a legal entity and shall not sell, assign, transfer or otherwise dispose of the Project or substantially all of its assets without the written consent of the Authority and the Purchaser; provided however that the Borrower may merge with or into or consolidate with another entity, and the Project or this Agreement may be transferred pursuant to such merger or consolidation without violating this section provided (a) the Borrower causes the proposed surviving, resulting or transferee company to furnish the Authority with a Change of Ownership Information Form; (b) the net worth of the surviving, resulting or transferee company following the merger, consolidation or transfer is equal to or greater than the net worth of the Borrower immediately preceding the merger, consolidation or transfer; (c) any litigation or investigations in which the surviving, resulting or transferee company or its principals, officers and directors are involved, and any court, administrative or other orders to which the surviving, resulting or transferee company or its officers and directors are subject, relate to matters arising in the ordinary course of business; (d) the merger, consolidation or transfer shall not impair the excludability of interest paid on the Bond from the gross income of the Purchaser thereof for purposes of federal income taxation or cause a reissuance pursuant to an opinion of a nationally recognized bond counsel; (e) the surviving, resulting or transferee company assumes in writing the obligations of the Borrower under this Agreement and the Note, and (f) after the merger, consolidation or transfer, the Project shall be operated as an authorized project under the Act. The foregoing shall not abrogate the requirement that the Borrower obtain the consent of the Purchaser.

Section 10.05. Relocate Project. During the term of this Loan, the Borrower shall not relocate the Project or any part thereof out of the State. During the term of this Loan, the Borrower shall not relocate the project within the State without the prior written consent of an authorized Authority Representative and an opinion of Bond Counsel that the relocation will not affect the tax-exempt status of the Bond.

Section 10.06. Operate Project. The Borrower shall operate or cause the Project to be operated as an authorized project for a purpose and use as provided for under the Act until the expiration or earlier termination of this Agreement.

Section 10.07. Annual Certification. On each anniversary hereof, the Borrower shall furnish to the Authority the following:

(a) a certification indicating whether or not the Borrower is aware of any condition, event or act which constitutes an Event of Default, or which would constitute an Event of Default with the giving of notice or passage of time, or both, under any of the Loan Documents;

(b) a written description of the present use of the Project and a description of any anticipated material change in the use of the Project or in the number of employees employed at the Project, and

(c) a report from every entity that leases or occupies space at the Project indicating the number of persons the entity employs at the Project.

Section 10.08. Affirmative Action and Prevailing Wage Regulations. The Borrower shall comply with the Authority's Affirmative Action and Prevailing Wage Rate Regulations and to that end to the extent applicable:

(a) (i) insert in all construction bid specifications for any construction contract the following provisions:

Construction of this project is subject to the Affirmative Action Regulations of the New Jersey Economic Development Authority which establishes hiring goals for minority and female workers. Any contractor or subcontractor must agree to make every effort to meet the established goals and to submit certified reports and records required by the Authority. Copies of the Affirmation Action Regulations may be obtained by writing to: Office of Affirmative Action, New Jersey Economic Development Authority, Gateway One, Suite 2403, Newark, New Jersey 07102;

Submission of a bid signifies that the bidder knows the requirements of the Affirmative Action Regulations and signifies the bidder's intention to comply. Construction of this project is subject to N.J.A.C. 19:30-3.1 et seq. Workers employed in construction of this project must be paid at a rate not less than the prevailing wage rate established by the New Jersey Commissioner of Labor;

(ii) Include in all construction contracts those provisions which are set forth in the Addendum to Construction Contract annexed hereto as Exhibit A;

(iii) Obtain from all contractors and submit to the Authority a contractor's certificate in the form annexed hereto as Exhibit B within 3 business days of the execution of any construction contract;

(iv) Create an office of Borrower Affirmative Action Officer and maintain in that office until the completion date an individual having responsibility to coordinate compliance by the Borrower with the Authority's Affirmative Action Regulations and to act as liaison with the Authority's Office of Affirmative Action;

(v) Submit to the Authority on the Completion Date, a Completion Certificate in the form annexed hereto as Exhibit C; and

(vi) Furnish to the Authority all other reports and certificates required under the Authority's Affirmative Action and Prevailing Wage Rate Regulations.

(b) (i) The Borrower shall, in every Construction Contract to which it is a party, require the Contractor to pay workers engaged in the performance of such Construction Contract a wage rate not less than the Prevailing Wage Rate;

(ii) The Borrower shall further require, in every Construction Contract to which it is a party, that the Contractor execute the Contractor's Certificate and Agreement, submit certified copies of payroll records to the Authority as required by the Authority, and execute and file the Contractor's Completion Certificate.

Section 10.09. Preservation of Project. (a) The Borrower will at all times preserve and protect the Project, or cause the Project to be preserves and protected, in good repair, working order and safe condition, and from time to time will make, or will cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto including those required after a casualty loss. The Borrower shall pay, or cause to be paid, all operating costs, utility charges and other costs and expenses arising out of ownership, possession, use or operation of the Project. The Authority shall have no obligation and makes no warranties respecting the condition or operation of the Project.

(b) The Borrower will not use as a basis for contesting any assessment or levy of any tax the financing under this Bond Agreement or the issuance of the Bonds by the Authority and, if any administrative body or court of competent jurisdiction shall hold for any reason that the Facility is exempt from taxation by reason of the financing under this Bond Agreement or issuance of the Bonds by the Authority or other Authority action in respect thereto, the Borrower covenants to make payments in lieu of all such taxes in an amount equal to such taxes and, if applicable, interest and penalties.

Section 10.10. Access to the Project and Inspection. The Authority and their duly authorized agents shall have the right, at all reasonable times upon the furnishing of notice that is reasonable under the circumstances to the Borrower, to enter upon the Project site and to examine and inspect the Project and the Project Site.

Section 10.11. Additional Information. Until payment of the Bonds shall have occurred the Borrower shall promptly, from time to time, deliver to the Authority, the Purchaser and the Escrow Agent such information and materials relating to the Project and the Borrower as the Authority, the Purchaser or the Escrow Agent may reasonably request. An authorized representative shall also be permitted, at all reasonable times, to examine the books and records of the Borrower with respect to the Project and the obligations of the Borrower hereunder, but such representative shall not be entitled to access to trade secrets or other proprietary information (other than financial information of the Borrower.)

Section 10.12. Project Sign. During the period from the effective date of this Bond Agreement and until thirty (30) days after the Completion Date, the Borrower shall cause to be posted and maintained at the site of the Project, a sign to be provided to the Borrower by the Authority indicating that financial assistance for the Project has been provided by the Authority. The maintenance of the sign shall be at the expense of the Borrower.

ARTICLE XI

DEFAULTS AND REMEDIES

Section 11.01. Event of Default. Any one or more of the following events shall constitute an Event of Default hereunder:

(a) A breach by the Obligated Parties of any term, covenant, condition, obligation or agreement under any Loan Document (after taking into account any applicable notice and/or grace period), including the failure to make any payment of principal or interest when due.

(b) If any representation or warranty made by or on behalf of any Obligated Party made herein, in the Application or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false or misleading in any material respect when made.

(c) The Obligated Parties transfer title to or possession of any interest in all or any part of the Premises, to any party, without the prior express written consent of the Authority and Purchaser pursuant to the terms of the Loan Documents;

(d) The Obligated Parties enter into any additional financing with regard to, or permits the filing of any additional lien upon the Premises without the prior written consent of the Purchaser;

(e) The filing of a petition seeking relief, or the granting of relief, under the Bankruptcy Reform Act of 1978 or any similar federal or state statute by or against any of the Obligated Parties, the making of a general assignment for the benefit of creditors by any of the Obligated Parties or any action by any of the Obligated Parties for the purpose of effecting the foregoing;

(f) The filing, entry or issuance of any judgment, execution, garnishment, attachment, distraint or lien against any of the Obligated Parties or their property;

(g) Seizure or foreclosure of any of the properties or assets of the Obligated Parties pursuant to process of law or by respect of legal self-help, involving monetary damages.

(h) Any substantial change in the nature or character of the business or the voluntary permanent closing of the business or ceasing of operations of any of the Obligated Parties;

(i) Any change in the management or ownership of any of the Obligated Parties without the consent of both the Authority and the Purchaser pursuant to the terms of this Agreement;

(j) The dissolution, merger, consolidation or reorganization of any of the Obligated Parties, except as otherwise permitted by this Agreement;

(k) Default by any of the Obligated Parties in any of the terms or conditions of any agreement covering the payment of borrowed money from the Purchaser, if such a default would permit the Purchaser to accelerate the debt irrespective of whether the default is waived or not waived by the Purchaser;

(l) A material deterioration in the financial condition of any of the Obligated Parties or the occurrence of any event, which in the sole opinion of the Purchaser, impairs the financial responsibility of any of the Obligated Parties; and/or

(m) When any of the Obligated Parties becomes insolvent or is not paying its debts as they become due.

Section 11.02. Purchaser's Remedies. Upon the occurrence of an Event of Default and at any time thereafter during the continuance of such Event of Default, the Purchaser may take one or more of the following remedial steps:

(a) by notice to the Borrower and the Authority, declare the entire principal amount of the Note to be due and payable forthwith, whereupon the Note shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding;

(b) take any action at law or in equity to collect the payments then due and thereafter to become due under the Note or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under any Loan Document;

(c) take possession of the Borrower's interest in the Collateral without terminating this Bond Agreement, and pursue remedies of a creditor under the Uniform Commercial Code as adopted in the State and assign, sell or lease, or otherwise dispose of the Borrower's interest in the Collateral for the account of the Borrower, and the Borrower shall then be liable for the amounts due under this Bond Agreement and the Note less amounts received pursuant to such assignment or contract of sale or lease or other disposition of the Borrower's interest in the Collateral and the amount of such difference shall then be immediately due and payable. The Borrower hereby agrees that, in the event the Purchaser does take possession of the Collateral as provided herein, the obligation of the Borrower to pay such amounts due or to become due under this Bond Agreement and the Note shall survive such repossession;

(d) without further notice or demand or legal process, enter upon any premises of the Borrower and take possession of the Collateral all records and items relating to the Collateral and, at the Purchaser's request, the Borrower will assemble the Collateral and such records and items relating to the Collateral and deliver them to the Purchaser; and

(e) with or without judicial process, sell, lease or otherwise dispose of any or all of the Collateral at public or private sale or proceedings, by one or more contracts, in one or more parcels, at the same or different times and places, with or without having the Collateral at the place of sale or other disposition, to such persons or entities, for cash or credit or for future delivery and upon such other terms, as the Purchaser may in its discretion deem best in each such matter. The purchaser of any of the Collateral at any such sale shall hold the same free of any equity of redemption of other right or claim of the Borrower, all of which, together with all rights, of stay, exemption or appraisal under any statute or other law now or hereafter in effect, the Borrower hereby unconditionally waives to the fullest extent permitted by law. If any of the Collateral is sold on credit or for future delivery, the Purchaser shall not be liable for the failure of the purchaser to pay for same and, in the event of such failure, the Purchaser may resell such Collateral.

(f) The Borrower further agrees that notice of the time after which any private sale or other intended disposition or action relating to any of the Collateral is to be made or taken, shall be deemed commercially reasonable notice thereof, and shall satisfy the requirements of any applicable statute or other law, if such notice is delivered or mailed (by ordinary first class mail, postage prepaid) not less than ten (10) business days prior to the date of the sale, disposition or other action to which the notice related. The Purchaser shall not be obligated to make any sale or other disposition or take other action pursuant to such notice and may, without other notice or publication, adjourn or postpone any public or private sale or other disposition or action by announcement at the time and place fixed therefor, and such sale, disposition or action may be held or accomplished at any time or place to which the same may be so adjourned or postponed.

(g) The Purchaser may purchase any or all of the Collateral at any public sale and may purchase at private sale any of the Collateral that is of a type customarily sold in a recognized market or the subject of widely distributed price quotations or as may be further permitted by law. The Purchaser may make payment of the purchase price for any Collateral by credit against the then outstanding amount of the Obligations.

(h) The Purchaser may at its discretion retain any or all of the Collateral and apply the same in satisfaction of part or all of the Obligations.

Upon the institution of any such action hereunder by the Purchaser, the Purchaser shall be entitled to the appointment of a receiver for the Collateral without proof of the depreciation of the value of same.

If the Purchaser shall have proceeded to enforce its rights under this Bond Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Purchaser, then the parties hereto shall be restored respectively to their several positions and rights hereunder, and all obligations, rights, remedies and powers of the parties hereto shall continue as though no such proceedings had taken place.

Without limiting the generality of the foregoing, upon the happening of any Event of Default, all of the Borrower's legal or equitable right, title and interest in the Premises and the Borrower's right to possession thereof may be terminated by an action for foreclosure or repossession in accordance with the statutes of the State.

For so long as the Purchaser is the holder of the Bonds, the Purchaser will have the right to immediately and without notice or other acts to set off against any of the Borrower's or Guarantors' obligations to the Purchaser any sum owed by the Purchaser or any of its affiliates in any capacity to the Borrower or Guarantors whether due or not, or any property of the Borrower's or Guarantors' in the possession of the Purchaser or any of its affiliates, and the Purchaser will be deemed to have exercised such right of set off and to have made a charge against any such sum or property immediately upon the occurrence of any Event of Default, even though the actual book entries may be made at some time subsequent thereto.

Section 11.03. Authority's Remedies. (a) Upon the occurrence of an Event of Default as set forth in Section 11.01 or a Determination of Taxability and at any time thereafter during the continuance of such Event of Default or determination of taxability, as the case may be, the Authority may call and cancel the Bonds by giving written notice in accordance with the provisions of Section 12.01. The Borrower, the Guarantors, the Purchaser and any assigns hereby expressly agree that the Bonds may be called and cancelled by the Authority and upon the date specified in the notice from the Authority (the "Cancellation Date"), which shall be at least thirty (30) and no more than sixty (60) days after the giving of such notice, the Bonds will be called and cancelled. The Purchaser will deliver the Bonds to the Authority for cancellation upon the Cancellation Date, but even if such delivery does not occur, the Bonds will be considered cancelled and of no further force or effect on the Cancellation Date.

(b) If the Borrower commits a breach or threatens to commit a breach, of any of the provisions of this Agreement or any other Loan Document, the Authority shall have the right and remedy, without posting bond or other security to have the provisions of this Agreement or any other Loan Document specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Authority and that money damages will not provide an adequate remedy therefor.

Section 11.04. Effect of Cancellation of the Bonds. (i) Upon the Cancellation Date, the Note will evidence the indebtedness from the Borrower to the Purchaser and all of its terms, including the interest rate at the Taxable Rate and payment terms therein specified, will control the obligations of the Borrower to the Purchaser.

(ii) If this occurs, the monthly payment shall be modified to reflect the difference between the interest stated in the Bond and Note and the increased interest rate called for in this Section. This condition may be reflected in a separate agreement to be prepared by counsel for the Purchaser. The Authority will no longer be a party to the transaction and shall have no further rights with respect thereto (except its right to obtain outstanding fees and its right of indemnification, which shall survive) and shall be released of any and all debts, liabilities and obligations to any party under this Agreement, the Bond or any other Loan Document. The Authority and the Purchaser shall execute and deliver to each other such other documents and agreements as the other may reasonably request in order to evidence the cancellation of the Bond and the withdrawal of the Authority from the transaction.

(iii) Upon cancellation of the Bond pursuant to the provisions hereof, the Authority hereby agrees that the Purchaser (except as stated above) shall automatically be vested with all of the Authority's right, title and interest in and to the Loan Documents. Any amounts remaining in the Escrow Account on the Cancellation Date after deduction of amounts which may be due the Authority pursuant to the terms of this Agreement are assigned to the Purchaser. The Authority hereby authorizes the holder of any such funds to pay to the Purchaser any such amounts remaining in the Escrow Account on the Cancellation Date after payments which may be due the Authority.

(iv) In the event that there is a dispute among any of the parties concerning the right of the Authority to cancel the Bond pursuant to the provisions of this Section, the Borrower shall nevertheless comply with the terms of the Note as hereinabove amended and make all payments required thereunder from and after the Cancellation Date directly to the Bond Purchaser. If a court of competent jurisdiction determines finally that the Authority's attempted cancellation of the Bond violated the terms of this Agreement, the Bond will be reinstated in accordance with the final order of the court, but until such final order is made, the Borrower will continue to comply with the terms of the Note as hereinabove amended. Any overpayment by the Borrower will be returned to it by the Bond Purchaser upon reinstatement of the Bond.

Section 11.05. No Remedy Exclusive. No remedy herein conferred or reserved to the Authority or the Purchaser is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Bond Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Purchaser to exercise any remedy reserved to it in this Article, it shall not be necessary to give notice, other than such notice as may be required in this Article.

Section 11.06. Waiver of Event of Default. Notwithstanding anything in this Agreement or in any of the other Loan Documents to the contrary, neither the Escrow Agent nor the Purchaser shall have the right to waive an Event of Default under any of the Loan Documents which arises out of a violation of a Reserved Right without the prior written consent of the Authority, which the Authority shall give in its sole and complete discretion. Notwithstanding anything herein or in any other Loan Document to the contrary, nothing herein shall affect the Authority's unconditional right to enforce its Reserved Rights.

Section 11.07. Agreement to Pay Attorneys' Fees and Expenses . In the event the Borrower should default under any of the provisions of this Bond Agreement or other Loan Documents and either the Authority or the Purchaser shall require and employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Borrower or enforcement of the Bonds under any Loan Document, the Borrower agrees that it will, on demand therefor, pay to the Authority or the Purchaser, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred by the Authority or the Purchaser.

Section 11.08. Immunity of the Authority. In the exercise of the powers of the Authority and its members, officers, employees or agents under this Agreement, and including without limitation the application of moneys, the investment of funds, the assignment or other disposition of the Collateral upon an Event of Default in the event of default by the Borrower, neither the Authority nor its members, officers, employees or agents shall be accountable to the Purchaser, the Escrow Agent or the Borrower for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred. The Authority and its members, officers, employees and agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

Section 11.09. No Additional Waiver Implied by One Waiver. In the event any agreement contained in any Loan Document should be breached by any party and thereafter such breach should be waived by any party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Notice. All notices, consents, approvals and other communications given hereunder shall be in writing and delivered by personal hand delivery, sent by nationally recognized overnight carrier or mailed by certified mail, return receipt requested, addressed as follows and deemed to be delivered on the day of hand delivery to the individual set forth below, the business day after pick up by nationally recognized overnight courier or on the third business day following the date of deposit in the mail:

Authority:	New Jersey Economic Development Authority 36 West State Street PO Box 990 Trenton, New Jersey 08625 Attn: Director of Program Services
Borrower:	PCT Allendale, LLC 21 Main Street Hackensack, New Jersey 07601 Attn: Jerry Miano, Controller
With a copy to:	Epstein, Becker & Green, PC 250 Park Avenue New York, New York 10177 Attn: Philip Gassel, Esq.
Purchaser:	Commerce Bank/North 1100 Lake Street Ramsey, New Jersey 07446 Attn: Charles M. Ponti, Regional Vice President
With a copy to:	Harwood Lloyd, LLC 130 Main Street Hackensack, New Jersey 07601 Attn: Michael Brady, Esq.
Escrow Agent:	Commerce Bank/North 1100 Lake Street Ramsey, New Jersey 07446 Attn: Charles M. Ponti, Regional Vice President

The addresses set forth hereinabove may be changed pursuant to notice given in accordance with this Section 12.01.

Section 12.02. Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein, in the other Loan Documents and in the certificates delivered pursuant hereto and thereto shall survive the making of the Loan herein contemplated and the execution and delivery of the Note and shall continue in full force and effect so long as the Obligations are outstanding and unpaid. Whenever in this Bond Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Bond Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Authority and the Purchaser.

Section 12.03. Costs and Expenses. All expenses in connection with the preparation, execution, delivery, recording and filing of this Bond Agreement, the Note, the Mortgage and other collateral documents and in connection with the preparation, issuance and delivery of the Bonds, the Authority's fees, the reasonable fees and expenses of Bond Counsel, the fees and expenses of the Purchaser and the reasonable fees and expenses of Purchaser's counsel shall be paid directly by the Borrower. The Borrower shall also pay throughout the term of the Bonds the Authority's annual fees and expenses and the Purchaser's annual and special fees and expenses under this Agreement, the Note and the Mortgage, including, but not limited to, reasonable attorney's fees and all costs of issuing the Bonds, and any costs and expenses in connection with any approval, consent or waiver under, or modification of, any such document.

Section 12.04. New Jersey Law Governs. This Bond Agreement and the other Loan Documents shall be construed in accordance with and governed by the laws of the State (without regard to the State's conflicts of laws principles).

Section 12.05. Modification in Writing. The waiver of any provision of this Bond Agreement or any other Loan Document, or consent to any departure by the Borrower therefrom shall, in no event, be effective unless the same shall be in writing and signed by the Authority, the Purchaser and the Borrower. Any such waiver shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon the Borrower in any case shall entitle it to any other further notice or demand in the same circumstances.

Section 12.06. Failure to Exercise Rights. Neither any failure nor any delay on the part of the Authority, the Purchaser or the Borrower in exercising any right, power or privilege hereunder or under any other Loan Document shall operate as a waiver hereof or thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege.

Section 12.07. Assignment of Loan Documents. The Borrower acknowledges that the Loan Documents shall be assigned by the Authority to the Purchaser as security for the Bonds pursuant to the terms of the Authority's Assignment. The Authority retains the Reserved Rights and the right, jointly and severally with the Purchaser, to specifically enforce the provisions contained in the Loan Documents.

The Borrower assents to such assignment and hereby agrees that, as to the Purchaser, its obligation to make payments under the Loan Documents shall be absolute, and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority of any duty or obligation to the Borrower, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the Borrower by the Authority.

Section 12.08. Further Assurances and Corrective Instruments . The Authority, the Purchaser and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or for carrying out the intention of or facilitating the performance of this Bond Agreement.

Section 12.09. Authority May Rely on Certificates. The Authority shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith and in accordance with the terms of this Bond Agreement, upon any resolution, order, notice request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Bond Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert believed by it to be qualified in relation to the subject matter, and the Authority shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

Section 12.10. Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Bond Agreement.

Section 12.11. Severability. In the event any provision of this Bond Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render any other provision hereof unenforceable.

Section 12.12. Counterparts. This Bond Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 12.13. Effective Date and Term. This Bond Agreement shall become effective upon its execution and delivery by the parties hereto, and all representations and warranties shall be deemed to have been made as of such date of execution and delivery and shall remain in full force and effect from the date hereof and, subject to the provisions hereof, shall expire on such date as the Bonds and the interest thereon, the Note and the interest thereon and all other expenses, penalties, fees, additions to tax or sums to which the Authority and the Purchaser are entitled, have been fully paid and retired.

Section 12.14. Waiver of Jury Trial. **THE PARTIES HEREBY WAIVE ALL RIGHTS THEY MAY HAVE TO A JURY TRIAL IN AN' AND ALL DISPUTES RELATING TO, OR ARISING UNDER, THIS BOND AGREEMENT AND/OR THE NOTE.**

IN WITNESS WHEREOF, the parties hereto have executed and attested this Bond Agreement, as of the date first written above.

ATTEST:

/s/ John J. Rosenfeld
John J. Rosenfeld
Assistant Secretary

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By: /s/ Teri Dunlop
Teri Dunlop
Director of Closing Services

WITNESS:

/s/ Daniel R. Lewis
Daniel R. Lewis, Esq.

PCT ALLENDALE, LLC

By: /s/ George S. Goldberger
George S. Goldberger
Managing Member

The undersigned Guarantors hereby acknowledge all of the terms, conditions, provisions of the foregoing Bond Agreement, including without limitation the Events of Default, and acknowledges its representations in Article VIII thereof and covenants in Article IX thereof, and hereby agree to comply with the same.

WITNESS AS TO BOTH:

/s/ Daniel R. Lewis
Daniel R. Lewis, Esq.

PROGENITOR CELL THERAPY, L.L.C.

By: /s/ George S. Goldberger
George S. Goldberger
Chief Financial Officer

DOMANICELL, LLC

By: /s/ George S. Goldberger
George S. Goldberger
Chief Financial Officer

ATTEST:

/s/ Rebecca Larmore
Rebecca Larmore
Assistant Cashier

COMMERCE BANK/NORTH

By: /s/ Charles M. Ponti
Charles M. Ponti
Regional Vice President

The duties of the Escrow Agent as set forth in the foregoing Bond Agreement dated as of October 1, 2007 are hereby accepted this 31 st day of October, 2007.

COMMERCE BANK/NORTH, as Escrow Agent

By: /s/ Charles M. Ponti
Charles M. Ponti
Regional Vice President

EXHIBIT A

ADDENDUM TO CONSTRUCTION CONTRACT

Every construction contract must require that:

a) Ten percent of each disbursement for the construction of the project will be retained by the Project Owner/Applicant, Agent or Trustee until the Authority's Affirmative Action Officer gives written notice that the amount may be released.

b) The Contractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the AA Officer setting forth provisions of this nondiscrimination clause;

c) The contractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex;

d) The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

e) The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with applicable county employment goals established in accordance with N.J.A.C. 17:27-7.3.

f) The contractor awarded a construction contract by the Authority or the Project Owner/Applicant must submit an Initial Project Workforce Report, EDA Form AA201, within three (3) business days of signing.

g) The Contractor must submit Weekly Certified Payrolls to the Authority on a weekly basis.

h) The Contractor must submit a Monthly Project Workforce Report, EDA Form AA202, within seven (7) business days of the end of each month for which the project is underway.

i) The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

j) The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

k) The Contractor must submit an Affirmative Action Certificate to the Authority as required by the application for financial assistance.

1) The Addendum to Construction Contract, which is provided by the Authority, with its application for financial assistance must be part of all construction contracts and must be signed by the Contractor.

m) The Contractor shall comply with any applicable rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et.seq., N.J.A.C. 17: 27 and P.L.1975, c.127 as amended and supplemented from time to time.

n) The Contractor shall comply with any regulations promulgated by the New Jersey Department of Labor pursuant to P.L. 1963, c. 150 as amended and supplemented from time to time requiring the payment of prevailing wages.

o) The Contractor shall ascertain from the New Jersey Department of Labor the prevailing wage rate in the locality in which the Project is located for each craft or trade needed to complete the Project.

EXHIBIT B

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

AFFIRMATIVE ACTION CERTIFICATE

NJEDA PROJECT NUMBER

PROJECT OWNER/APPLICANT NAME

PROJECT LOCATION *(include Street, City and County)*

NOTE: Upon completion, this certificate must be mailed to: Affirmative Action Officer, New Jersey Economic Development Authority, Gateway One, Suite 2403, Newark, New Jersey 07102. If there are any questions, contact the Affirmative Action Officer at **973-648-4130.**

CERTIFICATE SUBMITTED BY (Check One)

☐	General Contractor	☐	Engineer
☐	Subcontractor	☐	Architect
☐	Construction Manager	☐	Professional Planner

I/We, the undersigned engaged in the construction of the above named project certify that:

1. The full name and business address of the undersigned is:

NAME

ADDRESS PO BOX

CITY	COUNTY
STATE	ZIP CODE

TELEPHONE	FAX	E-MAIL ADDRESS
Area Code ( )	Area Code ( )	

AFFIRMATIVE ACTION CONTACT PERSON w/your company (NOT NJEDA)

2. Has the aforementioned party been denied a business-related license or had it suspended or revoked by any administrative, governmental or regulatory agency?

☐ Yes ☐ No

3. Is the aforementioned debarred, suspended or disqualified from contracting with any federal, state or municipal agency?

☐ Yes ☐ No

4. I/We are fully familiar with the provisions of the Prevailing Wage Regulations of the New Jersey Economic Development Authority, N.J.A.C. 19:30-4.1, and the applicable prevailing wage rates established by the New Jersey Commissioner of Labor, and the sanctions for failure to pay the prevailing wage provided in N.J.S.A. 34:11-56.35 - 34:11-56.40.

☐ Yes ☐ No

5. I/We have received a copy of the Affirmative Action Regulations of the New Jersey Economic Development Authority, revised August 8, 1990. I/We have agreed as part of the construction contract to comply with the provisions of the Affirmative Action Regulations, to meet the minority employment goals, and to submit to the Authority weekly payroll reports showing the name, race, sex, craft or trade, gender, Social Security Number and all deductions made from wages earned. I/We will also provide the Monthly Project Manning Report within seven (7) days of the end of each month.

☐ Yes ☐ No

6. I/We have agreed as part of the contract to pay to workers employed in the construction of the project wages at a rate not less than the prevailing wage rate established by the Commissioner of Labor for the Locality in which the project is located.

☐ Yes ☐ No

7. I/We require each subcontractor as part of the contract to agree to pay to workers employed in the construction of the project at a rate not less than the prevailing wage rate as determined by the Commissioner of Labor and to comply with the Authority's Affirmative Action Regulations.

☐ Yes ☐ No

8. I/We are aware that I/we will be required to provide copies of weekly payroll records and minority hiring reports for all workers employed in the construction of the project including workers employed by subcontractors. Also, the Monthly Project Manning Reports will be submitted within seven (7) days of the end of each month.

☐ Yes ☐ No

9. I/We require each of my/our subcontractors and lower-tier subcontractors to complete and execute a Subcontractor's Certificate before entering into any contracts with the subcontractor.

☐ Yes ☐ No

10. I/We agree in consideration of any amount paid by the Project/Owner under the construction contract and in consideration of the approval of the Affirmative Action Officer of any construction advance, that the Authority in its own name or in the name of the Project/Owner may take action, in law or in equity, to enforce the provisions of the construction contract regarding compliance with the Affirmative Action Regulations.

☐ Yes ☐ No

11. I/We will provide to the Authority, or its designated representative, complete access to all payroll records and other records necessary to purposes of determining compliance with the Authority's Affirmative Action Regulations.

☐ Yes ☐ No

12. I/We will keep accurate records identifying the name, address, Social Security Number, race, sex, craft or trade, number of hours worked in each craft or trade, hourly wage rate, gross earnings paid and all deductions made from wages earned to each worker employed by me/us in connection with the performance of the Construction Contract and will preserve such records for two years from the date of completion of the project.

☐ Yes ☐ No

13. The approximate date for the start of construction is/was:

MONTH _____ DAY _____ YEAR _____

14. "This Contract is subject to the requirement of the Affirmative Action Regulations N.J.A.C. 19:30-3.1 of the New Jersey Economic Development Authority revised August 8, 1990. The Subcontractor agrees to make every effort to meet the applicable employment goals and to comply with all applicable provisions of the Affirmative Action Regulation N.J.A.C. 19:30-3.1, as amended and supplemented from time to time, including the submission of the employment reports to the Authority. This contract is subject to N.J.A.C. 19:30-4.1 et. seq. The construction of the work shall be paid at a rate not less than the prevailing wage rate established by the New Jersey Commissioner of Labor pursuant to N.J.S.A. 34:11-56:30. The Subcontractor shall keep accurate records showing the name, race, sex, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with construction of the work and to preserve such records for two (2) years from completion of the Work."

SIGNATURE
NAME (Please Print)
TITLE
DATE

(Rev. 2/98)

EXHIBIT C

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

COMPLETION CERTIFICATE

NJEDA PROJECT NUMBER

PROJECT OWNER/APPLICANT NAME

PROJECT LOCATION *(include Street, City and County)*

Completion Certificate to be completed by Subcontractor, Construction Manager, General Contractor AND Project Owner/Applicant and forwarded to:

NJ Economic Development Authority
ATTN: Affirmative Action
Gateway One - Suite 2403
Newark, NJ 07102.

I/We the undersigned ☐ Subcontractor ☐ Construction Manager ☐ General Contractor, certify to the New Jersey Economic Development Authority and the Project Owner/Applicant as follows:

1. Construction of the above project is substantially complete.
2. All workers employed in construction of the Project have been paid at a rate not less than the Prevailing Wage rate. In making this certification I have relied on payroll records submitted by subcontractors and lower-tier contractors.
3. We have met the minority availability required percentage goals established by the Authority's Affirmative Action Regulations (N.J.A.C. 19:30-3.1 et seq.). We have submitted all reports and certificates required by the Authority

DATE _____

_____
Signature of Authorized Representative for Subcontractor

_____
Print Name & Title

_____
Print OR Type Company Name of Subcontractor

_____
Street Address OR PO Box of Subcontractor

_____
City, State and Zip Code of Subcontractor

DATE _____

_____
Signature of Authorized Representative for (check one)
☐ Construction Manager ☐ General Contractor

_____
Print Name & Title

_____
Print or Type Company Name of (check one)
☐ Construction Manager ☐ General Contractor

_____
Street Address or PO Box of (check one)
☐ Construction Manager ☐ General Contractor

_____
City, State and Zip Code of (check one)
☐ Construction Manager ☐ General Contractor

I/We, the undersigned authorized representative of the Project Owner/Applicant, certify as follows:

1. I/We have reviewed the attached Completion Certificate of the Contractor.
2. I/We have no knowledge or information which would cause me/us to believe that any facts, information or representations made herein are false or misleading.

DATE _____

_____
Signature of Authorized Representative for Project Owner/Applicant

_____
Print Name & Title

_____
Print OR Type Project Owner/Applicant Name

_____
Street Address OR PO Box of Project Owner/Applicant

_____
City, State and Zip Code of Project Owner/Applicant

DO NOT WRITE BELOW THIS LINE - FOR NJEDA USE ONLY

DATE INFO RECEIVED		REQUEST OUTSTANDING		RELEASE AUTHORIZED	
Certificate	CPRs	Certificate	CPRs	By	Date

Please Note: Outstanding information requested on _____ has not been received

Special Considerations:

EXHIBIT D

TO: Commerce Bank/North
1100 Lake Street
Ramsey, New Jersey 07446

REQUISITION NO. __

The undersigned, an Authorized Representative of PCT Allendale, LLC (the "Borrower"), pursuant to the Bond Agreement by and among the Borrower, the New Jersey Economic Development Authority (the "Authority") and Commerce Bank/North ("the Purchaser"), dated as of October 1, 2007 (the "Bond Agreement") makes the following requisition for payment from the Escrow Account established pursuant to the Bond Agreement entered into with regard to the PCT Allendale, LLC Project.

Payment to:
Amount: $_____
Reason for Payment: See Schedule A attached hereto.

Such amount is based on an obligation properly incurred pursuant to the provisions of the Bond Agreement, is a Proper Charge against said Escrow Account is unpaid or unreimbursed from the Escrow Account and has not been the basis of any previous withdrawal. The amount requested, to the extent it represents work performed or supervised by officers or employees of the Borrower, does not exceed the actual cost to the Borrower of any cost or expense incurred by reason of work performed or supervised by officers or employees of the Borrower or any of its affiliates. No Event of Default has occurred and is continuing under any provision of the Bond Agreement. Of the foregoing amount $ _____ represents payments to contractors, from which a holdback equal to $_____ (10%) has already been deducted.

Such amount will be used for the purposes detailed in Schedule A attached hereto.

All proceeds of all prior Requisitions have been expended solely for the purposes for which they were requisitioned, and no proceeds of the current or any prior Requisition have been or will be returned to the Borrower as a rebate, refund or otherwise.

Each condition precedent to the making of this Requisition under the Bond Agreement has been satisfied.

All required licenses, approvals and permits covering or required for the development of the Project have been issued and are in force, and there are no actions pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, variances, certificates or agreements for or relating to the Project.

Neither the Borrower nor any guarantor of the Loan is a party to any lawsuit.

There have been no adverse changes in the financial condition of the Borrower or any guarantor of the Loan.

The Borrower has attached hereto a paid receipt for any taxes which were due since the date of the last Requisition.

I further certify that no written notice of any lien, right to lien, mechanic lien, notices of intention, contracts, stop notices, liens or claims, attachment upon or claim, affecting the right to receive payment of, any of the monies payable under this requisition has been received, or am I aware of any thereof of the same, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of this requisition.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, ____

PCT ALLENDALE, LLC

By: _____
Authorized Representative

Approved:
COMMERCE BANK/NORTH, as Purchaser

By: _____
Authorized Representative

SCHEDULE A TO REQUISITION NO. ____

Closing Cost:

Acquisition Cost (attach invoices):

Construction Cost:

Contractor:

Type of Work:

Type of Equipment:

Manufacturer:

Model #:

Serial #:

Date of Receipt:

SCHEDULE A

Exceptions to Section 8.10

NONE.

SCHEDULE B

Metes and Bounds Description

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Allendale, County of Bergen, State of New Jersey:

Tract I

Being Known and designated as Unit A in Four Pearl Court Condominium, a condominium, together with an undivided 25.3% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

Tract II

Being Known and designated as Unit No. B in Four Pearl Court Condominium, a condominium, together with an undivided 24.4% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

Tract III

Being Known and designated as Unit C in Four Pearl Court Condominium, a condominium, together with an undivided 23.4% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

NOTE FOR INFORMATION ONLY: Being a portion of Lot 4.05, **Block** 601, **Tax Map of the** Borough **of** Allendale, **County of** Bergen.

AFTER THE ENDORSEMENT OF THIS NOTE AS HEREIN PROVIDED, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO A SUCCESSOR OF THE PURCHASER UNDER THE BOND AGREEMENT REFERRED TO HEREIN.

NOTE

$3,120,000 **West Orange, New Jersey**
October 31, 2007

PAYMENT OBLIGATION: FOR VALUE RECEIVED, **PCT ALLENDALE, LLC** (the "Borrower") does hereby promise to pay to the order of the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the "Authority"), at its offices at 36 West State Street, Trenton, New Jersey 08625 the sum of THREE MILLION ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS ($3,120,000.00).

BOND AGREEMENT: This Note has been executed pursuant to and in connection with that certain bond agreement (the "Bond Agreement") dated as of October 1, 2007 executed by and among the Authority, the Borrower and Commerce Bank/North, as purchaser (the "Purchaser" or the "Bank") and is subject to all the terms and provisions of said Bond Agreement. All capitalized terms used in this Note and not defined herein shall have the meaning given such terms in the Bond Agreement.

INTEREST:

(i) Commencing on the date hereof and continuing hereafter through and including the Maturity Date (as defined below), the outstanding principal balance of this Note shall bear interest at an annual fixed rate equal to five percent (5.00%) per annum (the "Initial Rate"), provided that the interest rate on this Note shall be subject to adjustment as of October 1, 2017 (the "Reset Date") in accordance with the terms of this Note (such rate reset shall be an "Interest Rate Reset").

(ii) The Initial Rate will be subject to adjustment as of the Reset Date to the tax free equivalent fixed per annum rate of interest equal to one hundred eighty-five (185) basis points over and above the Index Rate (as defined below), by written notice given by the Purchaser to the Borrower (as hereinafter defined) at least five (5) business days prior to the Reset Date (such adjusted interest rate shall be the "Reset Rate").

(iii) All interest on the principal amount due under this Note shall be calculated for the actual number of days that principal is outstanding based on a year of 360 days. The Reset Rate, as calculated by the Purchaser, shall be utilized absent manifest error.

(iv) Anything to the contrary notwithstanding, after the occurrence of an Event of Default, or if none has occurred, after maturity of this Note, whether by acceleration or otherwise, the rate of interest to accrue on the outstanding principal balance and any other sums due from Borrower hereunder shall be three (3%) percent per annum above the Interest Rate then in effect (the "Default Rate").

"Index Rate" as used herein shall mean the ten (10) year United States Treasury Note Average Yield, which average yield is the most recently available on an actual day basis, as such ten (10) year United States Treasury Note Average Yield, is published in The Wall Street Journal or successor publication.

REPAYMENT:

(i) On the date hereof the Borrower shall pay interest in the amount of $433.33 accruing from the date hereof to November 1, 2007. Commencing on December 1, 2007 and continuing on the first day of each month thereafter (each a "Payment Date") through and including the Maturity Date, the Borrower shall make consecutive monthly payments of principal and interest in the amount of $20,766.05, provided that the amount of such principal and interest payments shall be subject to adjustment as provided below.

(ii) Upon an Interest Rate Reset as of the Reset Date, commencing on November 1, 2017 and continuing on each Payment Date thereafter, the Borrower shall make equal consecutive monthly payments of principal and interest utilizing (a) a fixed interest rate equal to the Reset Rate and (b) an amortization schedule for the remaining term of this Note.

(iii) If not previously paid, the entire unpaid principal balance owing to the Authority in connection with this Note, together with all unpaid interest, fees and expenses shall be due and payable in full on October 1, 2027 (the "Maturity Date").

(iv) Unless an Event of Default has occurred, all payments shall be applied first to any prepayment penalty, second to any late fees, third to any other outstanding charges, fourth to accrued interest and the residual, if any, to principal. Subsequent to the occurrence of an Event of Default, any payments received may be applied to principal, interest, fees or expenses as determined by the Purchaser in its sole discretion.

PREPAYMENT: The Borrower may prepay the Loan, in whole or in part, at any time upon the giving of a minimum of thirty (30) days irrevocable prior express written notice to the Purchaser of its intention to prepay the Loan, subject to the following conditions. Any principal prepayment made by the Borrower shall be accompanied by the payment of all accrued and unpaid interest on this Note, and all other fees, expenses and other sums due and owing, if any. Any partial prepayment of principal shall be applied in the inverse order of maturity. Upon the payment of any sum in reduction of the amount of the Loan which exceeds the amount the Borrower is required to pay under any term or provision of this Note or any other Loan Document, including prepayment of the entire debt, the Purchaser shall be entitled to charge and the Borrower shall be obligated to pay, in addition to interest and all other charges then properly due, a prepayment premium as follows:

(i) 5% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the first year following the date of this Note;

(ii) 4% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the second year following the date of this Note;

(iii) 3% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the third year following the date of this Note;

(iv) 2% of the amount of principal which is being prepaid shall accompany any principal prepayment made in the fourth year following the date of this Note;

(v) 1 % of the amount of principal which is being prepaid shall accompany any principal prepayment made in the fifth year following the date of this Note; and

(vi) no prepayment penalty shall be due with respect to any amount of principal which is being prepaid at any time after the fifth year following the date of this Note.

TAXABILITY: In the event that interest on the Bond (as defined in the Bond Agreement) ever ceases to be excludable from the gross income of the recipients thereof within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") (except if the reason for such inclusion is because the recipient is a "substantial user" or "related person", as provided for in Section 147(a) of the Code) (a "Determination of Taxability") the interest rate on the Bond shall, from the date of such inclusion (the "Taxable Date"), be increased to the taxable equivalent of the taxable equivalent of the interest rate then in effect on the Taxable Date, and this Note shall be subject to acceleration by the holder hereof. In the event that the Bond is canceled by the Authority pursuant to Section 11.03 of the Bond Agreement, the interest rate on this Note shall be increased to the Taxable Rate effective as of the Cancellation Date (as defined in the Bond Agreement). As of the Cancellation Date or upon a Determination of Taxability the monthly principal and interest payments shall be adjusted to provide for substantially equal payments of principal and interest utilizing (a) a fixed interest rate equal to the Taxable Rate and (b) an amortization schedule for the remaining term of this Note.

REAL ESTATE TAX ESCROW: In addition to the monthly payments of principal and interest, the Borrower shall also pay to the Bank on a monthly basis, one-twelfth (1/12th) of the annual real estate taxes.

SECURITY: The Borrower has provided the Authority a security interest in substantially all of its assets and delivered as security for this Note, among other things, a Mortgage bearing even date herewith covering the Premises.

CALL OPTION: Although the repayment of the loan evidenced by this Note has been designed as if it were to extend for a term of approximately twenty (20) years, the Borrower understands that the Bank expressly reserves the absolute and unconditional right and option, exercisable at the Bank's sole discretion, to declare the entire unpaid principal balance under this Note, together with all interest which shall have accrued thereon, to be due and payable in full on or about the Reset Date (the "Loan Call Date"). Written notice of the exercise of such option shall be provided to the Borrower within a 180-day period beginning 90 days prior to the Loan Call Date. All outstanding principal and accrued interest shall be due and payable in full ninety (90) days from the date of notification of said call option being exercised.

LATE CHARGE: The effective date of the receipt by the Authority of any payment due under this Note shall be the day on which the Purchaser receives cash or collected funds at the address specified in the "Notices" Section of this Note, or such other address as may be specified by the Purchaser. In the event a payment is not received within fifteen days of the date it is due hereunder, a "late charge" of five percent (5%) of any payment overdue may be charged by the holder of this Note for the purpose of defraying the expense incident to handling such overdue payment. However, this provision shall not constitute consent or an agreement to extend the time for payment of any installment beyond the due date thereof. No late fee shall be due so long as the Borrower has timely funded its payment account with sufficient monies to make the payment due in full.

EVENTS OF DEFAULT: The occurrence of any event described in Section 11.01 of the Bond Agreement shall constitute an event of default ("Event of Default") hereunder.

REMEDIES UPON DEFAULT: Upon the occurrence of any Event of Default, the entire unpaid principal balance and accrued interest due under this Note and all other sums due to the Authority under or by virtue of any of the Loan Documents shall, at the option of the Authority, become immediately due and payable without notice or demand and the Authority may thereupon exercise all rights and remedies available to it.

RIGHT OF SET OFF: Upon the occurrence and during the continuance of any Event of Default, the Authority or the Purchaser is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Authority or the Purchaser to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Note or the Bond Agreement or any other Loan Document, irrespective of whether or not the Authority or the Purchaser shall have made any demand under this Note or the Agreement or such other Loan Document and although such obligations may be unmatured. The Authority or the Purchaser agrees to promptly notify the Borrower after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Authority or the Purchaser under this Section are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the Authority or the Purchaser may have under this Note, any of the other Loan Documents or by law.

MAXIMUM RATE OF INTEREST: Notwithstanding anything to the contrary contained herein or in any other document executed in connection with the Loan, the effective rate of interest on the Loan shall not exceed the maximum effective rate of interest permitted by applicable law or regulation. The Borrower hereby agrees to give the Authority written notice in the event that Borrower has actual knowledge that any interest payment made to the Authority with respect to this Loan will cause the total interest payments collected in any one year to be usurious under applicable law, and the Authority hereby agrees not to collect knowingly any interest from the Borrower in the form of fees or otherwise which will render this Loan usurious. In the event that such interest would be usurious in the Authority's opinion, the Authority reserves the right to reduce the interest payable by the Borrower. This provision shall survive the repayment of the Loan.

PAYMENTS BY BORROWER: Payments hereunder shall be made by direct charge to the demand deposit account maintained by the Borrower with the Purchaser. The Borrower hereby consents to the Purchaser making such charge.

ATTORNEY'S FEE: If this Note is placed in the hands of an attorney for collection because of a default in the terms hereof or in the terms of the Bond Agreement or any mortgage given as security for the within obligation, the Borrower agrees (i) to pay the reasonable fees of such attorney and court costs, including but not limited to such fees and court costs paid or incurred by the Authority in enforcing this Note or realizing on or satisfying any judgment entered in favor of the Authority on this Note (whether or not such fees and court costs are paid or incurred pre-judgment or post-judgment and whether or not legal action is instituted) and (ii) if a judgment is entered in any action the amount of such fees and court costs shall form a part of such judgment.

NOTICES: All notices, consents, approvals and other communications given hereunder shall be in writing and delivered by personal hand delivery, sent by nationally recognized overnight carrier or mailed by certified mail, return receipt requested, addressed as follows and deemed to be delivered on the day of hand delivery to the individual set forth below, the business day after pick up by nationally recognized overnight courier or on the third business day following the date of deposit in the mail:

Authority:	New Jersey Economic Development Authority 36 West State Street PO Box 990 Trenton, New Jersey 08625 Attn: Director of Program Services
Borrower:	PCT Allendale, LLC 21 Main Street Hackensack, New Jersey 07601 Attn: Jerry Miano, Controller
With a copy to:	Epstein, Becker & Green, PC 250 Park Avenue New York, New York 10177 Attn: Philip Gassel, Esq.

Purchaser: Commerce Bank/North
1100 Lake Street
Ramsey, New Jersey 07446
Attn: Charles M. Ponti, Regional Vice President

The addresses set forth hereinabove may be changed pursuant to notice given in accordance with Section 12.01 of the Bond Agreement.

PAYMENT AT MATURITY:THIS LOAN IS PAYABLE IN FULL AT MATURITY OR UPON DEMAND IF THERE SHALL BE AN EVENT OF A DEFAULT. BORROWER MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE AUTHORITY IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. BORROWER WILL THEREFORE BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS OR BORROWER WILL HAVE TO FIND A LENDER WILLING TO LEND THE MONEY. IF THIS LOAN IS REFINANCED AT MATURITY, BORROWER MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COST NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF REFINANCING IS OBTAINED FROM THE AUTHORITY.

CONSTRUCTION OF THIS NOTE: The laws of New Jersey shall govern the construction of this Note and the rights, remedies, warranties, representations, covenants, and provisions hereof without regard to the principles of conflict of laws. If any provision in this Note is inconsistent with the Bond Agreement, the Bond Agreement shall control.

SEVERABILITY: If any provision of this Note shall contravene or be held invalid under the laws of any jurisdiction, this Note shall be construed as if it did not contain such provision, and the rights, remedies, warranties, representations, covenants and provisions hereof shall be construed and enforced accordingly in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction, or any other provisions of this Note.

WAIVER OF PRESENTMENT: Each and all parties hereto whether maker, endorser, sureties, guarantors or otherwise do hereby jointly and severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest.

NO WAIVER: No failure on the part of the Authority to exercise, and no delay in exercising, any right, remedy or power hereunder or under any other document or agreement executed in connection herewith shall operate as a waiver thereof, nor shall any single or partial exercise by the Authority of any right, remedy or power hereunder or under any other document or agreement executed in connection herewith preclude any other or future exercise of any other right, remedy or power.

REMEDIES CUMULATIVE: Each and every right, remedy and power hereby granted to the Authority or allowed it by law or other agreement shall be cumulative and not exclusive and may be exercised by the Authority from time to time.

CHANGE, MODIFICATION OR WAIVER: This Note may not be changed or modified orally, nor may any right or provision hereof be waived orally, but in each instance only by an instrument in writing signed by the party against which enforcement of such change, modification or waiver is sought. The interest rate, due date or other terms, conditions or covenants of this Note may be modified in writing, so long as consented to by the Borrower, the Authority and the holder hereof in accordance with Section 12.05 of the Bonds Agreement. If the parties agree to a change, which change is a "modification" as defined in New Jersey P.L. 1985 c. 353, then the Mortgage securing this Note shall be subject to the priority provision of the law.

WAIVER OF JURY TRIAL: BORROWER AND THE AUTHORITY HEREBY INTENTIONALLY, KNOWINGLY, VOLUNTARILY EXPRESSLY AND MUTUALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1 ARISING UNDER THIS NOTE OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF BORROWER AND THE AUTHORITY WITH RESPECT TO THIS NOTE, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE, AND BORROWER AND THE AUTHORITY HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE THIS ORIGINAL NOTE OR A TRUE COPY THEREOF WITH ANY COURT A WRITTEN EVIDENCE TO THE CONSENT OF BORROWER TO THE WAIVER OF RIGHT TO A TRIAL BY JURY.

[The remainder of this page intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, the Borrower has executed and delivered to the Authority this Note on the day and year first above written.

WITNESS:

/s/ Daniel K. Lewis, Esq.
Daniel K. Lewis, Esq.

PCT ALLENDALE, LLC

By: /s/ George S. Goldberger
George S. Goldberger
Managing Member

ENDORSEMENT

Pay to the order of Commerce Bank/North, as Purchaser under the Bond Agreement dated as of October 1, 2007, between the Authority, the Borrower and the Purchaser, without recourse. This endorsement is given and made without any warranty as to the authority and genuineness of the signature of the maker of the foregoing Note.

This the 31st day of October, 2007.

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By: /s/ Teri Dunlop
Teri Dunlop
Director of Closing Services

MORTGAGE AND SECURITY AGREEMENT

FROM

PCT ALLENDALE, LLC

TO

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

AND

COMMERCE BANK/NORTH

DATED: October 31, 2007

Record and Return to:

Bernard S. Davis, Esq.
Wolff & Samson PC
The Offices at Crystal Lake
One Boland Drive
West Orange, New Jersey 07052

MORTGAGE AND SECURITY AGREEMENT

THIS **MORTGAGE** made October 31, 2007, from **PCT ALLENDALE, LLC,** a New Jersey limited liability company, having an address at 21 Main Street, Hackensack, New Jersey 07601 (the "**Mortgagor**") to **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the "Authority"), a public body corporate and politic constituting an instrumentality of the State of New Jersey, having an office at 36 West State Street, PO Box 990, Trenton, New Jersey 08625 and **COMMERCE BANK/NORTH,** a New Jersey banking corporation organized and existing under the laws of the State of New Jersey having an office at 1100 Lake Street, Ramsey, New Jersey 07446 (the "Purchaser"; which together with the Authority are the **"Mortgagee").**

WITNESSETH:

WHEREAS, the Mortgagor is indebted to the Authority in the principal sum of THREE MILLION ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS ($3,120,000.00) (as well as certain Other Obligations referred to herein) which indebtedness is evidenced by the Mortgagor's Note payable to the Authority dated October 31, 2007 (the "Authority Note") providing for monthly installments of principal and interest with the balance of indebtedness payable in accordance with the terms of the Authority Note; and

WHEREAS, the Loan evidenced by the Authority Note is being made available by the Mortgagee to the Mortgagor pursuant to the terms and provisions set forth in that certain Bond Agreement dated as of October 1, 2007 (the "Bond Agreement") executed by and among the Mortgagor, the Mortgagee and the Purchaser, under which the Mortgagee has agreed to provide the Mortgagor with funds to undertake the refinancing a loan used for the acquisition of condominium units in an existing building located in the Borough of Allendale, County of Bergen in the State of New Jersey (the "Project"); and

WHEREAS, all words and terms identified by their initial letter capitalized and not otherwise defined herein shall have the meanings as set forth in the Bond Agreement.

TO SECURE TO MORTGAGEE the repayment of the indebtedness evidenced by the Note, as well as certain Other Obligations referred to herein, with interest thereon, together with the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Mortgagor herein contained, Mortgagor does hereby mortgage to Mortgagee all that certain real estate located in the Borough of Allendale, County of Bergen, State of New Jersey and more fully described on Schedule "A", attached hereto and made a part hereof (the "Property").

TOGETHER with all of Mortgagor's right, title and interest now owned or hereafter acquired in:

(1) All buildings, improvements and appurtenances erected or hereafter erected on the Property;

(2) All machinery, apparatus, equipment, fittings, fixtures and other property permanently affixed to the Property (not including trade fixtures) and all additions thereto and renewals and replacements thereof, and all substitutions therefor now owned or hereafter acquired by the Mortgagor, or in which the Mortgagor has or shall have an interest (collectively, the "Fixtures"), and all proceeds and products of any of the above;

(3) Any and all tenements, hereditaments and appurtenances belonging to the real estate or any part thereof hereby mortgaged or intended so to be, or in any way appertaining thereto, and all streets, alleys, passages, ways, water courses, and all leasehold estates, easements, licenses, permits, approvals, covenants and other agreements now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of said real estate over ground adjoining said real estate and all rights to enforce the maintenance thereof, and all other rights, liberties and privileges of whatsoever kind or character, and the reversions and remainders, income, rents, issues and profits arising therefrom, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the real estate or any part thereof;

(4) All awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right), or for any other injury to or decrease in the value of the Property;

(5) All leases and other agreements affecting the use or occupancy of the Property now or hereafter entered into and the right to receive and apply the rents, issues and profits of the Property to the payment of the indebtedness evidenced by the Authority Note and the Other Obligations;

(6) All contracts from time to time executed by the Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Property together with the right to exercise any options; all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof; and all drawings, plans, specifications and similar or related items relating to the Property;

(7) All trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Property or any part thereof; all general intangibles related to the operation of the Property now existing or hereafter arising;

(8) All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(9) The right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Property.

(10) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

All of the above-mentioned real estate, buildings, improvements, fixtures, machinery, equipment, materials, hereditaments and appurtenances and other property interests referred to in Paragraphs (1) through (10) inclusive above, together with the Property are collectively referred to herein as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, unto Mortgagee, to its own use forever.

PROVIDED ALWAYS, and this instrument is created upon the express condition that, if Mortgagor pays or causes to be paid to Mortgagee the principal sum due under the Note, all interest due thereon and all other sums payable to Mortgagee as are secured hereby, in accordance with the provisions of the Note, the Bond Agreement and this Mortgage and other Loan Documents (as hereinafter defined), at the times and in the manner specified without deduction, fraud or delay, and Mortgagor performs and complies with or causes to be performed and complied with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Note and the Bond Agreement and other Loan Documents (as hereinafter defined), then this Mortgage and the estate hereby granted shall cease and become void.

MORTGAGOR REPRESENTS, COVENANTS AND WARRANTS to and with Mortgagee that until the indebtedness secured hereby is fully repaid:

1. Other Obligations.

(A) In addition to all obligations and liabilities owing to the Mortgagee in connection with the Authority Note, this Mortgage (and all other collateral pledged as security for the Authority Note) shall also be deemed to secure the payment by the Mortgagor of all "Other Obligations". For purposes hereof, the term "Other Obligations" shall be deemed to include all of the Mortgagor's obligations and liabilities owing to the Purchaser under, relating to or arising in connection with all other obligations or liabilities owing to the Mortgagee and/or the Purchaser by the Mortgagor.

(B) It is expressly understood and agreed that the obligations evidenced by the Authority Note are cross-defaulted and cross-collateralized with the Other Obligations. Accordingly:

(i) all collateral pledged as security for the Authority Note (including, without limitation, this Mortgage) shall also be deemed to secure all Other Obligations, which security shall be subordinate to the indebtedness evidenced by the Note. Conversely, all collateral pledged as security for the Other Obligations shall also be deemed to secure the Authority Note;

(ii) the occurrence of an Event of Default under any loan document executed in conjunction with the foregoing or the Other Obligations (together with the Authority Note, the Bond Agreement and this Mortgage, are the "Loan Documents") shall automatically and immediately constitute an Event of Default under all Other Obligations (without the giving of any further notice or the expiration of any cure period). Conversely, the occurrence of an event of default under any of the Other Obligations after the expiration of any applicable notice, grace or cure period shall automatically and immediately constitute an Event of Default hereunder.

2. Payment and Performance. Mortgagor shall pay to Mortgagee, in accordance with the terms of the Note, this Mortgage and the other Loan Documents, the principal and interest due thereon, and other sums therein set forth; and Mortgagor shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of the Note, the Bond Agreement, this Mortgage and the other Loan Documents; and Mortgagor shall timely perform all of its obligations and duties under any lease, easement agreement, license, permit, approval, covenant or other agreement relating to, affecting, created for the benefit of or used in connection with the operation of all or any portion of the Mortgaged Property now or hereafter in effect. Without limiting the generality of the foregoing, Mortgagor shall observe and perform or cause to be observed and performed each and every term to be observed and performed by Borrower pursuant to the Master Deed or the rules and regulations pertaining to the Four Pearl Court Condominium.

3. Warranty of Title. Mortgagor represents and warrants that it possesses good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, except for those title exceptions listed in the Mortgagee's title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage.

4. Maintenance of Mortgaged Property. Mortgagor shall be required to or cause to keep and maintain all buildings and improvements now or at any time hereafter erected on the Mortgaged Property and the sidewalks and curbs abutting them, in good order and condition and in a rentable and tenantable state of repair, and will make or cause to be made, as and when necessary, all repairs, renewals and improvements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property; shall not remove or demolish any portion of the Mortgaged Property, or alter the structural character of any building erected at any time on the Mortgaged Property which would materially impair the mortgage collateral, without the prior written consent of Mortgagee, and shall not permit the Mortgaged Property to become deserted or abandoned, other than in the ordinary course of renovating the improvements.

5. Insurance.

(A) Mortgagor shall keep the Mortgaged Property continuously insured, to the extent of its full insurable replacement value, against loss or damage by fire, with extended coverage and rental curtailment coverage, and coverage against loss or damage by vandalism, malicious mischief and, if available and required against flood and against other hazards as may be required under the Bond Agreement. Mortgagor shall also maintain or cause to be maintained comprehensive general public liability insurance and workers compensation insurance, in such total amounts as Mortgagee may require, from time to time naming Mortgagee as Mortgagee and as additional insured.

(B) All policies, including policies for any amounts carried in excess of the required minimum and policies not specifically required by Mortgagee, shall be in form reasonably satisfactory to Mortgagee, shall be issued by companies reasonably satisfactory to Mortgagee, shall be maintained in full force and effect, shall be delivered to Mortgagee, with premiums prepaid, and shall provide for at least thirty (30) days' notice of cancellation to Mortgagee. All hazard insurance policies shall be endorsed with a standard mortgagee clause in favor of Mortgagee, not subject to contribution, and shall be for a term of at least one (1) year. Certificates of insurance, addressed to Mortgagee, evidencing such hazard insurance and public liability insurance may be delivered to Mortgagee in lieu of the policies therefor.

(C) If the insurance, or any part thereof, shall expire, or be cancelled, or become void or voidable by reason of breach of any condition thereof, or if Mortgagee reasonably determines that such coverage is unsatisfactory by reason of the failure or impairment of the capital of any company in which the insurance may then be carried, or if for any reason whatsoever the insurance shall be unsatisfactory to Mortgagee, Mortgagor shall cause new insurance coverages to be placed on the Mortgaged Property, reasonably satisfactory to Mortgagee. All renewal policies or certificates of insurance, with premiums paid, shall be delivered to Mortgagee at least thirty (30) days before expiration of the old policies.

(D) In the event of loss, Mortgagor will give immediate notice thereof to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor; provided, however, that any adjustment of a proof of loss shall require the prior written consent of Mortgagee such consent not to be unreasonably withheld or delayed. Each insurance company issuing fire, casualty and/or hazard insurance policies relating to the Mortgaged Property is hereby authorized and directed to make payment under such insurance, including return of unearned premiums, directly to Mortgagee for deposit in the Escrow Account established under the Bond Agreement, and Mortgagor appoints Mortgagee, irrevocably, as Mortgagor's attorney-in-fact to apply for and endorse any draft therefor. Such hazard policies of insurance and all renewals thereof are hereby assigned to Mortgagee as additional security for payment of the indebtedness hereby secured and Mortgagor hereby agrees that upon and during the continuance of an Event of Default any values available thereunder upon cancellation or termination of any of said policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to Mortgagee as assignee thereof. If Mortgagee becomes the owner of the Mortgaged Property or any part thereof by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the absolute property of Mortgagee.

6. Taxes and Other Charges. Mortgagor shall pay or cause to be paid when due and payable and before interest or penalties are due thereon, without any deduction, defalcation or abatement, all condominium fees, taxes, assessments, water and sewer rents and all other charges or claims which may be assessed, levied or filed at any time against Mortgagor, the Mortgaged Property or any part thereof or against the interest of Mortgagee therein, or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial sale; and Mortgagor shall produce or cause to be produced to Mortgagee not later than such dates receipts for the payment thereof. If no Event of Default or no event which would be an Event of Default with the passage of time or giving of notice has occurred and Mortgagor shall in good faith and by appropriate legal action contest the validity of any such item, or the amount thereof, and Mortgagor shall have established on its books or by deposit of cash with Mortgagee, as Mortgagee may elect, a reserve for the payment thereof in such amount as Mortgagee may require (including any interest and penalties which may be payable in connection therewith), then Mortgagor shall not be required to pay the item or to produce the required receipts while the reserve is maintained and so long as the contest operates to prevent collection is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Mortgagor. Further, Mortgagor will not apply, or be permitted to apply for or claim, any deduction, by reason or this Mortgage, from the taxable value of all or any part of the Mortgaged Property. It is expressly agreed that no credit shall be claimed or allowed on the principal or interest payable under the Note because of any taxes or other charges paid.

7. Funds for Taxes and Insurance. (a) Mortgagor shall pay to Mortgagee a sum equal to (i) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (ii) upon an Event of Default, the premiums which will next become due on the insurance policies required by this Mortgage, all in amounts as estimated by Mortgagee, plus any reasonable reserves required by Mortgagee less all sums already paid therefore or deposited with Mortgagee for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Mortgagee to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Mortgagor shall pay to Mortgagee, upon request, such additional amounts as Mortgagee shall estimate to be sufficient to make up any deficiency. No amount paid to Mortgagee hereunder shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Mortgagee shall have the right, at its sole discretion, to apply any amounts so held against the indebtedness secured hereby. If requested by Mortgagee, the Mortgagor shall provide to the Mortgagee, within 30 days of the end of each fiscal year of the Mortgagor, evidence, in form and substance satisfactory to the Mortgagee, of payment of the insurance premiums and taxes described in Sections 5 and 6 hereof.

(b) Upon payment in full of all sums secured by this Mortgage, Mortgagee shall promptly refund to Mortgagor any funds held by Mortgagee. If under any paragraph hereof the Mortgaged Property is acquired by Mortgagee, Mortgagee shall apply, no later than immediately prior to the sale of the Mortgaged Property or upon its acquisition by Mortgagee, any Funds held by Mortgagee at the time of application as a credit against the sums secured by this Mortgage.

8. Documentary and Other Stamps. If at any time the United States, the State in which the Mortgaged Property is located or any political subdivision thereof, or any department or bureau of any of the foregoing shall require documentary, revenue or other stamps on the Note or this Mortgage or any other Loan Document, Mortgagor shall be responsible to pay for them together with any interest or penalties payable thereon.

9. Other Taxes. If any law or ordinance now or hereafter imposes a tax directly or indirectly on Mortgagee with respect to the Mortgaged Property, the value of Mortgagor's equity therein, or the indebtedness evidenced by the Note or any other Loan Document and secured by this Mortgage, Mortgagor shall promptly pay such tax. If Mortgagor fails to cause such tax to be paid or if Mortgagor is not lawfully permitted to pay such tax, Mortgagee, at its election, shall have the right at any time to give Mortgagor written notice declaring that the principal debt, with interest and other appropriate charges, shall be due on a specified date not less than thirty (30) days thereafter, provided, however, that such election shall be ineffective if, prior to the specified date, Mortgagor lawfully pays that tax (in addition to all other payments required hereunder) and agrees to pay the tax whenever it becomes due and payable thereafter, which agreement shall then constitute a part of this Mortgage with interest at the Default Rate (as defined in the Note).

10. Compliance With Laws and Regulations. Mortgagor shall comply in all material respects with all laws, ordinances, regulations and orders of all federal, state, municipal and other governmental authorities relating to the Mortgaged Property, subject to Mortgagor's right to contest the same in accordance with and as permitted by law.

11. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right at any time, upon reasonable notice to Mortgagor, and at any time upon an emergency, to enter the Mortgaged Property at a reasonable hour and to inspect and photograph its condition and state of repair.

12. Declaration of No Set-Off. Within twenty (20) days after written request to do so by Mortgagee, but no more often than twice in any calendar year. Mortgagor shall certify to the best of its knowledge to Mortgagee or to any proposed assignee of this Mortgage, in a writing duly acknowledged, the amount of principal, interest other charges then owing on the obligation secured by this Mortgage and by prior liens, if any, and whether there are any set-offs or defenses against it or claims against Mortgagee.

13. Required Notices. Mortgagor shall notify Mortgagee reasonably promptly of the occurrences of any of the following:

(A) A fire or other casualty causing damage to the Mortgaged Property;

(B) Receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property;

(C) Receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property or any real property adjacent to the Mortgaged Property;

(D) Receipt of any default or termination notice from any tenant of all or any portion of the Mortgaged Property;

(E) Change in the occupancy or use of the Mortgaged Property;

(F) Receipt of any default or acceleration notice from the holder of any lien or security interest in the Mortgaged Property; or

(G) Commencement of any material litigation affecting the Mortgaged Property.

14. Condemnation.

(A) In the event of any condemnation or taking of any part of the Mortgaged Property by eminent domain, alteration of the grade of street, or other injury to or decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor, after deducting therefrom all costs and expenses regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorney's fees incurred by Mortgagor in connection with the collection of such proceeds, shall be deposited in the Escrow Account established under the Bond Agreement to be applied as provided in the Bond Agreement.

(B) If prior to the receipt of such proceeds by Mortgagee, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the proceeds to the extent of:

(i) The full amount of all such proceeds if Mortgagee is the successful purchaser at the foreclosure sale, or

(ii) If anyone other than Mortgagee is the successful purchaser at the foreclosure sale, any deficiency (as herein defined) due to Mortgagee in connection with the foreclosure sale, with interest thereon at the Default Interest Rate, and reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with collection of such proceeds and the establishment of such deficiency. For purposes of this subparagraph 13(B)(ii), the word "deficiency" shall be deemed to mean the difference between (a) the net sale proceeds actually received by Mortgagee as a result of such foreclosure sale less any costs and expenses incurred by Mortgagee in connection with enforcement of its rights under the Note, this Mortgage and the other Loan Documents and (b) the aggregate amount of all sums which Mortgagee is entitled to collect under the Note, this Mortgage and the other Loan Documents.

(C) In the case of a material condemnation of the Premises, if the proceeds of the initial award of damages for the condemnation or taking are insufficient to pay in full the indebtedness and all other amounts secured hereby, Mortgagee shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby appointed irrevocably as attorney-in-fact for Mortgagor, which appointment is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the proceeds, and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

(D) Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party in any condemnation proceedings.

15. No Other Liens.

(A) Without the prior written consent of Mortgagee, Mortgagor shall not create or cause or permit to exist any lien on or security interest in the Mortgaged Property, including any furniture, fixtures, appliances, equipment or other items of personal property which are intended to be or become part of the Mortgaged Property, except the lien created hereby and any other liens granted to or previously or hereafter approved by Mortgagee, including Permitted Encumbrances (as defined in the Bond Agreement).

(B) Except as provided in (A) above, no lien or encumbrance of any type, whether voluntary or involuntary, shall be permitted to be filed or entered against the Mortgaged Property without the prior written consent of Mortgagee. If any such lien or encumbrance is filed or entered, Mortgagor shall have it removed of record within thirty (30) days after it is filed or entered.

(C) Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by Mortgagee, to terminate any lease of all or a portion of the Mortgaged Property whether or not such lease is subordinate (whether by law or the terms of such lease or other agreement) to the lien of this Mortgage without first obtaining the prior written consent of Mortgagee. The holder of the subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien or otherwise, to terminate any such lease, whether or not permitted to be so by Mortgagor or as a matter of law, and any such attempt to terminate any such lease shall be ineffective and void without first obtaining the prior written consent of Mortgagee.

16. No Transfer. Except in accordance with the Bond Agreement, without the prior written consent of Mortgagee, Mortgagor will not cause or permit, to the extent it may do so, (i) any transfer of title to or beneficial interest in the Mortgaged Property or any part thereof or (ii) any transfer of an interest by any person holding any part of the title or beneficial interest in or to the Mortgaged Property which will cause the ownership or controlling interest in the legal or beneficial owner of the Mortgaged Property to be different from that in effect on the date hereof; provided that the consent of the Purchaser is not required for any change in ownership of the Mortgagor pursuant to a bona fide estate plan of any member of the Mortgagor to immediate family members. Any consent of Mortgagee with respect to this paragraph shall pertain to the referenced transfer only and shall not constitute, or obligate Mortgagee to approve, any further transfer or relieve any person of any liability hereunder or under the Note or any other Loan Document. Any violation of or failure to comply with the provisions of this paragraph shall constitute an immediate Event of Default hereunder, anything herein to the contrary notwithstanding.

17. Right to Remedy Defaults. If, after the expiration of applicable notice and grace periods, Mortgagor should fail to perform or cause to be performed any of the terms, agreements or conditions of Mortgagor in this Mortgage, Mortgagee, at its election and without notice to Mortgagor, shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee deems advisable to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall be secured hereby and the lien therefor shall relate back to the date of this Mortgage, and shall bear interest from the date of payment by Mortgagee until the day of repayment at the rates equal to the Default Rates provided in the Note.

18. Events of Default. Each of the Events of Default, as defined in the Bond Agreement, shall constitute an event of default ("Event of Default") hereunder.

19. Remedies.

(A) Upon the occurrence of any Event of Default, the entire unpaid principal balance due under the Note and all accrued interest due under the Note and all other sums secured by this Mortgage shall become immediately due and payable, at the option of Mortgagee, without notice or demand and Mortgagee may at its option do one or more of the following:

(i) Foreclosure: Mortgagee may institute an action of mortgage foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid principal balance of the Note and/or the Other Obligations, with interest at the respective rate stipulated in the Authority Note or in the promissory note(s) evidencing the Other Obligations, together with all other sums due to Mortgagee in accordance with the provisions of the Note and this Mortgage and/or the Other Obligations, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for insurance, taxes, water or sewer rents, charges or claims, payments on prior liens or repairs to the Mortgaged Property, all costs of suit, together with interest at the maximum legal rate then pertaining on any judgment obtained by Mortgagee from and after the date of said judgment until actual payment is made of the full amount due to Mortgagee, and a reasonable attorneys' fee for collection together with reimbursement for all out of pocket expenses.

(ii) Possession and Assignment of Rents: Mortgagee may enter into possession of the Mortgaged Property, with or without legal action, collect from tenants all rentals then due or to become due (which rents shall also include sums payable for use and occupation) and, after deducting all costs of collection and administration expenses, apply the net rentals to any or all of the following in such order and amounts as Mortgagee, in Mortgagor's sole discretion, may elect: to the payment of any sums due for insurance premiums, taxes, water and sewer rents, charges and claims and all other carrying charges, and to the maintenance, repair or restoration of the Mortgaged Property, and on account and in reduction of the principal, interest or any other sums hereby secured. In and for that purpose, Mortgagor hereby assigns to Mortgagee all rentals due and to become due under any lease or leases or rights to use and occupation of the Mortgaged Property presently or hereafter created, as well as all rights and remedies provided in such lease or leases or at law or in equity for the collection of the rentals. Mortgagee shall have the right for the same default or any subsequent default to bring one or more actions to recover possession of the Mortgaged Property. Mortgagee may bring such action before or after a Sheriff's sale or judicial sale or other foreclosure sale of the Mortgaged Property in which Mortgagee is the successful bidder.

Mortgagee may seek possession of the Mortgaged Property before or after (i) the institution of foreclosure proceedings under this Mortgage; (ii) the entry of judgment thereunder or under the Note and/or the Other Obligations or (iii) a Sheriff's sale of any part of the Mortgaged Property in which Mortgagee is the successful bidder, it being the understanding of the parties that the authorization to pursue such proceedings for obtaining possession is an essential part of the remedies for enforcement of the Mortgage, the Note and the other Loan Documents, and shall survive any execution sale to Mortgagee. If, for any reason after such action has been commenced, it shall be discontinued, or possession of the Mortgaged Property shall remain in or be restored to Mortgagor, Mortgagee shall have the right for the same default or any subsequent default to bring one or more further amicable actions as above provided to recover possession of the Mortgaged Property.

(iii) Receiver: Mortgagee may apply for, and as a matter of right, without consideration for the value of the Mortgaged Property, or for the solvency of any person, firm, or corporation obligated for the payment of the amount due, shall be entitled to the appointment by any competent court or tribunal, without prior demand or notice to any party, of a receiver of rents and profits and rental value of the Mortgaged Property, with power to take possession of the Mortgaged Property, including possession from Mortgagor if in possession and occupying any portion of the Mortgaged Property, and in the latter case to require Mortgagor, as a condition of remaining in possession and occupation to pay the reasonable rental value for the use and occupation thereof with further power to lease and repair the Mortgaged Property and to renovate same if Mortgagee reasonably deems renovation necessary and with such other powers as may be deemed necessary. Such receiver, after deducting all proper charges and expenses shall each month pay over to Mortgagee the residue of said rents and profits and rental value to be applied by Mortgagee to the payment of the amount remaining secured hereby or to any deficiency (whether or not any judgment therefor may be entered and irrespective of the market value of the Mortgaged Property) which may exist in the event of foreclosure by sale after applying the proceeds of the sale of the Mortgaged Property or the payment of the amount due, including interest, costs and expenses of such foreclosure and sale, or in the event of strict foreclosure to the payment of any deficiency existing thereunder. A receiver while in possession of the Mortgaged Property shall have the right to make repairs and to make improvements necessary or advisable in its reasonable opinion to preserve the Mortgaged Property or make and keep it rentable to the best advantage and the Mortgagee may advance moneys to a receiver for such purpose. Any monies so expended or advanced by Mortgagee or by a receiver shall be repaid so far as possible out of the rents collected after payment of other expenses properly chargeable against said rents, and any unpaid balance of monies so advanced or expended shall be added to and become part of the debt secured by this Mortgage.

(B) Upon the occurrence and continuance of any Event of Default, the Mortgagee shall have all of the remedies of a Secured Party under all applicable laws including the Uniform Commercial Code, including without limitation the right and power to sell, or otherwise dispose of, the collateral, or any part thereof, and for that purpose may take immediate and exclusive possession of the collateral, or any part thereof, and with or without judicial process, enter upon any property on which the collateral, or any part thereof, may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Mortgagee's option, Mortgagor shall assemble the collateral and make it available to the Mortgagee at the place and at the time designated in the demand. Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Note or this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action is commenced.

(C) Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage. The Mortgagee, upon so acquiring the Mortgaged Property, or any part thereof shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner permitted by applicable laws.

(D) The purchase money, proceeds or avails of any sale made under or by virtue of this Section, together with any other sums which then may be held by the Mortgagee under this Mortgage, whether under the provisions of this Section or otherwise, shall, to the extend permitted by law, be applied as follows:

FIRST: To the payment of the costs and expenses of such sale and of any judicial proceedings wherein the same shall be made, including reasonable compensation to the Mortgagee, its agents and counsel, and all the expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest at the respective Default Rates set forth in the Note or the promissory note(s) evidencing the Other Obligations, as applicable on all advances made by the Mortgagee including all taxes or assessments, except taxes, assessments and other charges subject to which the Mortgaged Property shall have been sold.

SECOND: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provisions of this Mortgage, the Bond Agreement, the Authority Note, on a pro rata basis, or any loan document executed in connection with the Other Obligations.

THIRD: To the payment of the whole amount then due, owing or unpaid upon the Note and the other Obligations for principal and interest, with interest on the unpaid principal at the respective Default Rates set forth in the Note on a pro rata basis or the promissory note(s) evidencing the Other Obligations, as applicable, from and after the happening of any Event of Default until the same is paid.

FOURTH: To the payment of any other sums required to be paid by the Mortgagor pursuant to any provisions of any loan document executed in connection with the Other Obligations.

FIFTH: To the payment of the whole amount then due, owing or unpaid upon the promissory note(s) evidencing the Other Obligations, as applicable, from and after the happening of any Event of Default until the same is paid.

SIXTH: To the payment of the surplus, if any, to whomever may be lawfully entitled to receive the same.

(E) Mortgagee may exercise all of the rights and remedies provided in this Mortgage or the Note or any other Loan Document, or which may be available to Mortgagee by law, and all such rights and remedies may be cumulative and concurrent and may be pursued singly, successively or together, at Mortgagee's sole discretion, and may be exercised as often as occasion therefor shall occur. Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of the obligation or this Mortgage, or pursuant to any other judicial proceedings under the Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect. Any failure by Mortgagee to insist upon strict performance by Mortgagor of the Note, this Mortgage, the Bond Agreement or any other Loan Document shall not be deemed to be a waiver thereof, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor. Any waiver by Mortgagee of any breach by Mortgagor of any term, covenant, agreement or condition contained herein shall not be valid unless in writing signed by an officer of Mortgagee, and such waiver shall not affect the right of Mortgagee thereafter to exercise all rights or remedies set forth herein or available at law or in equity on account of a subsequent Event of Default hereunder.

(F) Mortgagee shall have the right to set off all or any part of any amount due by Mortgagor to Mortgagee under the Note, this Mortgage or otherwise, against any indebtedness, liabilities or obligations owing by Mortgagee for any reason and in any capacity to Mortgagor with respect to the Mortgaged Property, including any obligation to disburse to Mortgagor or its assignee any funds or other property on deposit with or otherwise in the possession, control or custody of Mortgagee.

20. Rights and Remedies Cumulative.

(A) The rights and remedies of Mortgagee as provided in this Mortgage, in the Note and related Loan Documents or contained therein shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(B) Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Bond Agreement, the Note or the other Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Mortgage, the Note or the other Loan Documents and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of it.

(C) Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage, the Bond Agreement, the Note or the other Loan Documents or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of the Mortgagee extending the time of payment or modifying the terms of this Mortgage; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extensions or modification agreement, unless expressly released and discharged in writing by Mortgagee.

(D) Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

(E) For payment of the indebtedness secured hereby, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect, except as otherwise provided in any related loan documents.

21. Mortgagor's Waivers. Mortgagor hereby waives and releases, to the extent permitted by law:

(A) All procedural errors, defects and imperfections in any proceeding instituted by Mortgagee under the Note, this Mortgage or any other Loan Document.

(B) All benefits that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale or execution or providing for any stay of execution, exemption from civil process or extension of time for payment.

(C) Unless specifically required herein or in any other agreement of Mortgagee delivered in connection herewith, all notices of Mortgagor's default or of Mortgagee's election to exercise or Mortgagee's actual exercise of, any option under the Note, this Mortgage or any other Loan Document.

22. Counsel Fees. If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Property or title therein, the lien created by this Mortgage or Mortgagee's interest therein, or if Mortgagee engages counsel to collect any of the indebtedness or to enforce the performance of the agreements, conditions, covenants, provisions or stipulations of this Mortgage or the Note or any other Loan Document, Mortgagee's costs, expenses and reasonable counsel fees, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the applicable Default Rate, until paid, they shall be deemed to be part of the indebtedness evidenced by the Note and secured by this Mortgage.

23. Further Assurances. Mortgagor will execute and deliver such further instruments and perform such further acts as may be reasonably requested by Mortgagee, from time to time, to confirm the provisions of this Mortgage or any other Loan Document, to carry out more effectively the purposes of this Mortgage, the Note or any other Loan Document, or to confirm the priority of the lien created by this Mortgage on any property, rights or interest encumbered or intended to be encumbered by the lien of this Mortgage or the other documents accompanying the Note or any other Loan Document. Mortgagor shall pay all costs of recording, filing, refiling and acknowledging such documents in such public offices as Mortgagee may require.

24. Release and/or Modification. From time to time without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sum secured by this Mortgage and to observe the covenants of Mortgagor contained herein, without affecting the validity of the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby and without affecting the lien or priority of the lien hereof on the Mortgaged Property, Mortgagee may, at Mortgagee's option without giving notice to any of the Guarantors, and without liability on Mortgagee's part, release all or any part of the Mortgaged Property, take or release any other security, change the interest rate, change the due date or modify other terms and conditions of this Mortgage, the Note or any other Loan Document and subject to the provisions of N.J.S.A. 46:9-8.1 et seq., increase the principal amount of, or a substitution in the collateral for, the loans evidenced by the Note or other Obligations. The priority of the lien of this Mortgage shall not be affected by the fact that there may not have been any outstanding indebtedness at some time or times during the term hereof.

25. Severability and Savings Clauses. If any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Mortgage shall remain in full force and effect and shall be liberally construed in favor of Mortgagee in order to effect the provisions of this Mortgage. In addition, in no event shall the rates of interest under the Note or the Other Obligations exceed the maximum rate of interest permitted to be charged by applicable law (including the choice of law rules) and any interest paid in excess of the permitted rate shall be refunded to Mortgagor. Such refund shall be made by application of the excessive amount of interest paid against any sums outstanding under the Note or the Other Obligations and shall be applied in such order as Mortgagee may determine. If the excessive amount of interest paid exceeds the sums outstanding under the Note, the portion exceeding the said sums outstanding under the Note or the Other Obligations shall be refunded in cash by Mortgagee. Any such crediting or refund shall not cure or waive any default by Mortgagor hereunder or under the Note or any Other Loan Document. Mortgagor agrees, however, that in determining whether or not any interest payable under the Note, this Mortgage or any Other Loan Document exceeds the highest rate permitted by law, any nonprincipal payment (except payments specifically stated in the Note or any Other Loan Document to be "interest"), including, without limitation, prepayment premiums and late charges, shall be deemed, to the extent permitted by law, to be an expense, fee or premium rather than interest,

26. Notices. All notices consents, approvals or other communications given hereunder shall be in writing and delivered by personal hand delivery, sent by nationally recognized overnight carrier or mailed by certified mail, return receipt requested, addressed as follows and deemed to be delivered on the day of hand delivery to the person set forth below, the business day after pick up by nationally recognized overnight courier or on the third business day following the date of deposit in the mail:

If to Mortgagee:	New Jersey Economic Development Authority 36 West State Street PO Box 990 Trenton, New Jersey 08625 Attn: Director of Program Services
If to Mortgagor:	PCT Allendale, LLC 21 Main Street Hackensack, New Jersey 07601 Attn: Jerry Miano, Controller
If to the Bank	Commerce Bank/North 1100 Lake Street Ramsey, New Jersey 07446 Attn: Charles M. Ponti, Regional Vice President

27. Covenant Running With The Land. Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns as if they had executed such agreement (including, without limitation, any buyer of the Mortgaged Property).

28. Amendment. This Mortgage shall not be modified or amended, except by agreement, in writing, signed by the party against whom enforcement of the modification is sought.

29. Construction of Mortgage. The laws of New Jersey shall govern the construction of this Mortgage and the rights, remedies, warranties, representations, covenants, and provisions hereof without regard to the principles of conflict of laws. If any provision in this Mortgage is inconsistent with the Bond Agreement, the Bond Agreement shall control.

30. Definitions. Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

(A) The word "Mortgagor" shall mean PCT Allendale, LLC, any subsequent owner (beneficially or of record, including, without limitation, any installment buyer) of the Mortgaged Property and its respective successors and assigns.

(B) The word "Mortgagee" shall mean the New Jersey Economic Development Authority and Commerce Bank/North.

(C) The term "Guarantor" shall mean Progenitor Cell Therapy, L.L.C.

(D) The word "person" shall include an individual, corporation, partnership, limited liability company, limited liability partnership or unincorporated association.

(E) The use of any gender shall include all genders.

(F) The singular number shall include the plural and the plural number shall include the singular as the context may require.

(G) If Mortgagor is more than one person, all agreements, conditions, covenants, provisions, stipulations, warrants of attorney, authorizations, waivers, releases, options, undertakings, rights and benefits made or given by Mortgagor shall be joint and several, and shall bind and affect all persons who are defined as "Mortgagor" as fully as though all of them were specifically named herein wherever the word Mortgagor is used.

31. Captions. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage nor shall they in any way affect its meaning, construction or effect.

32. Terms of Loan Commitment. Reference is made to a certain loan Commitment Letter dated August 15, 2007 and all subsequent amendments thereto, if any, the terms and provisions of which commitment are incorporated herein by reference as if set forth at length. In the event of a conflict or inconsistency between terms and provisions set forth herein and those set forth in the Commitment Letter, the terms and provisions set forth herein shall be deemed to control and prevail.

33. Environmental Provisions.

(a) For the purposes of this paragraph the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls, (ii) the "Environmental Requirements" shall collectively mean all applicable present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions and having jurisdiction.

(b) The Mortgagor hereby represents and warrants to the Mortgagee that, to the best of Mortgagor's knowledge: (i) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, in any manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement, (ii) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iii) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Environmental Requirement, nor does the Mortgagor have knowledge or reason to believe that any such notice will be received or is being threatened, and (iv) the Mortgaged Property and the operation thereof are in compliance in all material respects with all Environmental Requirements.

(c) Subject to the Mortgagor's right to contest any action by a Governmental Authority by appropriate means, the Mortgagor shall comply, and shall cause all tenants or other occupants of the Mortgaged Property to comply, in all material respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Mortgaged Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, or about the Mortgaged Property in a manner that violates any Environmental Requirement. The Mortgagor shall notify the Mortgagee promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Mortgaged Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to the Mortgagee copies of any notices received by the Mortgagor relating to alleged violations of any Environmental Requirement or any potential liability under any Environmental Requirement and will promptly pay when due any fine or assessment against the Mortgagee, the Mortgagor or the Mortgaged Property relating to any Environmental Requirement. If at any time it is it is determined that the operation or use of the Mortgaged Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any form of cleanup or corrective action, the Mortgagor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from the Mortgagee, take, at the Mortgagor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, the Mortgagor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to comply in all material respects and in a timely fashion with all Environmental Requirements.

(d) If the Mortgagor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the Mortgagee may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Mortgagee (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from the Mortgagor and shall bear interest at the Default Rate from the date any such sums are so advanced or paid by the Mortgagee until the date any such sums are repaid by the Mortgagor to the Mortgagee. The Mortgagor will execute and deliver, promptly upon request, such instruments as the Mortgagee may deem useful or necessary to permit the Mortgagee to take any such action, and such additional notes and mortgages, as the Mortgagee may require to secure all sums so advanced or paid by the Mortgagee. If a lien is filed against the Mortgaged Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of the Mortgagor or for which the Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Mortgaged Property is located, then the Mortgagor will, within thirty (30) days from the date that the Mortgagor is first given notice that such lien has been placed against the Mortgaged Property (or within such shorter period of time as may be specified by the Mortgagee if such Governmental Authority has commenced steps to cause the Mortgaged Property to be sold pursuant to such lien), either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to the Mortgagee and is sufficient to effect a complete discharge of such lien on the Mortgaged Property.

(e) The Mortgagee may, at its option, if the Mortgagee reasonably believes that a Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Mortgaged Property or portions thereof to be conducted to confirm the Mortgagor's compliance with the provisions of this paragraph 33, and the Mortgagor shall cooperate in all reasonable ways with the Mortgagee in connection with any such audit. If such audit discloses that a violation of or a liability under an Environmental Requirement exists or if such audit was required or prescribed by law, regulation or Governmental Authority, the Mortgagor shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph 33, be paid by the Mortgagee.

(f) If this Mortgage is foreclosed, or if the Mortgaged Property is sold pursuant to the provisions of this Mortgage, or if the Mortgagor tenders a deed or assignment in lieu of foreclosure or sale, the Mortgagor shall deliver the Mortgaged Property to the purchaser at foreclosure or sale or to the Mortgagee, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all material respects with all Environmental Requirements.

(g) Notwithstanding the waiver, if any, by the Mortgagee of compliance by the Mortgagor with any Environmental Law or other requirement under this Mortgage, the Mortgagor will defend, indemnify, and hold harmless the Mortgagee, its co-lenders, participants, employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, reasonable counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (i) any breach by the Mortgagor of any of the provisions of this paragraph 33, (ii) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement or any policy or requirement of the Mortgagee hereunder. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the loans evidenced by the Note and secured by this Mortgage, constitute the personal recourse undertakings, obligations and liabilities of the Mortgagor.

(h) The obligations and liabilities of the Mortgagor under this paragraph 33 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the indebtedness evidenced by the Note and/or Other Obligations have been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by the Mortgagee, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

34. Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement," within the meaning of the Uniform Commercial Code, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property. The Mortgagor by executing and delivering this Mortgage has granted to the Mortgagee, as security for the indebtedness evidenced by the Note and the Other Obligations, a security interest in the Mortgaged Property. If the Mortgagor shall default under the Note or this Mortgage, the Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Fixtures or any part thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Fixtures. The Mortgagor shall pay to the Mortgagee on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by the Mortgagee in protecting its interest in the Fixtures and in enforcing its rights hereunder with respect to the Fixtures. Any notice of sale, disposition or other intended action by the Mortgagee with respect to the Fixtures sent to the Mortgagor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Mortgagor, and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the Uniform Commercial Code unless objected to in writing by the Mortgagor within five (5) days after receipt by the Mortgagor of such notice. The proceeds of any sale or disposition of the Fixtures, or any part thereof, may be applied by the Mortgagee to the payment of the indebtedness evidenced by the Note and the Other Obligations, in such order, priority and proportions as the Mortgagee in its discretion shall deem proper to the extent permitted by law. If any change shall occur in the Mortgagor's name, the Mortgagor shall promptly cause to be filed at its own expense, new financing statements as required under the Uniform Commercial Code to replace those on file in favor of the Mortgagee.

MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT IT HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE AND SECURITY AGREEMENT.

[The remainder of this page intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage under seal the day and year first above written.

WITNESS:

/s/ Daniel R. Lewis Esq.
Daniel R. Lewis, Esq.

PCT ALLENDALE, LLC

By: /s/ George S. Goldberger
George S. Goldberger
Managing Member

ACKNOWLEDGEMENT

STATE OF NEW JERSEY :
: SS.:
COUNTY OF ESSEX :

BE IT REMEMBERED that on this 31st day of October, 2007, before me, the subscriber, an Attorney-at-Law of New Jersey, and I hereby certify that I am such an Attorney-at-Law as witness my hand, personally appeared George S. Goldberger, Managing Member of PCT ALLENDALE, LLC, who, I am satisfied is the person who executed the foregoing Mortgage and Security Agreement and on behalf of said limited liability company, and who thereupon acknowledged that he signed and delivered said Instrument as the voluntary act and deed of said limited liability company.

/s/ Daniel R. Lewis
Daniel R. Lewis
Attorney-at-Law of New Jersey

SCHEDULE A

Legal Description of the Property

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Allendale, County of Bergen, State of New Jersey:

Tract I

Being Known and designated as Unit A in Four Pearl Court Condominium, a condominium, together with an undivided 25.3% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

Tract II

Being Known and designated as Unit No. B in Four Pearl Court Condominium, a condominium, together with an undivided 24.4% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

Tract III

Being Known and designated as Unit C in Four Pearl Court Condominium, a condominium, together with an undivided 23.4% interest in the Common elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, about to be recorded in the Office of the Bergen County Clerk/Register, as same may now or hereafter be lawfully amended.

NOTE FOR INFORMATION ONLY: Being a portion of Lot 4.05, **Block** 601, **Tax Map of the** Borough **of** Allendale, **County of** Bergen.

LOAN#_____

MORTGAGE LOAN NOTE
[Fixed Rate or Tied to Index]

Date of Note: November 30, 2010

Principal Amount: $1,000,000.00

Maturity Date: March 30, 2021

FOR VALUE RECEIVED, PCT ALLENDALE, LLC, a New Jersey limited liability company ("**Borrower**"), having an address at 4 Pearl Court, Allendale, NJ 07401. **HEREBY PROMISES TO PAY** to the order of TD Bank, N.A., a national banking association, (hereinafter, together with its successors and assigns, referred to as the "**Lender**"), at P.O. Box 5600, Lewiston, Maine, 04243-5600, or at such other place as the holder hereof may from time to time designate in writing, in immediately available federal funds, the Principal Amount, together with interest on the outstanding Principal Amount, in accordance with the terms of this Note. From the date hereof through and including March 30, 2016 (the "Rate Reset Date") Interest shall accrue on the outstanding Principal Amount at a fixed rate equal to six percent (6%) per annum. From and after the Rate Reset Date, the outstanding Principal Amount shall bear interest for the remaining term at a fixed rate determined by the Lender based upon then current market conditions.

Borrower shall make interest only payments hereunder on December 30, 2010 and on the 30yth day of each month thereafter up to and including March 30, 2011. Thereafter, Borrower will pay the Principal Amount in one hundred nineteen (119) consecutive monthly payments of principal and interest, commencing on April 30, 2011 and on the 30th day of each month thereafter up to and including the Maturity Date at which time a one-hundred twentieth (120th) and final payment equal to the entire remaining unpaid principal balance, plus accrued interest, shall be due and payable. The amount of the monthly payment of principal and interest shall be adjusted on the Rate Reset Date to reflect any interest rate change.

The annual interest rate for this Note is computed on a 365/360 basis; that is by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding.

Although the payment of the Principal Amount evidenced by this Note has been designed as if it were to extend until the Maturity Date, Borrower understands and agrees that Lender expressly reserves the right and option, exercisable at its discretion, to declare the entire unpaid principal balance under this Note together with all interest that shall have accrued thereon to be due and payable on March 30, 2016 (the "Loan Call Date"). In the event that Lender desires to exercise its option to declare the Loan due on the Loan Call Date, it shall deliver written notice (the "Call Notice") thereof by certified mail return receipt requested or by a recognized overnight courier service to Borrower's address set forth herein within the one hundred twenty (120) day period commencing sixty (60) days prior to and ending on the 60th day after a Loan Call Date. Borrower shall, within ninety (90) days after the date of written notice by Lender of its exercise of the option, repay the entire Principal Amount due under this Note together with all unpaid interest which shall have accrued thereon as well as any sums which may then be due under this Note or any other document constituting a part of the within loan transaction.

Notwithstanding anything in this Note to the contrary, the entire unpaid Principal Amount, plus accrued interest, shall be due and payable on March 30, 2011 (the "Early Maturity Date") in the event that the merger of NBS Acquisition Company LLC, ("NBS") a Delaware limited liability company and wholly owned subsidiary of Neostem, Inc. ("Neostem") with and into Progenitor Cell Therapy, LLC, a Delaware limited liability company and the sole member of Borrower ("PCT") pursuant to the terms of that certain Agreement and Plan of Merger dated as of September 23, 2010 by and among NBS, Neostem and PCT, has not been completed by the Early Maturity Date.

Borrower hereby authorizes Lender to charge checking account number 345 291 7320 at TD Bank, N.A. (or such other account maintained by Borrower at TD Bank, N.A. as Borrow of principal and/or interest due and payable to Lender hereunder on the thirtieth (30 th) day of each month (28th day for February) (each, a "**Charge Date**") and Lender is hereby authorized to charge the Deposit Account on each Charge Date or, if any Charge Date shall fall on a Saturday, Sunday or legal holiday, then the Lender reserves the right to charge the Deposit Account on either the first (1 st) Business Day (as hereafter defined) immediately preceding or on the first (1st) Business day immediately following any such Charge Date until the Note shall be paid in full.

Borrower agrees to maintain sufficient funds in the Deposit Account to satisfy the payment due Lender under the Note on each Charge Date during the term of the Loan. If sufficient funds are not available in the Deposit Account on any Charge Date to pay the amounts then due and payable under this Note, Lender, in its sole discretion, is authorized to: (a) charge the Deposit Account for such lesser amount as shall then be available; and/or (b) charge the Deposit Account on such later date or dates that funds shall be available in the Deposit Account to satisfy the payment then due (or balance of such payment then due). Notwithstanding the foregoing, Borrower shall only be entitled to receive credit in respect of any payments of principal and interest due under the Note for funds actually received by Lender as a result, of any such charges to the Deposit Account. Borrower shall be liable to Lender for any late fees or Interest at the Default Rate (as defined below) on any payments not made on a timely basis by Borrower because of insufficient funds in the Deposit Account on any Charge Date. In the event the Deposit Account continues to contain insufficient funds to fully satisfy the payments due Lender under the Note, Borrower shall be responsible for making all such payments from another source and in no event shall the obligations of Borrower under the Note be affected or diminished as a result of any shortages in the Deposit Account, it being understood and agreed that Borrower shall at all times remain liable for payment in full of all indebtedness under the Note.

Lender may, at Lender's sole discretion, discontinue charging the Deposit Account at any time on not less than ten (10) days' written notice to the Borrower, in which event, Borrower shall thereafter be responsible for making all payments hereunder to Lender at the address set forth in Lender's notice or if no such address is given, then to Lender at P.O. Box 5600, Lewiston, Maine, 04243-5600.

Except with respect to the payment on the Maturity Date, Borrower shall pay a late payment charge of five cents ($.05) for each dollar ($1.00) of each payment that is made more than fifteen (15) days after the due date thereof, which charge shall be due and payable with each such late payment.

This Note is secured by, and the parties hereto are entitled to the benefits and security of, that certain Mortgage, Security Agreement and Fixture Filing (the "**Mortgage**"), dated the date hereof, from Borrower, as mortgagor, to Lender, as mortgagee, encumbering, among other things, certain real property and improvements described in the Mortgage, all of the covenants, conditions and agreements of the Mortgage being made a part of this Note by this reference.

Except as may be otherwise provided in the Mortgage, all monthly payments received by Lender hereunder shall be applied first, to the payment of accrued interest on the Principal Amount, second, to the reduction of the Principal Amount of this Note, and finally, the balance, if any, to the payment of any fees, costs, expenses or charges then payable by Borrower to Lender hereunder, under the Mortgage or under any other document executed and delivered by Borrower in connection with the loan evidenced by this Note.

Borrower agrees that if it fails to make any payment due under this Note within five (5) days after the date when due, or upon the happening of any "**Event of Default**" under the Mortgage (as defined in the Mortgage), the outstanding Principal Amount, together with accrued interest and all other expenses, including, without limitation, reasonable attorneys' fees, shall immediately become due and payable at the option of the holder of this Note, notwithstanding the Maturity Date. For purposes hereof, attorneys' fees shall include, without limitation, fees and disbursements for legal services incurred by the holder hereof in collecting or enforcing payment hereof whether or not suit is brought, and if suit is brought, then through all appellate actions. From and after any "**Event of Default**" under the Mortgage, the interest rate of this Note shall be increased by three hundred (300) basis points (the " **Default Rate**").

In no event shall the total of all charges payable under this Note, the Mortgage and any other documents executed and delivered in connection herewith and therewith that are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged by applicable law. Should Lender receive any payment that is or would be in excess of that permitted to be charged under any such applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall thereupon be applied to reduce the principal balance outstanding on this Note.

Borrower waives demand, presentment for payment, notice of dishonor, protest and notice of protest of this Note.

Any notice, demand or request relating to any matter set forth in this Note shall be given in the manner provided for in the Mortgage.

Time is of the essence as to all dates set forth herein; provided, however, that whenever any payment to be made under this Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computations of payment of interest. As used herein, the phrase " **Business Day**" shall mean any day except a Saturday, Sunday or other day on which that commercial banks are required or permitted to close in the State of New Jersey.

This Note may not be waived, changed, modified, terminated or discharged orally, but only by an agreement in writing signed by the party against whom enforcement of any such waiver, change, modification, termination or discharge is sought.

This Note may be prepaid in whole or in part upon thirty (30) days prior written notice to the Lender. In the event of any prepayment of this Note (other than a prepayment during the ninety (90) day period prior to the Maturity Date or a prepayment resulting from the application of a condemnation award or insurance proceeds following a casualty) in which case there shall be no prepayment fees or penalties), whether by voluntary prepayment, acceleration or otherwise, the Borrower shall, at the option of the Bank, pay a "fixed rate prepayment charge" equal to the, greater of (i) 1% of the principal balance being prepaid multiplied by the "Remaining Term," as hereinafter defined, in years or (ii) a "Yield Maintenance Fee" in an amount computed as follows: The current cost of funds, specifically the bond equivalent yield for United States Treasury securities (bills on a discounted basis shall be converted to a bond equivalent yield) with a maturity date closest to the "Remaining Term", shall be subtracted from the above stated interest rate, or default rate if applicable. If the result is zero or a negative number, there shall be no Yield Maintenance Fee due and payable. If the result is a positive number, then the resulting percentage shall be multiplied by the scheduled outstanding principal balance for each remaining monthly period of the "Remaining Term." Each resulting amount shall be divided by 360 and multiplied by the number of days in the monthly period. Said amounts shall be reduced to present values calculated by using the above reference current costs of funds divided by twelve (12). The resulting sum of present values shall be the "fixed prepayment charge" due to the Lender upon prepayment of the principal of this Note plus any accrued interest due as of the prepayment date.

"Remaining Term" as used herein shall mean the shorter of (i) the remaining term of this Note, or (ii) the remaining term of the then current fixed interest rate period.

BORROWER, AND BY ITS ACCEPTANCE HEREOF, LENDER, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS NOTE, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER ON THIS NOTE, ANY AND EVERY RIGHT BORROWER MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT BORROWER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

This Note and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey (without giving effect to New Jersey's principles of conflicts of law). Borrower hereby irrevocably submits to the nonexclusive jurisdiction of any state or federal court in the State sitting in the City of Camden, County of Camden, over any suit, action or proceeding arising out of or relating to this Note, and Borrower hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state or federal court in the State sitting in the City of Camden, County of Camden, may be made by certified or registered mail, return receipt requested, directed to Borrower at the address indicated below, and service so made shall be complete five (5) days after the same shall have been so mailed.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has executed and delivered this Note on the date first hereinabove written.

Witness:

/s/ Greicy Rubieca
Name: Greicy Rubieca

BORROWER:

PCT ALLENDALE, LLC, a New Jersey limited liability company

By: /s/ George S. Goldberger
George S. Goldberger
Managing Member

Address: 4 Pearl Court
Allendale, NJ 07401

Return to:
Paul C. Taylor, Esq.
Taylor Colicchio & Silverman, LLP
502 Carnegie Center, Suite 103
Princeton, New Jersey 08540

MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FILING

by and between

PCT ALLENDALE, LLC, a New Jersey limited liability company,
(the "Mortgagor")

and

TD BANK, N.A.,
a national banking association
("Mortgagee")

Amount: $1,000,000.00

Dated: November 30, 2010

Premises: Borough of Allendale
County of Bergen
State of New Jersey

MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING made as of the 30th day of November, 2010, between PCT ALLENDALE, LLC, a New Jersey limited liability company (the "Mortgagor") with an Organizational ID Number of 0600307371, having its principal business office at 4 Pearl Court, Allendale, 07401, and TD BANK, N.A., a national banking association, having its business office at 1701 Route 70 East, Cherry Hill, New Jersey 08034-5406 ("Mortgagee").

WITNESSETH

A. Mortgagor has executed and delivered to Mortgagee a certain Mortgage Loan Note bearing even date herewith in the principal amount of One Million Dollars ($1,000,000.00) (as same may be amended, restated, supplemented or replaced, from time to time, the " Note").

B. As a condition to Mortgagee making the loan to Mortgagor evidenced by the Note, Mortgagor has agreed to grant Mortgagee a mortgage on the property described herein.

NOW, THEREFORE, in consideration of the Mortgagee making the Loan to Mortgagor, and as security for:

(1) payment to Mortgagee of all amounts due and owing under the Note;

(2) payment to Mortgagee of all future or additional advances which may be made by Mortgagee to or for the account of Mortgagor, together with interest on such advances (including, without limitation, all sums which Mortgagee may advance under this Mortgage with respect to the Mortgaged Property (as defined below) to pay for taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the Mortgaged Property or the lien of this Mortgage, and expenses incurred by Mortgagee by reason of default beyond applicable notice and grace periods by Mortgagor under this Mortgage); and

(3) performance of the undertakings and covenants contained in the Loan Documents.

Mortgagor has granted, conveyed, bargained, sold, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby grant, convey, bargain, sell, alien, enfeoff, release, confirm and mortgage unto Mortgagee all those certain condominium units situate in the Borough of Allendale, County of Bergen, State of New Jersey, being Lots 4.05, G0001, G0002 and G0003, Block 601 on the Borough of Allendale Tax Map, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Units");

TOGETHER WITH all of Mortgagor's right, title and interest now owned or hereafter acquired in:

(1) all present and future leases, subleases and all other occupancy agreements and licenses covering all or any portion of the Units (which together with Mortgagor's interest as landlord thereunder are herein collectively referred to herein as the "Leases");

(2) all rents, issues and profits payable under the Leases and under any future renewals, extensions, amendments or modifications thereof;

(3) all fixtures, appliances, machinery, equipment, furnishings and furniture of any nature whatsoever, and other articles of personal property now or hereafter owned by Mortgagor and (i) which now or at any time hereafter are installed in, attached to or situated in or upon the Units; (ii) used or intended to be used in connection with the Units, or in the operation or maintenance of the Units (including, without limitation, communications, computer and security systems and the software system therefore); or (iii) the plant or business situate thereon, whether or not the personal property is or shall be affixed thereto, expressly including, but without limiting the generality of the foregoing, all articles of personal property listed on Exhibit "B" attached hereto and made part hereof;

(4) all building materials, fixtures, building machinery and building equipment owned by Mortgagor and delivered on site to the Units during the course of, or in connection with, the construction of, or reconstruction of, or remodeling of any Improvements from time to time during the term hereof;

(5) any and all tenements, hereditaments and appurtenances belonging to the Units or any part thereof, or in any way appertaining thereto, and all streets, alleys, passages, ways, water courses, and all leasehold estates, easements and covenants now existing or hereafter created for the benefit of Mortgagor or any subsequent owner or tenant of the Units over ground adjoining the Units and all rights to enforce the maintenance thereof, and all other rights, liberties and privileges of whatsoever kind or character, together with any after-acquired property interest in the Units which Mortgagor may at any time hereafter have or acquire, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law or in equity, of Mortgagor in and to the Units or any part thereof;

(6) To the extent assignable, all management agreements, service contracts, license agreements, concession agreements, written or oral, relating to the use and occupancy of the Units now or hereafter existing and the reversions and remainders, income, rents, issues and profits arising therefrom and all deposits (including tenant security deposits) thereunder, and all rights and benefits now or hereafter accruing to Mortgagor under any and all guarantees of the obligations of any tenant, licensee, concessionaire or other occupant thereunder, as any of the foregoing may be amended, extended, renewed or modified from time to time;

(7) All easement agreements, operating agreements, and similar agreements however labeled or denominated affecting the Units;

(8) All other documentation belonging to or in Mortgagor's possession now or hereafter existing in connection with the use or operation of the Units including any plans and specifications pertaining to the Improvements, all appraisals, engineering, environmental, soils, marketing and other reports and studies relating to the Units, all permits, licenses, and contract rights, warranties, guarantees, tenant lists, correspondence with present or prospective tenants or suppliers, advertising materials, and telephone exchange numbers as identified in such advertising materials; and

(9) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards.

All of the above-mentioned Leases, Units fixtures, machinery, furniture, equipment, tenements, hereditaments and appurtenances, agreements and other documents, and other property interests are sometimes collectively referred to herein as the " Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, unto Mortgagee, to its own use forever, subject, however, to that certain mortgage dated November 5, 2007 made by Mortgagor in favor of New Jersey Economic Development Authority in the original principal amount of $3,120,000.00 recorded on November 5, 2007 in the Bergen County Clerk's Office in Mortgage Book 17055 at Page 496 (the "First Mortgage").

PROVIDED ALWAYS, this instrument is upon the express condition that, upon payment in full of all amounts due and owing under the Note, then this Mortgage and the estate hereby granted shall cease and become void.

MORTGAGOR REPRESENTS, COVENANTS AND WARRANTS to and with Mortgagee that until all amounts due and owing under the Note have been paid in full.

1. Payment and Performance. Mortgagor shall pay to Mortgagee all amounts due and payable under the Note and this Mortgage (the "Obligations") in accordance with the terms of the Note and Mortgage. Mortgagor shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of this Mortgage and the other Loan Documents to which it is a party. Mortgagor shall timely perform all of its obligations and duties as landlord under any Leases of any portion of the Mortgaged Property now or hereafter in effect.

2. Warranty of Title. Mortgagor warrants to Mortgagee that Mortgagor possesses good and marketable unencumbered fee simple title to the Mortgaged Property, except for the First Mortgage and those title exceptions listed in the lender's title insurance policy approved by and issued to Mortgagee insuring the priority of the lien of this Mortgage.

3. Maintenance of Mortgaged Property. Mortgagor shall keep and maintain the Mortgaged Property and the abutting sidewalks and curbs in good order and condition (ordinary wear and tear excepted) in compliance with all applicable laws and in a rentable and tenantable state of repair, and will make, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property, shall not remove or demolish any portion of the Mortgaged Property, or any machinery, equipment or other personal property located thereon or alter the structural character or exterior appearance of any Mortgaged Property, without the prior written consent of Mortgagee. Mortgagor shall not permit the Mortgaged Property to become deserted or abandoned. Mortgagor shall operate the Mortgaged Property as it is currently being operated subject to any changes effectuated in the ordinary course of business, and Mortgagor shall not change the use of the Mortgaged Property from its current use without first obtaining the prior written consent of Mortgagee which consent shall not be unreasonably withheld, conditioned or delayed.

4. SUBJECT TO RISK MANAGEMENT REVIEW

(a) The Mortgagor will maintain insurance with responsible and reputable insurance companies or associations reasonably satisfactory to the Mortgagee in such amounts and covering such risks as shall be reasonably satisfactory to the Mortgagee from time to time, but in any event in amounts sufficient to present the Mortgagor from becoming a co-insurer. Without limitation of the foregoing, the Mortgagor shall keep the Mortgaged Property fully insured against fire, lightning and water damage and all extended coverage and special extended coverage perils and against such other risk as the Mortgagee may from time to time reasonably require, in an amount at least equal to its full insurable value. In addition, and without limitation of the foregoing, the Mortgagee shall procure and maintain:

(i) Business interruption insurance covering the payments due under the Note for not less than 12 months following fire or other casualty damage to or destruction of any of the Mortgaged Property;

(ii) Flood insurance, if any of the Units are located in a federally designated flood hazard zone;

(iii) Public liability insurance, owner's liability insurance and comprehensive automobile liability insurance protecting the Mortgagor against liability for injuries to persons and/or property in such minimum amounts and with such deductibles as are reasonably satisfactory to the Mortgagee from time to time;

(iv) Worker's compensation and employer's liability insurance meeting the Mortgagor's statutory obligations (provided that the Mortgagor may self-insure to the extent permitted by law); and

(v) Boiler and machinery coverage (direct damage and use and occupancy) on a replacement cost basis where deemed reasonably advisable by the Lender.

All insurance herein provided for shall be in such form and written by such companies as may be approved by the Lender in its reasonable discretion. The Mortgagor will deliver to the Mortgagee certificates of all policies of casualty insurance or business interruption insurance relating to the Mortgaged Property or any of same. All such policies of casualty insurance or business interruption insurance relating to the Mortgaged Property or any of same shall be payable to the Mortgagee under the standard mortgagee clause and loss payable endorsement and shall contain an obligation to provide at least 10 days' prior notice to the Lender of cancellation of such insurance by the carrier; and whenever any such insurance is to expire for any reason, the Borrower will deliver to the Lender, at least 10 days prior to such expiration, a renewal or replacement policy, complying with all of the conditions of this Section 4.

(b) If any of the Mortgaged Property shall be damaged or either partially or totally destroyed, or if title to, or the temporary use of, the whole or any part of the Mortgaged Property shall be taken or condemned by a governmental authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable by the Mortgagor pursuant to the Note and the Mortgagor shall continue to be obligated to make such payments. The Mortgagor covenants that it will take all actions and will do all things which may be necessary to enable recovery to be made upon such policies of insurance or on account of such taking, condemnation, conveyance, damage, injury or loss of title in order that moneys due on account of losses suffered may be collected and paid to the Mortgagee.

(c) The Mortgagor shall notify the Mortgagee of any damage to or destruction of all or any portion of the Mortgaged Property and any condemnation, eminent domain or other similar taking (or conveyance in lieu thereof) of all or any portion of the Mortgaged Property and shall promptly employ an independent architect to determine and advise, in writing, the Mortgagor and the Mortgagee whether it is practicable to repair, reconstruct or replace such damaged or destroyed property to its pre-casualty condition (the "Restoration") and, if so, the estimated time and funds required for the Restoration. If the independent architect shall advise that such Restoration is practicable, the Mortgagor shall proceed with such Restoration. The proceeds of any insurance covering such damage or destruction and the proceeds of any such taking or condemnation award relating to the Mortgaged Property shall be paid:

(i) to the Mortgagor in the case of any particular damage to, or destruction, taking or condemnation of, the Mortgaged Property, if such proceeds do not exceed $200,000 in the aggregate, and the Mortgagor shall use such proceeds to pay the costs of Restoration of the Mortgaged Property, or

(ii) to the Mortgagee in the case of any particular damage to, taking or condemnation or destruction of, the Mortgaged Property, if such proceeds exceed $200,000 in the aggregate, to be deposited by the Mortgagee into a separate fund and shall be disbursed by the Mortgagee to the Mortgagors to pay for the cost of Restoration of the Mortgaged Property, in accordance with its current construction loan disbursement policies. To the extent the insurance or condemnation proceeds are not sufficient, the costs thereof shall be paid from moneys to be provided by the Mortgagors to the Mortgagee. Any such proceeds or moneys of the Mortgagors held by the Lender pursuant to this paragraph (c) of this Section 4 which remain after the payment of the costs of the Restoration shall, at the written direction of the Mortgagors, be repaid to the Mortgagors.

(iii) If the independent architect advises that such Restoration is not practicable, then all insurance or condemnation proceeds shall be deposited with the Mortgagee and applied to the amounts outstanding under the Note and this Mortgage.

(iv) Immediately after the commencement of any condemnation or similar proceedings by a third party in the exercise of a power of eminent domain, or a power in the nature of eminent domain, the Mortgagor shall immediately notify the Mortgagee, in writing. The proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the exercise of such power, shall be applied pursuant to this Section 4.

(d) Notwithstanding anything in the Section 4 to the contrary, Mortgagee will have the right to require that all insurance proceeds be applied to the amounts due and owing under the Note and this Mortgage if Mortgagee reasonably determines that at least one of the following conditions is met:

(i) an Event of Default (or any event, which with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing hereunder;

(ii) Mortgagee determines, in its reasonable discretion, that there will not be sufficient funds from insurance proceeds, anticipated contributions of Mortgagor of its own funds or other sources acceptable to Mortgagee to complete the Restoration;

(iii) Mortgagee determines, in its reasonable discretion, that the Restoration will not be completed at least six (6) months before the maturity date of the Note; or

(v) Mortgagee determines that the Restoration will not be completed within twelve (12) months after the date of the loss or casualty.

5. Taxes and Other Charges.

Mortgagor shall pay when due and payable and prior to the time interest, penalties or additions are due thereon, without any deduction, defalcation or abatement, all real estate taxes, municipal assessments and liens, water and sewer rents, and other governmental levies and all other charges or claims of every nature and kind which may be assessed, levied, imposed, suffered, placed or filed at any time against Mortgagor, the Mortgaged Property or any part thereof or against the interest of Mortgagee therein, or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial or other sale (collectively "Taxes"); and upon request by Mortgagee, Mortgagor shall produce to Mortgagee, official receipts for the payment of the Taxes; provided, however, that if, pursuant to this Mortgage, Mortgagor shall have deposited with Mortgagee before the due date thereof sums sufficient to pay any Taxes, and Mortgagor is not otherwise in default beyond applicable notice and grace periods under the Loan Documents, the Taxes shall be paid by Mortgagee. Mortgagor will not apply for or claim any deduction, by reason of this Mortgage, from the taxable value of all or any part of the Mortgaged Property. No credit shall be claimed or allowed on the interest payable on the Note because of any Taxes paid.

6. Installments for Taxes and Other Charges. Without limiting the effect of Sections 4 and 5, while an Event of Default exists, upon Mortgagee's request, Mortgagor shall pay to Mortgagee, monthly with the monthly installments of interest or principal and interest, an amount equal to one-twelfth (1/12) of the annual Taxes ("Escrow Items"). On demand by Mortgagee from time to time during the occurrence and continuance of an Event of Default, Mortgagor shall pay to Mortgagee any additional sums necessary to pay the Escrow Items, all as estimated by Mortgagee. The amounts paid by Mortgagor shall be security for the Escrow Items and shall be used in payment thereof if Mortgagor is not otherwise in default beyond applicable notice and grace periods under the Loan Documents. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee, and no interest shall be payable thereon. If, pursuant to the Loan Documents, the Obligations become due and payable, Mortgagee shall have the right, at its election, to apply any amount of Escrow Items held by Mortgagee against the Obligations. At Mortgagee's option, Mortgagee from time to time may waive, and after any such waiver may reinstate, the provisions of this Section requiring the monthly payments of Escrow Items.

7. Documentary and Other Stamps. If at any time the United States, the State of New Jersey or any political subdivision thereof, or any department or bureau of any of the foregoing shall require documentary, revenue or other stamps or taxes on the Note or this Mortgage, Mortgagor on demand shall pay for them with any interest or penalties payable thereon.

8. Other Taxes. If any law or ordinance now or hereafter imposes a tax directly or indirectly on Mortgagee with respect to the Mortgaged Property (other than an income tax, withholding tax or foreign taxes), the value of Mortgagor's equity therein, or the Obligations secured by this Mortgage, Mortgagor shall have the right to contest such taxes but shall promptly pay such tax during the pendency of such contest.

9. Security Agreement. This Mortgage constitutes a security agreement under the Uniform Commercial Code in effect in the State of New Jersey and Mortgagor hereby grants to Mortgagee a security interest in all existing and future fixtures (and the proceeds thereof) included in the Mortgaged Property which might be deemed "personal property". Mortgagor covenants to retain all of the Mortgaged Property within the county in which the Units are located. Upon any Event of Default under this Mortgage, Mortgagee shall have, in addition to any other rights and remedies under the Loan Documents, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to the fixtures. Notwithstanding any.release of any or all of that property included in the Mortgaged Property which is deemed "real property", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the Obligations.

10. Compliance with Law and Other Matters.

(a) Mortgagor shall comply in all material respects with all laws ordinances, regulations and orders (collectively "Laws") of all Government Authorities relating to the Mortgaged Property and the use and occupancy of the Mortgaged Property.

(b) Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property or any part thereof without the prior written consent of Mortgagee, which consent will not be unreasonably withheld, delayed or conditioned.

(c) Mortgagor will comply in all material respects with all restrictive covenants, easement agreements and other recorded documents affecting the Mortgaged Property. Mortgagor will not record or permit to be recorded any document, instrument, agreement or other writing against the Mortgaged Property without the prior written consent of Mortgagee, which consent will not be unreasonably withheld, delayed or conditioned.

(d) Mortgagor shall pay when due all utility charges which are incurred by Mortgagor, whether public or private and whether or not such charges are or may become liens on the Mortgaged Property.

(e) Mortgagor shall not suffer or permit the Mortgaged Property to be used by the public in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a right or rights of adverse usage or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof.

11. Required Notices. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

a fire or other casualty causing damage in excess of $50,000 to the Mortgaged Property;

receipt of notice of eminent domain proceedings or condemnation of the Mortgaged Property;

receipt of a material notice from any Governmental Authority relating to the condition, structure, use or occupancy of the Mortgaged Property or any real estate adjacent to the Mortgaged Property;

receipt of any notice of default or threatened default, notice of lease termination or similar material notice from a tenant under any of the Leases; or

a material change in the occupancy of the Mortgaged Property.

12. Condemnation.

(a) In the event of any condemnation or taking of any part of the Mortgaged Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit) including attorneys' fees incurred by Mortgagee in connection with the collection of such proceeds, shall be applied as set forth in this Section. No settlement for the damages sustained shall be made by Mortgagor without Mortgagee's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. All the proceeds shall be applied in the order and in the amounts that Mortgagee, in Mortgagee's sole discretion, may elect, to the payment of the Obligations secured by this Mortgage. Notwithstanding the foregoing sentence and provided that no Event of Default has occurred and is continuing, Mortgagor may first apply such proceeds for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Property.

(b) If prior to the receipt of such proceeds by Mortgagee the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the proceeds to the extent of:

(i) the full amount of all such proceeds if Mortgagee is the successful purchaser at the foreclosure sale until all of the Obligations due and owing to Mortgagee have been paid in full, or

(ii) if any one other than Mortgagee is the successful purchaser at the foreclosure sale, any deficiency (as hereinafter defined) due to Mortgagee in connection with the foreclosure sale, with interest thereon at the highest applicable rate set forth in the Note, and reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with collection of such proceeds of condemnation and the establishment of such deficiency. For purposes of this subsection (b) (ii), the word "deficiency" shall be deemed to mean the difference between (A) the net sale proceeds actually received in cash by Mortgagee as a result of such foreclosure sale less any costs and expenses incurred by Mortgagee in connection with enforcement of its rights under this Mortgage and the other Loan Documents and (B) the aggregate amount of the Obligations.

(c) If an Event of Default has occurred and is continuing, Mortgagee shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby appointed irrevocably as attorney-in-fact for Mortgagor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable counsel fees, shall be paid first out of the proceeds, and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

(d) Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party to any condemnation proceeding.

13. Completion of Construction. Mortgagor shall complete and timely pay for any construction which is commenced at any time on the Mortgaged Property free of any mechanics liens or other liens. All such construction shall comply with all applicable Laws and shall be performed in a good and workmanlike manner. Nothing contained in this Section shall be deemed to waive any right Mortgagee may have under the Loan Documents to approve construction on the Mortgaged Property.

14. Leases.

Mortgagor hereby represents that there are no leases or agreements to lease all or any part of the Mortgaged Property now in effect except the Leases, if any, expressly approved in writing by Mortgagee. Mortgagor agrees not to enter into any Leases or agreements to lease all or any part of the Mortgaged Property or to terminate or consent to the prior surrender of, or assign its interest in, or modify or amend in any material respect any Leases or to permit the tenant or subtenant thereunder to subordinate its Leases to any lien subordinate to this Mortgage, without the prior written consent thereof by Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

Upon receipt by Mortgagor, from time to time, of any security deposit, prepaid rent (other than prepaid rent for the next succeeding calendar month), or similar payments by a tenant, subtenant, licensee or other user of the Mortgaged Property, Mortgagor shall deposit such sum in a separate escrow account with a national or state bank having banking offices in the state in which the Mortgaged Property is located. Mortgagor shall promptly give Mortgagee written notice of the name and address of the bank and the account number of the escrow account Mortgagor shall also give written authorization to such bank to permit Mortgagee to receive any information requested by Mortgagee from the bank as to the status and balance of such account. Said sums shall be held in trust by Mortgagor and disbursed only upon the prior written approval of Mortgagee, which approval shall not be unreasonably withheld. The prior written consent of Mortgagee shall not be required when by law (or agreement approved by Mortgagee) Mortgagor is required to return any of such sums to the party who deposited it with Mortgagor. Mortgagor hereby assigns all of such bank accounts to Mortgagee as collateral security for the Obligations and Mortgagor agrees that after an Event of Default by Mortgagor under the Loan Documents, the sums in said bank accounts shall, at the election of Mortgagee, be payable to Mortgagee as assignee of such bank account; provided, however, that Mortgagee shall have no liability for any prior misapplication of said sums by Mortgagor.

15. Right to Remedy Defaults.

(a) If Mortgagor should fail to pay Taxes, sums due under the First Mortgage, or insurance premiums, or any sums payable by Mortgagor pursuant to the Leases, or fail to make necessary repairs to the Mortgaged Property, or permit waste to the Mortgaged Property, or shall otherwise fail to perform its obligations under this Mortgage, Mortgagee, at its election, after giving Mortgagor ten (10) business days' notice of such failure (except in an emergency in which case no such notice shall be required), shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee deems advisable to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. Such payment by Mortgagee shall not release Mortgagor from Mortgagor's obligations or constitute a waiver of Mortgagor's default under this Mortgage.

(b) Mortgagee in making any payment authorized by this Section: (i) relating to Taxes may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of the Tax or claim thereof; or (ii) for the purchase, discharge, compromise or settlement of any other Lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (iii) for the payment of any sums to cure any default under the Leases, may do so without inquiry as to the validity or amount of any claimed default thereunder, unless as to any of the foregoing in clauses (i), (ii) or (iii), Mortgagor shall be contesting the same by appropriate legal proceedings diligently and in good faith and if: (1) Mortgagor notifies Mortgagee of the commencement of such proceedings (2) the Mortgaged Property is not in danger of being sold or forfeited; and (3) Mortgagor deposits with Mortgagee reserves sufficient to pay the contested amounts, if reasonably requested by Mortgagee. In exercising its rights hereunder Mortgagee may, but need not, make full or partial payments on any Lien, if any, and purchase, discharge, compromise or settle any tax lien or other Lien or title or claim thereof, or redeem from any tax sale or forfeiture effecting the Mortgaged Property or contest any tax. Such payments will be deemed made by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and Hens held by the owner or holder of any Lien, irrespective of whether such Lien is released or satisfied.

(c) All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall be secured by this Mortgage and the lien therefore shall relate back to the date of this Mortgage, and such sums, as well as costs, shall bear interest at the highest applicable default rate under the Note from the date of payment by Mortgagee until the date of repayment to Mortgagee.

(d) Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

(a) if Mortgagor fails to make any payment of principal or interest under the Note within five (5) days after the date that same is due.

(b) if Mortgagor fails to pay any other charges, fees, expenses or other monetary obligations owing to Mortgagee under the Note or this Mortgage within ten (10) days after Mortgagor's receipt of written notice from Mortgagee; or

(c) if Mortgagor fails to perform, comply with or observe any covenant or undertaking contained in the Note or this Mortgage (other than as set forth in subsections (a) through (b) above) and such failure continues for thirty (30) days after Mortgagor receives written notice from Mortgagee of the occurrence thereof; provided, however, if such failure is of the type that can be cured but not within such thirty (30) day period and the Mortgagor commences to cure such failure within such thirty (30) day period and diligently pursue the cure, the Mortgagor shall have a reasonable period of time (not to exceed ninety (90) days) to complete said cure; or

(d) if any statement, report, financial statement, or certificate made or delivered by Mortgagor or any of its officers, employees or agents, to Mortgagee is not true and correct, in all material respects, when made; or

(e) if any warranty, representation or other statement by or on behalf of Mortgagor contained in or pursuant to the Note, this Mortgage or the other Loan Documents or in any document, agreement or instrument furnished in compliance with, relating to, or in reference to this Mortgage, is false, erroneous, or misleading in any material respect when made; or

(f) the occurrence of an Event of Default under the First Mortgage;

(g) Mortgagor breaches or violates the terms of, or an Event of Default occurs under, any other agreement between the Mortgagor, any Guarantor and the Lender which, in the case of a non-monetary default, continues beyond any applicable cure period; or

(h) if any final judgment for the payment of money in excess of One Hundred Fifty Thousand Dollars ($150,000.00) in the aggregate (i) which is not fully and unconditionally covered by insurance or (ii) for which Mortgagor has not established a cash or cash equivalent reserve in the full amount of such judgment, shall be rendered by a court of record against Mortgagor and such judgment shall continue unsatisfied and in effect for a period of ninety (90) consecutive days without being vacated, discharged, satisfied or bonded pending appeal; or

(i) If Mortgagor or any Guarantor, makes or proposes in writing, an assignment for the benefit of creditors generally, offers a composition or extension to creditors, or makes or sends notice of an intended bulk sale of any business or assets now or hereafter owned or conducted by Mortgagor or any Guarantor; or

(j) Upon the commencement of any action for the dissolution or liquidation of Mortgagor, or any Guarantor, or the commencement of any proceeding to avoid any transaction entered into by any Mortgagor, or any Guarantor, or the commencement of any case or proceeding for reorganization or liquidation of the debts of any Mortgagor, or any Corporate Guarantor, under the Bankruptcy Code or any other state or federal law, now or hereafter enacted for the relief of debtors, whether instituted by or against any Mortgagor; provided however, that Mortgagor shall have ninety (90) days to obtain the dismissal or discharge of involuntary proceedings filed against it, it being understood that during such ninety (90) day period, Mortgagee may seek adequate protection in any bankruptcy proceeding; or

(k) Upon the appointment of a receiver, liquidator, custodian, trustee or similar official or fiduciary for Mortgagor, or any Guarantor or for the Mortgaged Property.

16. Remedies.

Upon the occurrence of an Event of Default, then forthwith:

(i) Foreclosure. Mortgagee may institute an action of mortgage foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Obligations, with interest at the highest applicable default rate set forth in the Note, together with all other sums due by Mortgagor in accordance with the provisions of this Mortgage and the other Loan Documents, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for Taxes, payments on Liens, insurance premiums, utilities or repairs to the Mortgaged Property and other sums which Mortgagee is permitted to advance pursuant to the terms of this Mortgage, all costs of suit, together with interest at such rate on any judgment obtained by Mortgagee from and after the date of any sheriff or other judicial sale until actual payment is made of the full amount due Mortgagee, and all Expenses.

(ii) Possession. Mortgagee may enter into possession of the Mortgaged Property, with, or without legal action, collect therefrom all rentals (which term shall also include sums payable for use and occupation) and, after deducting all costs of collection and admmistration expense, apply the net rentals to any or all of the following in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect: the payment of any sums due under any Lien, Taxes, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Mortgaged Property, and on account and in reduction of the Obligations; in and for that purpose, Mortgagor hereby assigns to Mortgagee all rentals due and to become due under the Leases or rights to use and occupation of the Mortgaged Property hereafter created, as well as all rights and remedies provided in such Leases or at law or in equity for the collection of the rentals. The taking of possession and collections of rents by Mortgagee shall not be construed to be an affirmation of any Leases or acceptance of attornment with respect to any Leases of all or any portion of the Mortgaged Property. Mortgagee, in its discretion, may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: to cancel or terminate any Leases for any cause or on any ground which would entitle Mortgagor to cancel the same; to elect to disaffirm any Leases which are then subordinate to the lien of this Mortgage; to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and to enter into any management, leasing or brokerage agreements covering the Mortgaged Property.

(b) Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any Obligations without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any Event of Default by Mortgagor existing at the time the earlier action was commenced.

(c) Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of this Mortgage, or pursuant to any other judicial proceedings under the Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

(d) Upon, or at any time after the filing of an action to foreclose this Mortgage, the court in which such action is filed may, at the request of Mortgagee, appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, with notice to Mortgagor, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to either the then value of the Mortgaged Property, the adequacy or inadequacy of any remedy available at law, or the solvency or insolvency of any other person liable to pay the Obligations, and Mortgagee hereunder or any agent of Mortgagee may be appointed as such receiver. Such receiver shall have the power to perform all of the acts permitted Mortgagee pursuant to subsection (b) (ii) above and such other powers which may be necessary or are customary in such cases for the protection, possession, control, management and operation of the Mortgaged Property during such period.

(e) Mortgagee may, at its sole option, disaffirm and cancel any Leases which are subordinate to this Mortgage at any time before the expiration of sixty (60) days after Mortgagee acquires the legal title to the Mortgaged Property by sheriff's deed or any other transfer of legal title to the Mortgaged Property pursuant to the exercise of a remedy hereunder or otherwise, even though Mortgagee shall have enforced such Leases, collected rents thereunder or taken any action that might be deemed by law to constitute an affirmance of the Leases. Such disaffirmance shall be made by written notice addressed to the applicable tenants at the Mortgaged Property or, at Mortgagee's option, such other address of such tenants as may be provided in the Leases.

(f) Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of a Lien junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the Obligations marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

(g) If Mortgagor is an occupant of part or all of the Mortgaged Property, Mortgagor shall immediately upon any acceleration after an Event of Default hereunder surrender the possession thereof to Mortgagee and if they remain in possession, such possession shall be as tenant at sufferance of Mortgagee, and Mortgagor shall pay monthly in advance to Mortgagee such rent for the premises so occupied as Mortgagee may reasonably demand, and in default of so doing Mortgagor or may be dispossessed by summary proceedings or otherwise with or without any action being brought to foreclose this Mortgage and without applying for a receiver to collect the rents. In case of the appointment of a receiver of rents and profits of the Mortgaged Property, the covenants of this Section may be enforced by such receiver.

(h) Upon any sale made under or by virtue of this Section 17, Mortgagee may bid for and then acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefore may make settlement for the purchase price by crediting upon the Obligations of Mortgagor the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage or under any of the Loan Documents.

(i) If Mortgagee shall have the right to foreclose this Mortgage, Mortgagor authorizes Mortgagee at its option to foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the Obligations or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property, it being expressly understood and agreed, however, that nothing herein contained shall prevent Mortgagee from asserting in any proceeding disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale, that any such tenancies adversely affect the value of the Mortgaged Property.

17. Rights and Remedies Cumulative.

(a) The rights and remedies of Mortgagee as provided in this Mortgage and the other Loan Documents and in the warrants attached thereto or contained therein shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee, and may be exercised as the need to exercise them shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(b) Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the provisions of this Mortgage or the other Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Mortgage or the other Loan Documents, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them.

(c) Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved or discharged of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Obligations, or by reason of consenting to the granting of any easements or recordation of restrictive covenants affecting the Mortgaged Property or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time or amount of payment or modifying the terms of this Mortgage or the other Loan Documents without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

(d) Mortgagee may release, regardless of consideration, any part of the security held for the Obligations without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

(e) For payment of the Obligations secured hereby Mortgagee may resort to any other security therefore held by Mortgagee in such order and manner as Mortgagee may elect.

(f) The receipt by Mortgagee of any sums from Mortgagor after the date on which Mortgagee elects to accelerate the Obligations by reason of an Event of Default hereunder shall not constitute a cure or waiver of such default or a reinstatement of this Mortgage or the other Loan Documents unless Mortgagee expressly agrees, by written notice to Mortgagor, that such payment shall be accepted as a cure or waiver of the default

18. Mortgagor's Waivers. Mortgagor hereby waives and releases:

(a) all procedural errors, defects and imperfections in any proceeding instituted by Mortgagee under the Note, this Mortgage or any of the other Loan Documents;

(b) all benefit that might accrue to Mortgagor by virtue of any present or future law, exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment; and

(c) unless specifically required herein, or in any other Loan Documents, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of, the Note, this Mortgage or the other Loan Documents.

19. Further Assurances. Mortgagor will execute and deliver such further instruments and perform such further acts as may be reasonably requested by Mortgagee from time to time to confirm the priority of the lien created by this Mortgage on any property, rights or interest encumbered or intended to be encumbered by the lien of this Mortgage or the other Loan Documents.

20. Future Advances. Without limiting any other provision of this Mortgage, Mortgagee may make future advances and this Mortgage shall also secure repayment of any future advances made by Mortgagee and the unpaid balances of other advances made, with respect to the Mortgaged Property, for the payment of taxes, assessments, maintenance, charges, insurance premiums or costs similar or dissimilar incurred for the protection of the Mortgaged Property or for the lien of this Mortgage and expenses incurred by Mortgagee.

21. Representations and Warranties. Mortgagor represents, warrants and covenants to and with Mortgagee that:

(a) There are no pending or, to the best of Mortgagor's knowledge, threatened proceedings or actions to revoke, invalidate, rescind, or modify the zoning classification or status of the Mortgaged Property, or any building, occupancy or other permits heretofore issued with respect thereto, or asserting that such zoning or permits do not permit either the current or proposed use of the Mortgaged Property.

(b) There are no leases or other arrangements for occupancy of space within the Mortgaged Property other than leases previously furnished to Mortgagee.

(c) No condemnation by any governmental authority of any portion of the Mortgaged Property or any roadways or other access ways abutting the Mortgaged Property, has commenced or, to the best of Mortgagor's knowledge, is contemplated.

(d) The Mortgaged Property has access to and adequate supply of water, electricity, gas, storm and sanitary sewerage and other required public utilities to serve the present and contemplated uses of the Mortgaged Property, fire and police protection, and free means of appropriate vehicular and pedestrian access between the Mortgaged Property and public highways; and none of the foregoing will be delayed or impeded by virtue of any requirements under any applicable laws including environmental protection laws; and that all of the foregoing comply with all applicable laws including environmental protection laws.

(e) To Mortgagor's knowledge, the improvements located in the Mortgaged Property do not encroach upon any building line, setback line, side yard line, or any recorded or visible easement (or other easement of which Mortgagor has knowledge of or has reason to believe may exist with respect to the Mortgaged Property) except as disclosed in the title policy insuring the lien of this Mortgage.

(f) If any construction has occurred at the Mortgaged Property within the last twelve (12) months, the construction has been completed substantially in accordance with the applicable laws and governmental approvals and, all such improvements are in good working order and are structurally sound and fit for their current use.

(g) The Mortgaged Property is taxed separately without regard to any other property, and for all purposes the Mortgaged Property may be mortgaged, conveyed, and otherwise dealt with as an independent parcel.

(h) Mortgagor is not a "foreign person" within the meaning of Sections 1445 or 7701 of the Internal Revenue Code.

22. Severability and Savings Clauses. If any provision of this Mortgage is held to be invalid or unenforceable by a Court of competent jurisdiction, the other provisions of this Mortgage shall remain in full force and effect and shall be liberally construed in favor of Mortgagee in order to effect the remanining provisions of this Mortgage.

23. Notices.

Any notices or consents required or permitted by this Mortgage shall be in writing and shall be deemed given if delivered in person or if sent by facsimile or by nationally recognized overnight courier, as follows, unless such address is changed by written notice hereunder:

If to Mortgagee;	TD Bank, N.A. Healthcare Financial Services Group 3470 Quakerbridge Road Mercerville, New Jersey 08619 Attn: Robert Bennett Telecopy: (609) 689-6324
with copies to:	Paul C Taylor, Esq. Taylor, Colicchio & Silverman LLP 502 Carnegie Center, Suite 103 Princeton, New Jersey 08540 Telecopy No. 609-987-0070
If to Mortgagor:	PCT Allendale, LLC. 4 Pearl Court Allendale, NJ 07401

with copies to: Phil Gassel, Esq.
Epstein Becker & Green, PC
250 Park Avenue
New York, NY 10177
Telecopy No. 212-661-0989

Any notice sent by Mortgagee or Mortgagor by any of the above methods shall be deemed to be given when so received by Mortgagee or Mortgagor.

Mortgagee shall by fully entitled to rely upon any facsimile transmission or other writing purported to be sent by any Authorized Officer as being genuine and authorized.

Time of Essence. Time shall be of the essence of each provision of this Mortgage of which time is an element.

24. Covenant Running with the Land. Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors and assigns as if they had personally made such agreement.

25. Amendment. This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

26. Applicable Law. This Mortgage and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the jurisdiction in which the Land is situated, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

27. Financing Statement. This mortgage is effective as a financing statement which is filed as a "fixture filing" pursuant to Section 9-502 (or any other applicable section) of the Uniform Commercial Code from the date of recordation of this Mortgage with respect to the following types of goods which are or will be fixtures related to the Mortgaged Property:

Fixtures, equipment, appliances and furnishings and the items set forth in the granting clauses of this Mortgage and on Exhibit "B" hereto.

For the purpose of this Paragraph, Mortgagor is the Debtor, and Mortgagee is the Secured Party and their addresses are as set forth in the recitals of this Mortgage. The record owner of the Real Estate is Mortgagor.

28. Definitions and Interpretation. Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

The word "Mortgagor" shall mean the person who executes this Mortgage and any subsequent owner of the Mortgaged Property and its respective heirs, executors, administrators, successors and assigns;

The word "Mortgagee" shall mean the person specifically named herein as "Mortgagee" or any subsequent holder of this mortgage;

The use of any gender shall include all genders;

The singular number shall include the plural and the plural the singular as the context may require.

The following phrase shall have the following meanings: (i) "including" shall mean "including but not limited to," (ii) "provisions" shall mean "provisions, terms, covenants and/or conditions," (iii) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage and/or deed of trust," (iv) "obligation" shall mean "obligation, duty, covenant and/or condition," (v) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein, and (vi) "Partnership" shall mean "partnership or joint venture" and "partner" shall mean "partner or joint venturer."

Any act which Mortgagee is permitted to perform under the Loan Documents may be performed at any time and from time to time by Mortgagee or any person or entity designated by Mortgagee.

Any act which Mortgagor is required to perform under the Loan Documents shall be performed at Mortgagor's sole cost and expense.

Any act which is prohibited to Mortgagor under the Loan Documents is also prohibited to all tenants or other occupants of any of the Real Estate and the Mortgaged Property.

The captions preceding the text of the Sections or subsections of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

All Exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Mortgage.

This Mortgage may be executed in counterparts, each of which, together with all counterparts, shall be deemed one Mortgage. This Mortgage shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

Definitions contained in this Mortgage which identify documents, including the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments and supplements thereto entered into from time to time to satisfy the requirements of this Mortgage or otherwise with the consent of Mortgagee. Reference to this Mortgage contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Mortgage.

29. No Third Party Benefits. This Mortgage and the other Loan Documents are made for the sole benefit of Mortgagor and Mortgagee and their successors and assigns, and no other party shall have any legal interest of any kind under or by reason of any of the foregoing. Whether or not Mortgagee elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Mortgagee shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Mortgagee's actions or omissions pursuant thereto or otherwise in connection with the transaction evidenced by the Note and secured by this Mortgage.

30. Failure of Mortgagee to Perform.

Mortgagee shall not be liable to Mortgagor for consequential damages, whatever the nature of a breach by Mortgagee of its obligations under this Mortgage, or any of the other Loan Documents, and Mortgagor for itself and all parties claiming through Mortgagor hereby waives all claims for consequential damages.

Mortgagee shall not be in default under this Mortgage, or under any other Loan Documents, unless a written notice specifically setting forth the claim of Mortgagor shall have been given to Mortgagee within thirty (30) days after Mortgagor first had knowledge of, the occurrence of the event which Mortgagor alleges gave rise to such claim and Mortgagee does not remedy or cure the default, if any there be, promptly thereafter.

Any action taken by Mortgagee to inspect the Mortgaged Property, and to approve leases and all other documents and instruments submitted to Mortgagee, will be exercised and taken by Mortgagee for its own protection only and may not be relied upon by Mortgagor or any other party for any purposes whatever, and Mortgagee shall not be deemed to have assumed any responsibility to Mortgagor or any other party with respect to any such action herein authorized or taken by Mortgagee with respect to the proper construction of improvements on the Mortgaged Property, or performance under any lease or other agreement. Any review, investigation or inspection conducted by Mortgagee, any architectural or engineering consultants retained by Mortgagee or any agent or representative of Mortgagee in order to verify independently Mortgagor's satisfaction of any conditions precedent to loan disbursements, Mortgagor's performance of any of the covenants, agreements and obligations of Mortgagor, or the truth of any representations and warranties made by Mortgagor hereunder or under any of the Loan Documents (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Mortgagee of) (i) any of Mortgagor's representations and warranties under this Mortgage or any of the other Loan Documents or Mortgagee's reliance thereon or (ii) Mortgagee's reliance upon any certifications of Mortgagor under the Loan Documents or any other facts in formation or reports furnished Mortgagee by Mortgagor.

31. Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS.

32. Consequential Damages: Neither Mortgagee nor agent or attorney of Mortgagee, shall be liable for any consequential damages arising from any breach of contract, tort or other wrong relating to the establishment, administration or collection of the Obligations.

33. Copy of Mortgage. Mortgagor hereby declares and acknowledges that it has received, without charge, a true copy of this Mortgage.

34. Notice to Prior Lien Holders: Mortgagor hereby authorizes Mortgagee, without liability and at Mortgagee's sole discretion, to give notice in form and substance satisfactory to Mortgagee of the lien and security interest created by this Mortgage to a holder of a previously recorded mortgage which is a lien on the Mortgaged Premises, in order, among other things, to subordinate further advances by such mortgage holder.

35. Modification of Mortgage. This Mortgage is subject to modification pursuant to N.J.S.A. Sections 46:9-8.1 and 8.2. and shall be entitled to the priority provisions thereof.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed as a sealed instrument the day and year first above written.

PCT ALLENDALE, LLC, a New Jersey limited liability company

By: /s/ George S. Goldberger
George S. Goldberger
Managing Member

STATE OF NEW JERSEY)
) SS.:
COUNTY OF Bergen)

BE IT REMEMBERED, that on this 30th day of November, 2010 before me, the subscriber, personally appeared George S. Goldberger, who acknowledged under oath, to my satisfaction, that this person (or if more than one, each person): (a) is the Managing Member of PCT Allendale, LLC, the limited liability company named in the within instrument and is authorized to sign the within instrument on behalf of the limited liability company, and (b) as such member signed, sealed and delivered this instrument as the voluntary act and deed of the limited liability company.

/s/ LISA LEZOTT

LISA LEZOTT
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES
01-09-2011

EXHIBIT A

All that certain plot, piece or parcel of land, with the building and improvements thereon erected, situate, lying and being in the Borough of Allendale, County of Bergen, State of New Jersey, bounded and described as follows:

TRACT I:

BEING KNOWN and designated as Unit A in FOUR PEAL COURT CONDOMINIUM, a Condominium, together with an undivided 25.3 % interest in the Common Elements appurtenant thereto, in accordance with and subject to the terras, conditions, easements, covenants, restrictions, limitations, and other provisions as set forth in the Master Deed for Four Pearl Court Condominium recorded in the Office of the Bergen County Clerk on September 21, 2007 in Deed Book 9413, Page 58, as the same may now or hereafter be lawfully amended.

TRACT II:

BEING KNOWN and designated as Unit B in FOUR PEAL COURT CONDOMINIUM, a Condominium, together with an undivided 24.4 % interest in the Common Elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations, and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, recorded in the Office of the Bergen County Clerk on September 21, 2007 in Deed Bock 9413, Page 58, as the same may now or hereafter be lawfully amended.

TRACT III:

BEING KNOWN and designated as Unit C in FOUR PEAL COURT CONDOMINIUM, a Condominium, together with an undivided 23.4 % interest in the Common Elements appurtenant thereto, in accordance with and subject to the terms, conditions, easements, covenants, restrictions, limitations, and other provisions as set forth in the Master Deed for Four Pearl Court Condominium, recorded in the Office of the Bergen County Clerk on September 21, 2007 in Deed Book 9413, Page 58, as the same may now or hereafter be lawfully amended.

EXHIBIT "B"

PROPERTY SUBJECT TO SECURITY INTEREST

Any and all fixtures, appliances, machinery, equipment furnishings and furniture of any nature whatsoever, and other items of personal property and fixtures at any time now or hereafter owned by Mortgagor/Debtor and now or at any time hereafter installed in, attached to or situated in or upon the land described in Exhibit "A" or the buildings and improvements now erected or to be erected thereon (including, without limitation, communications, computer and security systems and the software system therefor), or used or intended to be used in connection with the real estate, or in the operation or maintenance of the buildings and improvements, plant or business situate or operated thereon (the "Property") or in connection with the conduct of Mortgagor/Debtor's business whether or not the personal property is or shall be affixed to the Property.

Such personal property and fixtures shall include, without limiting the generality of the foregoing:

All plants, furnaces, boilers, machinery, ranges, engines, stokers, pumps, heaters, tanks, compressors, dynamos, motors, electrical transformers, fittings, siding, pipe, pipe connections, conduits, ducts, partitions, communication systems, storm and screen windows, doors, refrigerators, ovens, kitchen equipment, chests, chairs, desks, bookcases, tables, curtains, hangings, pictures, carpeting, artwork, lighting fixtures and apparatus, furniture, furnishings, elevators and motors, built-in filing cabinets, shelves, water coolers, signs, tools, electrical equipment, and all equipment, appliances and apparatus of every kind and description now or hereafter affixed or attached to or contained within and used or procured for use in connection with said buildings or improvements for heating, cooling, lighting, plumbing, ventilating, sprinkling, irrigating, refrigerating or air conditioning, or for providing water, gas, electricity or other services or for general operation of the buildings and improvements, or the plant or business situate or operated thereon.

All licenses, permits, franchises, trade names, logos, service marks, service contracts, management agreements, telephone numbers, advertising materials, warranties, guarantees, tenant lists, engineering, environmental, marketing and similar studies and appraisals for the Property and all other documents and items relating to the operation of the Property, and all leases and lease guarantees with respect to any part of the Property, and all rents, issues and profits arising out of the operation, use or occupancy of the Property.

All of Mortgagor's/Debtor's interest in all utility security deposits or bonds for the Property and all security deposits, bonds or other security delivered to any governmental authority in connection with the use, development or operation of the Property.

All of Mortgagor's/Debtor's books and records relating to the use, operation and occupation of the buildings and the Property including, without limitation, the books and records relating to the operation of Mortgagor's/Debtor's business therein, and the plans and specifications for the construction or reconstruction thereof.

If the Property is now or hereafter used in whole or in part as a hotel, motel or similar facility or as a restaurant or other food and/or beverage service facility, such personal property shall also include all licenses for the serving of alcoholic beverages at the Property and all lodging and food and/or beverage equipment including, without limitation, beds, bureaus, divans, couches, chinaware, linens, glassware, silverware, uniforms, ornaments, kitchen utensils, bars, bar fixtures, radios, televisions, electric equipment, lamps, mirrors, and other personal property and fixtures used now or hereafter in on or about the operation, use and occupation of a lodging facility and/or food and/or beverage facility, on the Property.

Such security interest shall extend to and include as well as any and all cash and non-cash proceeds, insurance proceeds and condemnation proceeds of such fixtures and personal property and any and all subsequently acquired fixtures and personal property by way of replacement, substitution, addition or otherwise and the proceeds thereof.

Such security interest shall not extend to property owned by third party space tenants now or hereafter occupying the Property.

EXHIBIT 10.57

NEOSTEM, INC.

2009 NON-U.S. BASED EQUITY COMPENSATION PLAN

1. **Purposes of the Plan.** The purposes of this NeoStem, Inc. 2009 Non-U.S. Based Equity Compensation Plan (the " Plan") are to provide additional incentives to Service Providers providing services outside of the United States, and to promote the success of the Company and its Subsidiaries abroad. Warrants, Stock Awards, Unrestricted Shares and Stock Appreciation Rights may be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

"Administrator" means a Committee which has been delegated the responsibility of administering the Plan in accordance with Section 4 of the Plan or, if there is no such Committee, the Board.

"Applicable Laws" means the requirements relating to the administration of equity compensation plans under the applicable laws, rules and regulations of: (i) any foreign country or jurisdiction where Awards are, or will be, granted under the Plan; (ii) the United States; and (iii) any stock exchange or quotation system on which the Common Stock is listed or quoted.

"Award" means a Warrant, a Stock Award, a Stock Appreciation Right and/or the grant of Unrestricted Shares.

"Board" means the Board of Directors of the Company.

"Cause", with respect to any Service Provider, means (unless otherwise determined by the Administrator): (i) if the Service Provider is party to a written agreement with the Company or one of its Subsidiaries, which agreement includes a definition of "Cause" or words having similar import, the meaning set forth in the Service Provider's written agreement; or (ii) if the Service Provider is not a party to a written agreement with the Company or one of its Subsidiaries (A) the commission of a crime under the Applicable Laws of the jurisdiction in which the Service Provider is providing services; (B) fraud on or misappropriation of any funds or property of the Company; (C) personal dishonesty, willful misconduct or breach of fiduciary duty which involves personal profit; (D) willful misconduct in connection with the Service Provider's duties; (E) chronic use of alcohol, drugs or other similar substances which affects the Service Provider's work performance; or (F) material breach of any provision of any employment, non-disclosure, non-competition, non-solicitation or other similar agreement executed by the Service Provider for the benefit of the Company, all as reasonably determined by the Committee, which determination will be conclusive.

"Code" means the Internal Revenue Code of the United States and its interpretive regulations.

"Committee" means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.

"Common Stock" means the common stock, par value $.001 per share, of the Company.

"Company" means NeoStem, Inc., a Delaware corporation.

"Consultant" means a natural person providing bona fide services to the Company or one of its Subsidiaries, or a natural person providing such services through a wholly-owned corporate alter-ego; provided, that, such services are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the Company's stock.

"Disability" means (i) if the Service Provider is party to a written agreement with the Company or one of its Subsidiaries, which agreement includes a definition of "Disability" or words having similar import, the meaning set forth in the Service Provider's written agreement; and (ii) if the Service Provider is not a party to a written agreement, the Service Provider's inability to perform the essential functions of his or her position for a period of 90 consecutive days or, 180 days within any one year period as a result of an injury or illness.

"Employee" means any employee of the Company or of a Subsidiary (including, without limitation, an employee who is also serving as an officer or director of the Company or of a Subsidiary).

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

"Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) if the Common Stock is listed on any established stock exchange or a national market system, including without limitation the NYSE Amex, Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, or any successor to any of them, the Fair Market Value of a Share of Common Stock shall be the closing sales price of a Share of Common Stock as quoted on such exchange or system for such date (or the most recent trading day preceding such date if there were no trades on such date), as reported in The Wall Street Journal or such other source as the Committee deems reliable, including without limitation, Yahoo! Finance;

(ii) if the Common Stock is regularly quoted by a recognized securities dealer but is not listed in the manner contemplated by clause (i) above, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock for such date (or the most recent trading day preceding such date if there were no trades on such date), as reported in The Wall Street Journal or such other source as the Committee deems reliable, including without limitation Yahoo! Finance; or

(iii) if neither clause (i) above nor clause (ii) above applies, the Fair Market Value shall be determined in good faith by the Administrator based on the reasonable application of a reasonable valuation method.

"Grant Agreement" means an agreement between the Company and a Participant evidencing the terms and conditions of an Award. Each Grant Agreement shall be subject to the terms and conditions of the Plan.

"Notice of Grant" means a written or electronic notice evidencing certain terms and conditions of an Award. The Notice of Grant applicable to Warrant or Stock Appreciation Rights shall be part of the Grant Agreement.

"Parent" means a "parent corporation" of the Company (or, for purposes of Section 16(b) of the Plan, a successor to the Company), whether now or hereafter existing, as defined in Section 424(e) of the Code.

"Participant" shall mean any Service Provider who is granted an Award under the Plan.

"Person" shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to such Rule 16b-3, as such rule is in effect when discretion is being exercised with respect to the Plan.

"Section 16(b)" means Section 16(b) of the Exchange Act.

"Service Provider" means an Employee or Consultant providing services outside the United States to the Company or to one of its Subsidiaries.

"Share" means a share of the Common Stock, as adjusted in accordance with Section 16 of the Plan.

"Stock Appreciation Right" means a right awarded pursuant to Section 14 of the Plan.

"Stock Award" means an Award of Shares pursuant to Section 11 of the Plan or an award of Restricted Stock Units pursuant to Section 12 of the Plan.

"Stock Award Agreement" means an agreement, approved by the Administrator, providing the terms and conditions of a Stock Award.

"Stock Award Shares" means Shares subject to a Stock Award.

"Stock Awardee" means the holder of an outstanding Stock Award granted under the Plan.

"Subsidiary" means any corporation or other entity of which the Company owns securities or interests having a majority, directly or indirectly, of the ordinary voting power in electing the board of directors, managers, general partners or similar governing Persons thereof.

"Unrestricted Shares" means a grant of Shares made on an unrestricted basis pursuant to Section 13 of the Plan.

"Warrant" means a stock warrant granted pursuant to the Plan.

"Warranted Stock" means the Common Stock subject to a Warrant.

"Warrantee" means the holder of an outstanding Warrant granted under the Plan.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 16(a) of the Plan, the maximum aggregate number of Shares that may be issued under the Plan is 8,700,000 Shares. The Shares may be authorized but unissued, or reacquired, shares of Common Stock. If a Warrant or Stock Appreciation Right expires or becomes unexercisable without having been exercised in full or is canceled or terminated, or if any Shares of Restricted Stock or Shares underlying a Stock Award are forfeited or reacquired by the Company, the Shares that were subject thereto shall be added back to the Shares available for issuance under the Plan. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

4. **Administration of the Plan**.

(a) *Appointment.* The Plan shall be administered by a Committee to be appointed by the Board, which Committee shall consist of not less than two members of the Board. The Board shall have the power to add or remove members of the Committee, from time to time, and to fill vacancies thereon arising; by resignation, death, removal, or otherwise. Meetings shall be held at such times and places as shall be determined by the Committee. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the vote of a majority of those members present at any meeting shall decide any question brought before that meeting.

(b) *Powers of the Administrator.* The Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of Shares;

(ii) to select the Service Providers to whom Awards may be granted hereunder;

(iii) to determine the number of shares of Common Stock to be covered by each Award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan or of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Warrants and Stock Appreciation Rights may be exercised (which may be based on performance criteria), any vesting, acceleration or waiver of forfeiture provisions, and any restriction or limitation regarding any Awards relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to construe and interpret the terms of the Plan, Awards granted pursuant to the Plan and agreements entered into pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(viii) to modify or amend each Award (subject to Section 19(c) of the Plan), including the discretionary authority to extend, subject to the terms of the Plan, the post-termination exercisability period of Warrant or Stock Appreciation Rights longer than is otherwise provided for in a Grant Agreement and to accelerate the time at which any outstanding Warrant or Stock Appreciation Right may be exercised;

(ix) to allow grantees to satisfy withholding tax obligations by having the Company withhold from the Shares to be issued upon exercise of a Warrant or Stock Appreciation Right, upon vesting of a Stock Award, or upon the grant of Unrestricted Shares that number of Shares having a Fair Market Value equal to the amount required to be withheld, provided that withholding is calculated at the minimum statutory withholding level. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All determinations to have Shares withheld for this purpose shall be made by the Administrator in its discretion;

(x) to reduce or increase the exercise price of any Award issued and outstanding under the Plan or all of the Awards issued and outstanding under the Plan;

(xi) to authorize any person to execute on behalf of the Company any agreement entered into pursuant to the Plan and any instrument required to effect the grant of an Award previously granted by the Administrator;

(xii) to modify or amend the Plan to comply with the laws of any foreign territory in which a Participant is providing services; and

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) *Effect of Administrator's Decision.* The Administrator's decisions, determinations and interpretations shall be final and binding on all holders of Awards and Restricted Stock. None of the Board, the Committee or the Administrator, nor any member or delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and each of the foregoing shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including without limitation reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors' and officers' liability insurance coverage which may be in effect from time to time.

(d) *Delegation of Grant Authority.* Notwithstanding any other provision in the Plan, the Board may authorize the Company's Chief Executive Officer or another executive officer of the Company or a committee of such officers (" Authorized Officers") to grant Warrants under the Plan; provided, however, that in no event shall the Authorized Officers be permitted to grant Warrants to (i) any Director, (ii) any person who is identified by the Company as an executive officer of the Company or who is subject to the restrictions imposed under Section 16 of the Exchange Act, (iii) any person who is not an Employee of the Company, a Subsidiary, or (iv) such other person or persons as may be designated from time to time by the Board. If such authority is provided by the Board, the Board shall establish and adopt written guidelines setting forth the maximum number of shares for which the Authorized Officers may grant Warrants to any individual during a specified period of time and such other terms and conditions as the Board deems appropriate for such grants. Such guidelines may be amended by the Board prospectively at any time. Subject to the foregoing, the Authorized Officers shall have the same authority as the Administrator under this Section 4 with respect to the grant of Warrants under the Plan.

5. **Eligibility.** Awards may only be granted to Service Providers providing services outside of the United States on the date of the grant of the Award. Notwithstanding anything contained herein to the contrary, an Award may be granted to a person who is not then a Service Provider; provided, however, that the grant of such Award shall be conditioned upon such person becoming a Service Provider at or prior to the time of the execution of the agreement evidencing such Award.

6. **Limitations.** Neither the Plan nor any Award nor any agreement entered into pursuant to the Plan shall confer upon a Participant any right with respect to continuing the Participant's relationship as a Service Provider with the Company or any of its Subsidiaries, nor shall they interfere in any way with the Participant's right or the right of the Company or the Subsidiary to terminate such relationship at any time, with or without cause.

7. **Term of the Plan.** Subject to Section 22 of the Plan, the Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 19 of the Plan.

8. **Term of Warrants.** Unless otherwise provided in the applicable Grant Agreement, the term of each Warrant granted to anyone who is an Employee of the Company, a Subsidiary shall be ten (10) years from the date of grant and the term of each Warrant granted to any Consultant shall be five (5) years from the date of grant.

9. **Warrant Exercise Price; Exercisability**.

(a) *Exercise Price.* The per share exercise price for the Shares to be issued pursuant to exercise of a Warrant shall be determined by the Administrator, provided that the exercise price shall be equal to or greater than the Fair Market Value of the Common Stock on the date that the Award is granted. The exercise price shall be stated in U.S. dollars.

(b) *Exercise Period and Conditions.* At the time that a Warrant is granted, the Administrator shall fix the period within which the Warrant may be exercised and shall determine any conditions that must be satisfied before the Warrant may be exercised.

(c) *Reload Warrants.* The Administrator may grant Warrants with a reload feature. A reload feature shall only apply when the Warrant price is paid by delivery of Common Stock (as set forth in Section 10(f)) or by having the Company reduce the number of shares otherwise issuable to a Warrantee (as provided for in Section 10(f)) (a "Net Exercise"). The Grant Agreement for the Warrants containing the reload feature shall provide that the Warrant holder shall receive, contemporaneously with the payment of the exercise price in shares of Common Stock or in the event of a Net Exercise, a reload warrant (the "Reload Warrant") to purchase that number of shares of Common Stock equal to the sum of (i) the number of shares of Common Stock used to exercise the Warrant (or not issued in the case of a Net Exercise), and (ii) the number of shares of Common Stock used to satisfy any tax withholding requirement incident to the exercise of such Warrant. The terms of the Plan applicable to the Warrant shall be equally applicable to the Reload Warrant with the following exceptions: (i) the exercise price per share of Common Stock deliverable upon the exercise of the Reload Warrant shall be the Fair Market Value of a share of Common Stock on the date of grant of the Reload Warrant; and (ii) the term of the Reload Warrant shall be equal to the remaining term of the Warrant (including a Reload Warrant) which gave rise to the Reload Warrant. The Reload Warrant shall be evidenced by an appropriate amendment to the Grant Agreement for the Warrant which gave rise to the Reload Warrant. In the event the exercise price of a Warrant containing a reload feature is paid by cash or check and not in shares of Common Stock, the reload feature shall have no application with respect to such exercise.

10. **Exercise of Warrants; Consideration.**

(a) *Procedure for Exercise; Rights as a Shareholder.* Any Warrant granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Grant Agreement. Unless the Administrator provides otherwise, vesting of Warrants granted hereunder shall be tolled during any unpaid leave of absence. A Warrant may not be exercised for a fraction of a Share. A Warrant shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Grant Agreement) from the person entitled to exercise the Warrant, and (ii) full payment for the Shares with respect to which the Warrant is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Grant Agreement and Section 10(f) of the Plan. Shares issued upon exercise of a Warrant shall be issued in the name of the Warrantee. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Warranted Stock, notwithstanding the exercise of the Warrant. The Company shall issue (or cause to be issued) such Shares promptly after the Warrant is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 16 of the Plan. Exercising a Warrant in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Warrant, by the number of Shares as to which the Warrant is exercised.

(b) *Termination of Relationship as a Service Provider.* Unless otherwise specified in the Grant Agreement or provided by the Administrator, if a Warrantee ceases to be a Service Provider, other than as a result of (x) the Warrantee's death or Disability, (y) the termination of such Warrantee's services with Cause, or (z) the Warrantee's voluntary termination of service, the Warrantee may exercise his or her Warrant for up to ninety (90) days following the date on which the Warrantee ceases to be a Service Provider to the extent that the Warrant is vested on the date of termination (but in no event later than the expiration of the term of such Warrant as set forth in the Grant Agreement). If, on the date that the Warrantee ceases to be a Service Provider, the Warrantee is not vested as to his or her entire Warrant, the Shares covered by the unvested portion of the Warrant shall revert to the Plan. If, after the date that the Warrantee ceases to be a Service Provider the Warrantee does not exercise his or her Warrant in full within the time set forth herein or the Grant Agreement, as applicable, the unexercised portion of the Warrant shall terminate, and the Shares covered by such unexercised portion of the Warrant shall revert to the Plan. A Warrantee who changes his or her status as a Service Provider (e.g., from being an Employee to being a Consultant) or who transfers his or her services among the Company or any of its Subsidiaries shall not be deemed to have ceased being a Service Provider for purposes of this Section 10(b).

(c) *Disability of a Warrantee.* Unless otherwise specified in the Grant Agreement, if a Warrantee ceases to be a Service Provider as a result of the Warrantee's Disability, the Warrantee may exercise his or her Warrant, to the extent the Warrant is vested on the date that the Warrantee ceases to be a Service Provider, up until the one-year anniversary of the date on which the Warrantee ceases to be a Service Provider (but in no event later than the expiration of the term of such Warrant as set forth in the Grant Agreement). If, on the date that the Warrantee ceases to be a Service Provider, the Warrantee is not vested as to his or her entire Warrant, the Shares covered by the unvested portion of the Warrant shall revert to the Plan. If, after the Warrantee ceases to be a Service Provider, the Warrantee does not exercise his or her Warrant in full within the time set forth herein or the Grant Agreement, as applicable, the unexercised portion of the Warrant shall terminate, and the Shares covered by such unexercised portion of the Warrant shall revert to the Plan.

(d) *Death of a Warrantee.* Unless otherwise specified in the Grant Agreement, if a Warrantee dies while a Service Provider, the Warrant may be exercised, to the extent that the Warrant is vested on the date of death, by the Warrantee's estate or by a person who acquires the right to exercise the Warrant by bequest or inheritance up until the one-year anniversary of the Warrantee's death (but in no event later than the expiration of the term of such Warrant as set forth in the Notice of Grant). If, at the time of death, the Warrantee is not vested as to his or her entire Warrant, the Shares covered by the unvested portion of the Warrant shall revert to the Plan. If the Warrant is not so exercised in full within the time set forth herein or the Grant Agreement, as applicable, the unexercised portion of the Warrant shall terminate, and the Shares covered by the unexercised portion of such Warrant shall revert to the Plan.

(e) *Termination for Cause or Voluntary Termination.* If the Company or a Subsidiary to which a Service Provider provides services terminates the Service Provider's Services for Cause, or if a Service Provider voluntarily terminates his or her relationship with the Company or the Subsidiary, unless otherwise provided in such Service Provider's Grant Agreement or by the Administrator, the Service Provider shall have no right to exercise any of such Service Provider's Warrants at any time on or after the effective date of such termination.

(f) *Form of Consideration.* The Administrator shall determine the acceptable form of consideration for exercising a Warrant, including the method of payment. Such consideration may consist entirely of:

(i) cash denominated in U.S. Dollars;

(ii) wire transfer denominated in U.S. Dollars;

(iii) check denominated in U.S. Dollars;

(iv) other Shares which (A) in the case of Shares acquired upon exercise of a Warrant at a time when the Company is subject to Section 16(b) of the Exchange Act, have been owned by the Warrantee for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Warrant shall be exercised;

(v) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

(vi) a reduction in the number of Shares otherwise issuable by a number of Shares having a Fair Market Value equal to the exercise price of the Warrant being exercised;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

11. **Stock Awards.** The Administrator may, in its sole discretion, grant (or sell at par value or such higher purchase price as it determines) Shares to any Service Provider subject to such terms and conditions as the Administrator sets forth in a Stock Award Agreement evidencing such grant. Stock Awards may be granted or sold in respect of past services or other valid consideration or in lieu of any cash compensation otherwise payable to such individual. The grant of Stock Awards under this Section 11 shall be subject to the following provisions:

(a) At the time a Stock Award under this Section 11 is made, the Administrator shall establish a vesting period (the " Restricted Period") applicable to the Stock Award Shares subject to such Stock Award. The Administrator may, in its sole discretion, at the time a grant is made, prescribe restrictions in addition to the expiration of the Restricted Period, including the satisfaction of corporate or individual performance objectives. None of the Stock Award Shares may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the Restricted Period applicable to such Stock Award Shares or prior to the satisfaction of any other restrictions prescribed by the Administrator with respect to such Stock Award Shares.

(b) The Company shall issue, in the name of each Service Provider to whom Stock Award Shares have been granted, stock certificates representing the total number of Stock Award Shares granted to such person, as soon as reasonably practicable after the grant. The Company, at the direction of the Administrator, shall hold such certificates, properly endorsed for transfer, for the Stock Awardee's benefit until such time as the Stock Award Shares are forfeited to the Company, or the restrictions lapse.

(c) Unless otherwise provided by the Administrator, holders of Stock Award Shares shall have the right to vote such Shares and have the right to receive any cash dividends with respect to such Shares. All distributions, if any, received by a Stock Awardee with respect to Stock Award Shares as a result of any stock split, stock distribution, combination of shares, or other similar transaction shall be subject to the restrictions of this Section 11.

(d) Any Stock Award Shares granted to a Service Provider pursuant to the Plan shall be forfeited if the Service Provider voluntarily terminates his or her services with the Company or the Subsidiary to which the Service Provider provided his or her services, or if the Company or Subsidiary terminates the Service Provider's services for Cause, in each case prior to the expiration or termination of the applicable Restricted Period and the satisfaction of any other conditions applicable to such Stock Award Shares. Upon such forfeiture, the Stock Award Shares that are forfeited shall be retained in the treasury of the Company and be available for subsequent awards under the Plan. If the Stock Awardee's services terminate for any other reason prior to the expiration or termination of the applicable Restricted Period and the satisfaction of any other conditions applicable to such Stock Award Shares, the Stock Award Shares held by such person shall be forfeited, unless the Administrator, in its sole discretion, shall determine otherwise.

(e) Upon the expiration or termination of the Restricted Period and the satisfaction of any other conditions prescribed by the Committee, the restrictions applicable to the Stock Award Shares shall lapse and, at the Stock Awardee's request, a stock certificate for the number of Stock Award Shares with respect to which the restrictions have lapsed shall be delivered, free of all such restrictions, to the Stock Awardee or his beneficiary or estate, as the case may be.

(f) Prior to the delivery of any shares of Common Stock in connection with a Stock Award under this Section 11, the Company shall be entitled to require as a condition of delivery that the Stock Awardee shall pay or make adequate provision acceptable to the Company for the satisfaction of the statutory minimum prescribed amount of tax and other withholding obligations of the Company under Applicable Law, including, if permitted by the Administrator, by having the Company withhold from the number of shares of Common Stock otherwise deliverable in connection with a Stock Award, a number of shares of Common Stock having a Fair Market Value equal to an amount sufficient to satisfy such tax withholding obligations.

12. **Restricted Stock Units.** The Committee may, in its sole discretion, grant Restricted Stock Units to a Service Provider subject to such terms and conditions as the Committee sets forth in a Stock Award Agreement evidencing such grant.

(a) "Restricted Stock Units" are Awards denominated in units evidencing the right to receive Shares of Common Stock, which may vest over such period of time and/or upon satisfaction of such performance criteria or objectives as is determined by the Committee at the time of grant and set forth in the applicable Stock Award Agreement, without payment of any amounts by the Stock Awardee thereof (except to the extent required by law). Prior to delivery of shares of Common Stock with respect to an award of Restricted Stock Units, the Stock Awardee shall have no rights as a stockholder of the Company.

(b) Upon satisfaction and/or achievement of the applicable vesting requirements relating to an award of Restricted Stock Units, the Stock Awardee shall be entitled to receive a number of shares of Common Stock that are equal to the number of Restricted Stock Units that became vested. To the extent, if any, set forth in the applicable Stock Award Agreement, cash dividend equivalents may be paid during, or may be accumulated and paid at the end of, the applicable vesting period, as determined by the Committee.

(c) Unless otherwise provided by the Stock Award Agreement, any Restricted Stock Units granted to a Service Provider pursuant to the Plan shall be forfeited if the Stock Awardee's service with the Company or its Subsidiaries terminates for any reason prior to the expiration or termination of the applicable vesting period and/or the achievement of such other vesting conditions applicable to the award.

(d) Prior to the delivery of any shares of Common Stock in connection with an award of Restricted Stock Units, the Company shall be entitled to require as a condition of delivery that the Stock Awardee shall pay or make adequate provision acceptable to the Company for the satisfaction of the statutory minimum prescribed amount of tax and other withholding obligations of the Company under Applicable Law, including, if permitted by the Administrator, by having the Company withhold from the number of shares of Common Stock otherwise deliverable in connection with an award of Restricted Stock Units, a number of shares of Common Stock having a Fair Market Value equal to an amount sufficient to satisfy such tax withholding obligations.

13. **Unrestricted Shares.** The Administrator may grant Unrestricted Shares in accordance with the following provisions:

(a) The Administrator may cause the Company to grant Unrestricted Shares to Service Providers at such time or times, in such amounts and for such reasons as the Administrator, in its sole discretion, shall determine. No payment shall be required for Unrestricted Shares.

(b) The Company shall issue, in the name of each Service Provider to whom Unrestricted Shares have been granted, stock certificates representing the total number of Unrestricted Shares granted to such individual, and shall deliver such certificates to such Service Provider as soon as reasonably practicable after the date of grant or on such later date as the Administrator shall determine at the time of grant.

(c) Prior to the delivery of any Unrestricted Shares, the Company shall be entitled to require as a condition of delivery that the Stock Awardee shall pay or make adequate provision acceptable to the Company for the satisfaction of the statutory minimum prescribed amount of tax and other withholding obligations of the Company under Applicable Law, including, if permitted by the Administrator, by having the Company withhold from the number of Unrestricted Shares otherwise deliverable, a number of shares of Common Stock having a Fair Market Value equal to an amount sufficient to satisfy such tax withholding obligations.

14. **Stock Appreciation Rights.** A Stock Appreciation Right may be granted by the Committee either alone, in addition to, or in tandem with other Awards granted under the Plan. Each Stock Appreciation Right granted under the Plan shall be subject to the following terms and conditions:

(a) Each Stock Appreciation Right shall relate to such number of Shares as shall be determined by the Committee.

(b) The Award Date (*i.e.*, the date of grant) of a Stock Appreciation Right shall be the date specified by the Committee, provided that that date shall not be before the date on which the Stock Appreciation Right is actually granted. The Award Date of a Stock Appreciation Right shall not be prior to the date on which the recipient commences providing services as a Service Provider. The term of each Stock Appreciation Right shall be determined by the Committee, but shall not exceed ten years from the date of grant. Each Stock Appreciation Right shall become exercisable at such time or times and in such amount or amounts during its term as shall be determined by the Committee. Unless otherwise specified by the Committee, once a Stock Appreciation Right becomes exercisable, whether in full or in part, it shall remain so exercisable until its expiration, forfeiture, termination or cancellation.

(c) A Stock Appreciation Right may be exercised, in whole or in part, by giving written notice to the Committee. As soon as practicable after receipt of the written notice, the Company shall deliver to the person exercising the Stock Appreciation Right stock certificates for the Shares to which that person is entitled under Section 14(d) hereof.

(d) A Stock Appreciation Right shall be exercisable for Shares only. The number of Shares issuable upon the exercise of the Stock Appreciation Right shall be determined by dividing:

(i) the number of Shares for which the Stock Appreciation Right is exercised multiplied by the amount of the appreciation per Share (for this purpose, the "appreciation per Share" shall be the amount by which the Fair Market Value of a Share on the exercise date exceeds (x) in the case of a Stock Appreciation Right granted in tandem with a Warrant, the exercise price or (y) in the case of a Stock Appreciation Right granted alone without reference to a Warrant, the Fair Market Value of a Share on the Award Date of the Stock Appreciation Right); by

(ii) the Fair Market Value of a Share on the exercise date.

15. **Non-Transferability.** Unless determined otherwise by the Administrator, a Warrant or Stock Appreciation Right may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Warrantee, only by the Warrantee. If the Administrator makes a Warrant or Stock Appreciation Right transferable, such Warrant or Stock Appreciation Right shall contain such additional terms and conditions as the Administrator deems appropriate. Notwithstanding the foregoing, the Administrator, in its sole discretion, may provide in the Grant Agreement regarding a given Warrant that the Warrantee may transfer, without consideration for the transfer, his or her Warrants to members of his or her immediate family, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Warrant. During the period when Shares of Restricted Stock and Stock Award Shares are restricted (by virtue of vesting schedules or otherwise), such Shares may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution.

16. **Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale** .

(a) *Changes in Capitalization.* Subject to any required action by the shareholders of the Company, the number of Shares of Common Stock covered by each outstanding Award and the number of Shares of Common Stock which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Award, as well as the price per share of Common Stock covered by each such outstanding Award, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an Award hereunder. Except as expressly provided herein, the issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, for cash or property, or for labor or services either upon direct sale or upon the exercise of rights or warrants to subscribe therefore, or upon conversion of shares or obligations of the Company convertible into sub-shares or other securities, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock then subject to outstanding Warrants and Stock Appreciation Rights.

(b) *Corporate Transactions.* If the Company merges or consolidates with another corporation, whether or not the Company is the surviving corporation, or if the Company is liquidated or sells or otherwise disposes of substantially all its assets, or if any "person" (as that term is used in Section 13(d) and 14(d)(2) of the Exchange Act) is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing greater than 50% of the combined voting power of the Company's then outstanding securities (each such event a " Corporate Transaction Event") then (i) after the effective date of such Corporate Transaction Event, each holder of an outstanding Warrant or Stock Appreciation Right shall be entitled, upon exercise of such Warrant or Stock Appreciation Right to receive, in lieu of Shares of Common Stock, the number and class or classes of shares of such stock or other securities or property to which such holder would have been entitled if, immediately prior to such Corporate Transaction Event, such holder had been the holder of record of a number of Shares of Common Stock equal to the number of shares as to which such Warrant and Stock Appreciation Right may be exercised; and (ii) the Board may waive any limitations set forth in or imposed pursuant hereto so that all Warrants and Stock Appreciation Rights from and after a date prior to the effective date of such Corporate Transaction Event, as specified by the Board, shall be exercisable in full. Notwithstanding anything contained herein to the contrary, the proposed transaction between the Company and China Biopharmaceutical Holdings, Inc. shall not constitute a Corporate Transaction Event.

In the event of a Corporate Transaction Event, then each outstanding Stock Award shall be assumed or an equivalent agreement or award substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the Committee determines that the successor corporation or a Parent or a Subsidiary of the successor corporation has refused to assume or substitute an equivalent agreement or award for each outstanding Stock Award, all vesting periods and conditions under Stock Awards shall be deemed to have been satisfied. The Board may also, in its discretion, cause all vesting periods and conditions under Stock Awards to be deemed to have been satisfied.

17. **Substitute Warrants.** In the event that the Company, directly or indirectly, acquires another entity, the Board may authorize the issuance of Warrants ("Substitute Warrants") to the individuals performing services for the acquired entity (if such services are performed outside of the United States) in substitution of Warrants previously granted to those individuals in connection with their performance of services for such entity upon such terms and conditions as the Board shall determine. Shares of capital stock underlying Substitute Warrants shall not constitute Shares issued pursuant to the Plan for any purpose.

18. **Date of Grant.** The date of grant of an Award shall be, for all purposes, the date on which the Administrator makes the determination granting such Warrant, Stock Appreciation Right, Stock Award or Unrestricted Share, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each grantee within a reasonable time after the date of such grant.

19. **Amendment and Termination of the Plan**.

(a) *Amendment and Termination.* The Board may at any time amend, alter, suspend or terminate the Plan.

(b) *Shareholder Approval.* The Company shall obtain shareholder approval of any Plan amendment to the extent necessary to comply with Applicable Laws.

(c) *Effect of Amendment or Termination.* No amendment, alteration, suspension or termination of the Plan shall impair the rights of any grantee, unless mutually agreed otherwise between the grantee and the Administrator, which agreement must be in writing and signed by the grantee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination.

20. **Conditions Upon Issuance of Shares**.

(a) *Legal Compliance.* Shares shall not be issued in connection with the grant of any Stock Award or Unrestricted Share or the exercise of any Warrant or Stock Appreciation Right unless such grant or the exercise of such Warrant or Stock Appreciation Right and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) *Investment Representations.* As a condition to the grant of any Stock Award or Unrestricted Share or the exercise of any Warrant or Stock Appreciation Right, the Company may require the person receiving such Award or exercising such Warrant or Stock Appreciation Right to represent and warrant at the time of any such exercise or grant that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

(c) *Additional Conditions.* The Administrator shall have the authority to condition the grant of any Award in such other manner that the Administrator determines to be appropriate, provided that such condition is not inconsistent with the terms of the Plan.

(d) *Trading Policy Restrictions.* Warrant and or Stock Appreciation Right exercises and other Awards under the Plan shall be subject to the terms and conditions of any insider trading policy established by the Company or the Administrator.

21. **Inability to Obtain Authority.** The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

22. **Shareholder Approval.** The Plan shall be subject to approval by the shareholders of the Company within twelve (12) months after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under Applicable Laws. Notwithstanding any provision in the Plan to the contrary, any exercise of a Warrant or Stock Appreciation Right granted before the Company has obtained shareholder approval of the Plan in accordance with this Section 22 shall be conditioned upon obtaining such shareholder approval of the Plan in accordance with this Section 22.

23. **Withholding; Notice of Sale.** The Company shall be entitled to withhold from any amounts payable to a Service Provider any amounts which the Company determines, in its discretion, are required to be withheld under any Applicable Law as a result of any action taken by a holder of an Award.

24. **Governing Law.** This Plan shall be governed by the laws of the State of Delaware, without regard to conflict of law principles.

April 4, 2011

Dr. Robin L. Smith
930 Fifth Avenue
Suite 8H
New York, NY 10021

Dear Robin:

This letter is being written to serve as an amendment to the employment agreement between you and NeoStem, Inc. (the "Company") dated as of May 26, 2006 (as amended on each of January 26, 2007, September 27, 2007, January 9, 2008, August 29, 2008 and July 29, 2009) pursuant to which you serve as the Company's Chairman of the Board and Chief Executive Officer (the "Agreement"). Except as set forth herein, the Agreement shall remain unchanged. Initially capitalized terms used herein but not defined herein shall have the meaning set forth in the Agreement.

1. Extension of Term.

The Term of the Agreement is hereby extended from December 31, 2011 to December 31, 2012.

2. Cash Bonus.

You shall be paid a cash bonus on October 1st of each of 2011 and 2012. The minimum amount of each such bonus shall be 110% of your prior year's bonus. You shall remain eligible for additional cash bonuses, stock grants and option awards as may be determined by the Company's Compensation Committee.

3. Effect of Non-Renewal.

Notwithstanding anything in the Agreement to the contrary, a failure to renew the Agreement at the end of the term (as extended by this amendment), regardless of the reason therefor, shall be treated for all purposes under the Agreement as a termination by the Company Without Cause.

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4. Termination by you.

Notwithstanding anything in the Agreement to the contrary, if you terminate the Agreement, other than for Good Reason, the Company shall pay you your Base Salary and your COBRA premiums for a period of one year.

5. Restrictive Covenants.

As a condition of enforcing any restrictive covenants contained in the Employee Confidentiality, Invention Assignment and Non-Compete Agreement dated as July 6, 2006 you entered into with the Company, your Agreement or any other agreement that contains a non-competition, non-solicitation, non-raiding or similar covenant (collectively, "Restrictive Covenants"), the Company agrees to pay you your Base Salary and your COBRA premiums during any period in which you are bound by any Restrictive Covenant; provided it shall not be paid in the event you are being paid your Base Salary under #3 or #4 above.

6. Stock Option Grant.

In connection with this amendment to your Agreement, you are being granted an option under the Company's 2009 Equity Compensation Plan to purchase 1,500,000 shares of Common Stock at a per share exercise price equal to the closing price of the Common Stock on the date of execution of this amendment to your Agreement, vesting as to (i) 500,000 shares immediately upon grant, (ii) 500,000 shares on December 31, 2011 and (iii) 500,000 shares on December 31, 2012.

7. Acceleration of Vesting of Existing Options.

Upon your agreement to this amendment to your Agreement, all unvested options that you hold as of the date hereof (other than the options described in paragraph 6 above) shall be deemed fully vested.

8. Extension of Time for Option Exercise.

Notwithstanding anything in the Agreement, or in any option grant agreement under the Company's 2003 Equity Participation Plan, the Company's 2009 Equity Compensation Plan, or any other plan under which you currently hold, or may receive after the date hereof, options during the Term, each vested option shall remain exercisable following the termination of your employment with the Company for the life of such option (i.e. the expiration date in effect for such option on the day immediately prior to the termination of your employment with the Company).

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9. Covenant to Remove Legends.

The Company agrees that it shall not place a legend restricting transfer on certificates representing shares of Common Stock that you own (i) following any sale of such shares pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), (ii) following any sale of such shares pursuant to Rule 144 under the Securities Act or (iii) if such shares are eligible for sale by you under Rule 144 without volume limitation. If any option for Common Stock held by you is exercised at a time when the underlying shares may be sold under Rule 144 without volume limitation, then such shares shall be issued free of all restrictive legends. In addition, the Company shall instruct its counsel to issue a legal opinion to the Company's transfer agent to effect the removal of any restrictive legend then appearing on any certificate(s) representing shares of Common Stock that you own (i) following any sale of such shares pursuant to an effective registration statement under the Securities Act, (ii) following any sale of such shares pursuant to Rule 144 or (iii) if such shares are eligible for sale by you under Rule 144 without volume limitation. In such event, the Company will, no later than three business days following the delivery to the Company or the Company's transfer agent of the certificate or certificates representing such shares, deliver or cause to be delivered to you a certificate or certificates that are free from all restrictive or other legends. You shall be entitled to receive reimbursement from the Company for any costs and expenses (including attorney's fees) incurred by you in connection with the enforcement of your rights under this paragraph. Notwithstanding the foregoing, for so long as you are an "affiliate" of the Company and for ninety (90) days thereafter, it is understood and agreed that your certificates shall bear the Company's standard "affiliate legend" in accordance with the Company's policies.

10. Covenant to Furnish Information

The Company agrees to use its reasonable best efforts once you cease to be employed by the Company and for so long as you own shares of Common Stock the sale of which would require that the current public information provision of Rule 144 be met, to (i) timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (ii) if the Company is not required to file reports pursuant to the Exchange Act, it will prepare and furnish to you and make publicly available in accordance with Rule 144(c) such information as is required for you to sell the Common Stock under Rule 144, and (iii) take such further action as you may reasonably request, to the extent required from time to time to enable you to sell your Common Stock without registration under the Securities Act within the requirements of the exemption provided by Rule 144.

The Company represents that this Amendment including each of its terms has been approved by the Company's Compensation Committee.

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Very truly yours,

NeoStem, Inc.

By: /s/ Richard Berman
Name: Richard Berman
Title: Chairman of Compensation Committee

Accepted and agreed:

/s/ Robin Smith
Robin Smith

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EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of February 25, 2011 and effective on the Commencement Date (March 4, 2011) by and between NeoStem, Inc. (the "Company") and Jason Kolbert (the "Employee").

WITNESSETH**:**

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

Section 1. ***Employment***. The Company agrees to employ the Employee, and the Employee agrees to be employed by the Company on a full-time basis, continuing for a three (3) year period until three years after the Commencement Date (the "Term") and renewable upon mutual agreement of the parties hereto. The Employee hereby represents and warrants that he has the legal capacity to execute and perform this Agreement, and that its execution and performance by him will not violate the terms of any existing agreement or understanding to which the Employee is a party.

Section 2. ***Position and Duties***. During the Term, the Employee shall (i) render services as the Chief Strategic Officer of the Company and (ii) perform duties consistent with such title and such other related duties as the CEO shall reasonably request. Employee will report to the CEO. During the Term, and except for reasonable vacation periods pursuant to the Company's policies, the Employee shall devote his time, attention, skill and efforts to the business and affairs of the Company and its subsidiaries and affiliates Employee shall be based in or around New York and Allendale, New Jersey; however, it is understood that reasonable travel shall be required from time-to-time including but not limited to China.

Section 3. ***Compensation***. For all services rendered by the Employee in any capacity required hereunder during the Term, the Employee shall be compensated as follows:

(a) The Company shall pay the Employee a fixed annual salary equal to $190,000 (the "Base Salary") in accordance with the Company's payroll practices, including the withholding of appropriate payroll taxes.

(b) The Employee shall be entitled to participate in all compensation and employee benefit plans or programs, and to receive all benefits and perquisites, which are approved by the Board of Directors and are generally made available by the Company to all salaried employees of the Company and to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof. Notwithstanding any of the foregoing, nothing in this Agreement shall require the Company or any subsidiary or affiliate thereof to establish, maintain or continue any particular plan or program nor preclude the amendment, rescission or termination of any such plan or program that may be established from time to time. Effective upon the Commencement Date of this Agreement, the Employee shall be granted an option (the "Option") to purchase 350,000 shares (the "Option Shares") of the Company's common stock, $.001 par value (the "Common Stock") under and subject to the Company's 2009 Equity Compensation Plan ("2009 Equity Plan") at an exercise price equal to the closing price of the Common Stock on the Commencement Date. The Option shall vest and become exercisable subject to Employee's continued employment as to 50,000 on signing and 100,000 Option Shares on each of the first, second and third one year anniversaries of the Commencement Date respectively, provided that the Employee remains employed by the Company on each of such dates. The foregoing Option is subject in all respects to the terms and conditions of the 2009 Equity Plan and applicable law and shall be subject to a written grant agreement setting forth the terms and conditions to which such Option grant shall be subject. All Option and Option Share issuances are subject to Employee's execution of the Company's Insider Trading Policy. In addition, Employee acknowledges that in his position, he will be an "affiliate" of the Company for purposes of U.S. securities laws and the Option Shares and any transfer of the Option Shares will be treated as such. Employee shall eligible for an annual cash bonus of up to 25% of his base salary in year 1, 35% year of his base salary in year 2, and 50% of his base salary in year 3.

Section 4. ***Business Expenses***. The Company shall pay or reimburse the Employee for all reasonable travel (it being understood that travel shall be arranged by the Company) and other reasonable expenses incurred by the Employee in connection with the performance of his duties and obligations under this Agreement, subject to the Employee's presentation of appropriate vouchers or receipts in accordance with such policies and approval procedures as the Company may from time to time establish for employees (including but not limited to prior approval of extraordinary expenses) and to preserve any deductions for Federal income taxation purposes to which the Company may be entitled.

Section 5. ***Benefits; Perquisites; Expense Reimbursement.*** In addition to those payments set forth above, Employee shall be entitled to the following benefits and payments:

(a) Vacation. Employee shall be entitled to three (3) weeks paid vacation per calendar year (pro rated in the event of a service year which is shorter than a calendar year), in addition to Company holidays. Any vacation time not used during a calendar year will be forfeited without compensation.

(b) Perquisites and Reimbursement of Expenses. Employee shall receive perquisites generally available to senior executives of the Company, including, but not limited to, payment or reimbursement for cell phone, blackberry and internet service.

Section 6. ***Termination of Employment***.

The Employee's employment hereunder may be terminated upon the occurrence of any of the following events:

(a) Termination for Cause. The Company may terminate the Employee's employment hereunder for Cause at any time. For purposes of this Agreement, "Cause" shall mean (i) conviction of, or plea of nolo contendere to, a felony or crime involving moral turpitude; (ii) fraud on or misappropriation of any funds or property of the Company; (iii) personal dishonesty, willful misconduct, willful violation of any law, rule or regulation (other than minor traffic violations or similar offenses) or breach of fiduciary duty which involves personal profit; (iv) willful misconduct in connection with Employee's duties; (v) chronic use of alcohol, drugs or other similar substances which affects the Employee's work performance; or (vi) material breach by Employee of Employee's (x) employment agreement or (y) non-disclosure, non-competition, non-solicitation or other similar agreement executed by the Employee for the benefit of the Company, where in the case of a breach of the employment agreement pursuant to clause (vi)(x) such breach is not cured by Employee within 30 days following receipt of written notice specifying the breach.

(b) Termination without Cause. The Company may terminate the Employee's employment hereunder other than for Cause at any time upon thirty (30) days prior written notice.

(c) Resignation for Good Reason. The Employee may voluntarily terminate his employment hereunder for Good Reason upon ninety (90) days' prior written notice to the Company. For purposes of this Agreement, "Good Reason" shall mean (i) material breach by the Company of Employee's employment agreement; (ii) Employee's position has been materially reduced or Employee has repeatedly been assigned duties that are materially inconsistent with his duties set forth herein; or (iii) the Company seeks to relocate Employee more than 150 miles from Allendale, New Jersey or San Francisco, California, as applicable. Anything herein to the contrary notwithstanding, "Good Reason" shall not be deemed to occur within the meaning of clauses (i) - (iii) above unless the Employee provides written notice to the Company within thirty (30) days of the initial occurrence of the event or condition constituting Good Reason stating the basis of such termination and the Company fails to cure such event or condition within thirty (30) days of receipt of such notice, and the Employee's employment shall not be deemed to be terminated for Good Reason unless the Employee's voluntary termination for Good Reason occurs no more than one (1) year after the initial occurrence of the event or condition constituting Good Reason.

(d) Resignation without Good Reason. The Employee may voluntarily terminate his employment hereunder for any reason at any time, including for any reason that does not constitute Good Reason, upon ninety (90) days' prior written notice to the Company.

(e) Disability. The Employee's employment hereunder shall terminate upon his Disability. For purposes of this Agreement, "Disability" shall mean the inability of the Employee to perform his duties to the Company on account of physical or mental illness or incapacity for a period of ninety (90) consecutive calendar days or one hundred eighty (180) calendar days (whether or not consecutive) during any 365-day period, as a result of a condition that is treated as a total or permanent disability under the long-term disability insurance policy of the Company that covers the Employee.

(f) Death. The Employee's employment hereunder shall terminate upon his death.

(g) Resignation from Directorships, Officerships and Committees. The termination of the Employee's employment for any reason shall constitute the Employee's resignation from (i) any director, officer, employee or committee position the Employee has with the Company or any of their affiliates and (ii) all fiduciary positions the Employee holds with respect to any employee benefit plans or trusts established by the Company. The Employee agrees that this Agreement shall serve as written notice of resignation in this circumstance.

Section 7. ***Compensation upon Termination of Employment.*** All defined terms used in this Section 7 but not defined in Section 7(e) or elsewhere in this Agreement shall have the meanings ascribed to such terms in the Confidentiality, Non-Compete and Inventions Assignment Agreement attached as Annex A hereto:

(a) Resignation for Good Reason; Termination without Cause. In the event that during the Term the Company terminates Employee's employment other than for Cause or the Employee voluntarily terminates his employment for Good Reason, the Company shall provide the Employee with the following payments and benefits, subject to the Employee's execution and nonrevocation of a release of claims as provided in Section 7(d) hereof and compliance with the restrictive covenants referred to in Section 8 hereof:

(i) Accrued Rights. The Company shall pay the Employee a lump-sum amount, within thirty (30) business days following the date of termination of the Employee's employment, equal to the sum of his earned but unpaid Base Salary through the date of termination, and (B) any unreimbursed business expenses or other amounts due to the Employee from the Company as of the date of termination (the " Accrued Rights").

(ii) Additional Payments. Subject to the terms and conditions set forth in this Section 7(a)(ii), the Company shall make additional payments to Employee in the form of continuation of Employee's then-current Base Salary for a period of three (3) months, payable in accordance with the Company's regular payroll practices, commencing on the first regular payroll date that occurs on or after the 55 th day after the date of termination of employment. The Company will only be required to make the payments set forth in this Section 7(a)(ii) on the condition that (1) the Employee will be governed by the non-competition and non-solicitation restrictions in Section 3 of Annex A until the date that is the later of the date that is (x) four (4) years from the closing of the Merger with PCT or (y) two (2) years from the date of termination of employment and (2) that Employee executes and delivers to the Company, no later than 45 days after the date of termination, a Release (as defined below) and does not revoke the Release.

(iii) Continued Benefits. The Employee and his eligible dependents shall be entitled to continue participation in the Company's group health plans in accordance with the health care continuation requirements of the Consolidated Omnibus Reconciliation Act of 1985 ("COBRA").

(b) Resignation without Good Reason; Termination for Cause or upon Death or Disability. In the event that during the Term the Company terminates Employee's employment for Cause, the Employee voluntarily terminates his employment other than for Good Reason, or the Employee's employment is terminated on account of death or Disability, the Company shall pay the Employee and provide him with any Accrued Rights under Section 7(a)(i) hereof. The Employee will be governed by the non-competition and non-solicitation restrictions in Section 3 of Annex A until the date that is the later of the date that is (x) four (4) years from the closing of the Merger with PCT or (y) two (2) years from the date of termination of employment, without additional compensation. All stock options shall be treated in accordance with the 2009 Equity Plan.

(c) No Further Rights. The Employee shall have no further rights under this Agreement or otherwise to receive any other compensation or benefits after such termination or resignation of employment, except with respect to the payments provided for under this Section 7. Employee acknowledges that all additional payments set forth in Section 7(a)(ii) are additional consideration for compliance with the restrictive covenants regarding non-competition in the PCT Business.

(d) Release of Claims. Notwithstanding anything contained in this Agreement to the contrary, the Company's provision of the payments and benefits under Section 7(a)(ii) hereof shall be contingent in all respects upon the Employee executing (and not revoking) a general release of claims against the Company and its affiliates, in the form provided by the Company (the "Release").

Section 8. ***Confidentiality; Covenant Against Competition; Proprietary Information; Corporate Policies.***

(a) Confidentiality, Non-Compete and Inventions Assignment Agreement. The Employee acknowledges that Employee as a condition to this Agreement, is simultaneously executing a Confidentiality, Non-Compete and Inventions Assignment Agreement attached hereto as Annex A and that the terms of such agreement will be in full force and effect as of the Commencement Date.

(b) Corporate Policies. The Employee acknowledges and agrees that on the Commencement Date, he will execute and be bound by the Company's various corporate policies, including but not limited to its expense reimbursement policies.

Section 9. ***Withholding Taxes***. The Company may directly or indirectly withhold from any payments made under this Agreement all Federal, state, city or other taxes and all other deductions as shall be required pursuant to any law or governmental regulation or ruling or pursuant to any contributory benefit plan maintained by the Company in which the Employee may participate.

Section 10. ***Notices***. All notices, requests, demands and other communications required or permitted hereunder shall be given in writing and shall be deemed to have been duly given if delivered or mailed, postage prepaid, by certified or registered mail or by use of an independent third party commercial delivery service for same day or next day delivery and providing a signed receipt as follows:

NeoStem, Inc.
420 Lexington Avenue
Suite 450
New York, New York 10170
Attention: General Counsel

(c) To the Employee:

_____
_____
_____
_____

or to such other address as either party shall have previously specified in writing to the other. Notice by mail shall be deemed effective on the second business day after its deposit with the United States Postal Service, notice by same day courier service shall be deemed effective on the day of deposit with the delivery service and notice by next day delivery service shall be deemed effective on the day following the deposit with the delivery service.

Section 11. ***No Attachment***. Except as required by law, no right to receive payments under this Agreement shall be subject to anticipation, commutation, alienation, sale, assignment, encumbrance, charge, pledge, or hypothecation or to execution, attachment, levy, or similar process or assignment by operation of law, and any attempt, voluntary or involuntary, to effect any such action shall be null, void and of no effect; provided, however, that nothing in this Section 11 shall preclude the assumption of such rights by executors, administrators or other legal representatives of the Employee or his estate and their conveying any rights hereunder to the person or persons entitled thereto.

Section 12. ***Source of Payment***. All payments provided for under this Agreement shall be paid in cash from the general funds of the Company. The Company shall not be required to establish a special or separate fund or other segregation of assets to assure such payments, and, if the Company shall make any investments to aid it in meeting its obligations hereunder, the Employee shall have no right, title or interest whatever in or to any such investments except as may otherwise be expressly provided in a separate written instrument relating to such investments. Nothing contained in this Agreement, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship, between the Company and the Employee or any other person. To the extent that any person acquires a right to receive payments from the Company hereunder, such right, without prejudice to rights which employees may have, shall be no greater than the right of an unsecured creditor of the Company.

Section 13. ***Binding Agreement; No Assignment***. This Agreement shall be binding upon, and shall inure to the benefit of, the Employee and the Company and their respective permitted successors, assigns, heirs, beneficiaries and representatives. This Agreement is personal to the Employee and may not be assigned by him. This Agreement may not be assigned by the Company except (a) in connection with a sale of all or substantially all of its assets or a merger or consolidation of the Company, or (b) to an entity that is a subsidiary or affiliate of the Company or the Parent. Any attempted assignment in violation of this Section 13 shall be null and void.

Section 14. ***Governing Law; Consent to Jurisdiction***. The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of New York. In addition, the Employee and the Company irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the United States District Court sitting in New York County for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on the Employee or the Company anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. The Employee and the Company irrevocably consent to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court.

Section 15. ***Entire Agreement; Amendments.*** This Agreement (together with Annex A hereto) embodies the entire agreement between Employee, and the Company with respect to the subject matter hereof and may only be amended or otherwise modified by a writing executed by all of the parties hereto.

Section 16. ***Counterparts***. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 17. ***Severability; Blue-Pencilling***. The provisions, sections and paragraphs, and the specific terms set forth therein, of this Agreement are severable. If any provision, section or paragraph, or specific term contained therein, of this Agreement or the application thereof is determined by a court to be illegal, invalid or unenforceable, that provision, section, paragraph or term shall not be a part of this Agreement, and the legality, validity and enforceability of remaining provisions, sections and paragraphs, and all other terms therein, of this Agreement shall not be affected thereby. The Employee acknowledges and agrees that as to himself, the restrictive covenants contained herein and in Annex A hereto (the "Restrictive Covenants") are reasonable and valid in geographical and temporal scope and in all other respects. If any court determines that any of such Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. It is the desire and intent of the parties that the Restrictive Covenants will be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any Restrictive Covenant shall be adjudicated to be invalid or unenforceable, such Restrictive Covenant shall be deemed amended to the extent necessary in order that such provision be valid and enforceable, such amendment to apply only with respect to the operation of such Restrictive Covenant in the particular jurisdiction in which such adjudication is made.

Section 18. ***Prior Agreements.*** This Agreement supersedes all prior agreements and understandings (including verbal agreements) between Employee and the Company regarding the terms and conditions of Employee's employment with the Company.

Section 19. ***409A Compliance.***

(a) Notwithstanding anything to the contrary contained herein, if necessary to comply with the restriction in Section 409A(a)(2)(B) of the Internal Revenue Code of 1986, as amended (the "Code") concerning payments to "specified employees," any payment on account of the Employee's separation from service that would otherwise be due hereunder within six months after such separation shall nonetheless be delayed until the first business day of the seventh month following the Employee's date of termination and the first such payment shall include the cumulative amount of any payments that would have been paid prior to such date if not for such restriction, together with interest on such cumulative amount during the period of such restriction at a rate, per annum, equal to the applicable federal short-term rate (compounded monthly) in effect under Section 1274(d) of the Code on the date of termination. For purposes of Section 7 hereof, the Employee shall be a "specified employee" for the 12-month period beginning on the first day of the fourth month following each "Identification Date" if he is a "key employee" (as defined in Section 416(i) of the Code without regard to Section 416(i)(5) thereof) of the Company at any time during the 12-month period ending on the "Identification Date." For purposes of the foregoing, the Identification Date shall be December 31.

(b) This Agreement is intended to comply with the requirements of Section 409A of the Code and regulations promulgated thereunder ("Section 409A"). To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A, the provision shall be read in such a manner so that no payments due under this Agreement shall be subject to an "additional tax" as defined in Section 409A(a)(1)(B) of the Code. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may the Employee, directly or indirectly, designate the calendar year of payment. Notwithstanding anything contained herein to the contrary, the Employee shall not be considered to have terminated employment with the Company for purposes of Section 7 hereof unless he would be considered to have incurred a "termination of employment" from the Company within the meaning of Treasury Regulation §1.409A-1(h)(1)(ii).

(c) All reimbursements provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during the Employee's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement is not subject to liquidation or exchange for another benefit.

[Signature follows on next page]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by their respective duly authorized officers and the Employee has signed this Agreement, all as of the first date above written but effective as of the Commencement Date.

NEOSTEM, INC.

By: /s/ Robin Smith
Name: Robin Smith
Title: CEO

/s/ Jason Kolbert
Jason Kolbert

ANNEX A

NEOSTEM, INC.

Confidentiality, Proprietary Information and Inventions Agreement

I recognize that NeoStem, Inc., a Delaware corporation (the "Company"), is engaged in the business of the collection, storage, manufacturing, therapeutic development and transportation of cells for cell based medicine and regenerative science, including cord blood and adult stem cell banking, the research and development of proprietary cellular therapies including very small embryonic like (VSEL) stem cells and other stem cell populations, and is pursuing other stem cell initiatives in the People's Republic of China and elsewhere as well as engaging in the generic pharmaceutical business in China (the "Business"). Any company with which the Company enters into, or seeks or considers entering into, a business relationship in furtherance of the Business is referred to as a "Business Partner."

I understand that as part of my performance of duties as a consultant or employee to the Company (the "Engagement"), I will have access to confidential or proprietary information of the Company and the Business Partners, and I may make new contributions and inventions of value to the Company. I further understand that my Engagement creates in me a duty of trust and confidentiality to the Company with respect to any information: (1) related, applicable or useful to the business of the Company, including the Company's anticipated research and development or such activities of its Business Partners; (2) resulting from tasks performed by me for the Company; (3) resulting from the use of equipment, supplies or facilities owned, leased or contracted for by the Company; or (4) related, applicable or useful to the business of any partner, client or customer of the Company, which may be made known to me or learned by me during the period of my Engagement.

For purposes of this Agreement, the following definitions apply:

"Proprietary Information" shall mean information relating to the Business or the business of any Business Partner and generally unavailable to the public that has been created, discovered, developed or otherwise has become known to the Company or in which property rights have been assigned or otherwise conveyed to the Company or a Business Partner, which information has economic value or potential economic value to the business in which the Company is or will be engaged. Proprietary Information shall include, but not be limited to, trade secrets, processes, formulas, writings, data, know-how, negative know-how, improvements, discoveries, developments, designs, inventions, techniques, technical data, patent applications, customer and supplier lists, financial information, business plans or projections and any modifications or enhancements to any of the above.

"Inventions" shall mean all Business-related discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, writings, graphics and other data, whether or not patentable or registrable under patent, copyright or similar statutes, that are related to or useful in the business or future business of the Company or its Business Partners or result from use of premises or other property owned, leased or contracted for by the Company. Without limiting the generality of the foregoing, Inventions shall also include anything related to the Business that derives actual or potential economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

As part of the consideration for my Engagement or continued Engagement, as the case may be, and the compensation received by me from the Company from time to time, I hereby agree as follows:

1. Proprietary Information and Inventions. All Proprietary Information and Inventions related to the Business shall be the sole property of the Company and its assigns, and the Company or its Business Partners, as the case may be, and their assigns shall be the sole owner of all patents, trademarks, service marks, copyrights and other rights (collectively referred to herein as "Rights") pertaining to Proprietary Information and Inventions. I hereby assign to the Company, any rights I may have or acquire in Proprietary Information or Inventions or Rights pertaining to the Proprietary Information or Inventions which Rights arise in the course of my Engagement. I further agree as to all Proprietary Information or Inventions to which Rights arise in the course of my Engagement to assist the Company or any person designated by it in every proper way (but at the Company's expense) to obtain and from time to time enforce Rights relating to said Proprietary Information or Inventions in any and all countries. I will execute all documents for use in applying for, obtaining and enforcing such Rights in such Proprietary Information or Inventions as the Company may desire, together with any assignments thereof to the Company or persons designated by it. My obligation to assist the Company or any person designated by it in obtaining and enforcing Rights relating to Proprietary Information or Inventions shall continue beyond the cessation of my Engagement ("Cessation of my Engagement"). In the event the Company is unable, after reasonable effort, to secure my signature on any document or documents needed to apply for or enforce any Right relating to Proprietary Information or to an Invention, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact to act for and in my behalf and stead in the execution and filing of any such application and in furthering the application for and enforcement of Rights with the same legal force and effect as if such acts were performed by me. I hereby acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of my Engagement and which are protectable by copyright are "works for hire" as that term is defined in the United States Copyright Act (17 USCA, Section 101).

2. Confidentiality. At all times, both during my Engagement and after the Cessation of my Engagement, whether the cessation is voluntary or involuntary, for any reason or no reason, or by disability, I will keep in strictest confidence and trust all Proprietary Information, and I will not disclose or use or permit the use or disclosure of any Proprietary Information or Rights pertaining to Proprietary Information, or anything related thereto, without the prior written consent of the Company, except as may be necessary in the ordinary course of performing my duties for the Company. I recognize that the Company has received and in the future will receive from third parties (including Business Partners) their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree that I owe the Company and such third parties (including Business Partners), during my Engagement and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence, and I will not disclose or use or permit the use or disclosure of any such confidential or proprietary information without the prior written consent of the Company, except as may be necessary in the ordinary course of performing my duties.

3. Noncompetition and Nonsolicitation.

(a) During my Engagement, and for a period of two (2) years after the Cessation of my Engagement, I will not directly or indirectly, whether alone or in concert with others or as a partner, officer, director, consultant, agent, employee or stockholder of any company or commercial enterprise, directly or indirectly, engage in any activity in the United States, Canada or Asia that the Company shall determine in good faith is in competition with the Company concerning its work or any Business Partner's work in the Business. During my Engagement and for a period of two (2) years after the Cessation of my Engagement, I will not, either directly or indirectly, either alone or in concert with others, solicit or encourage any employee of or consultant to the Company or any Business Partner to leave the Company or Business Partner or engage directly or indirectly in competition with the Company or Business Partner in the Business. During my Engagement and for a period of two (2) years after the Cessation of my Engagement, I agree not to plan or otherwise take any preliminary steps, either alone or in concert with others, to set up or engage in any business enterprise that would be in competition with the Business. The following shall not be deemed to breach the foregoing obligation: (i) my ownership of stock, partnership interests or other securities of any entity not in excess of two percent (2%) of any class of such interests or securities which is publicly traded. It is understood and agreed that the restrictions contained in this Section 3 shall immediately cease to be of force and effect in the event the Company and its Business Partner ceases to be engaged in the Business.

(b) Consultant acknowledges that (i) the restrictions contained in this section are reasonable and necessary to protect the legitimate business interests of the Company, (ii) that the two (2) year term of this obligation is reasonable in scope, (iii) that Consultant is engaged in other businesses other than the Business, such that this obligation shall not prevent Consultant from being able to continue operating in other businesses, and (iv) that this obligation is a material term, without which the Company would be unwilling to enter into the Consulting Agreement entered into concurrently with this Agreement.

(c) Consultant further acknowledges that any breach or threatened breach by Consultant of any provision hereof may result in immediate and irreparable injury to the Company, and that such injury may not be readily compensable by monetary damages. In the event of any such breach or threatened breach, Consultant acknowledges that, in addition to all other remedies available at law and equity, the Company shall be entitled to seek equitable relief (including a temporary restraining order, a preliminary injunction and/or a permanent injunction), and an equitable accounting of all earnings, profits or other benefits arising from such breach and will be entitled to receive such other damages, direct or consequential, as may be appropriate. In addition, and not instead of, those rights, Consultant further acknowledges that Consultant shall be responsible for payment of the fees and expenses of the Company's attorneys and experts, as well as the Company's court costs, pertaining to any suit, action, or other proceeding, arising directly or indirectly out of Consultant's violation or threatened violation of any of the provisions of this section. The Company shall not be required to post any bond or other security in connection with any proceeding to enforce this section.

4. Delivery of Company Property and Work Product. In the event of the Cessation of my Engagement, I will deliver to the Company all biological materials, devices, records, sketches, reports, memoranda, notes, proposals, lists, correspondence, equipment, documents, photographs, photostats, negatives, undeveloped film, drawings, specifications, tape recordings or other electronic recordings, programs, data, marketing material and other materials or property of any nature belonging to the Company or clients or customers, and I will not take with me, or allow a third party to take, any of the foregoing or any reproduction of any of the foregoing.

5. Equitable Relief. I acknowledge that irreparable injury may result to the Company from my violation or continued violation of the terms of this Agreement and, in such event, I expressly agree that the Company shall be entitled, in addition to damages and any other remedies provided by law, to an injunction or other equitable remedy respecting such violation or continued violation by me.

6. Thorough Understanding of Agreement. I have read all of this Agreement and understand it completely, and by my signature below I represent that this Agreement is the only statement made by or on behalf of the Company upon which I have relied in signing this Agreement.

IN WITNESS WHEREOF, I have caused this Confidentiality, Proprietary Information and Inventions Agreement to be signed on the date written below.

DATED: Feb. 25, 2011

/s/ Jason Kolbert
Jason Kolbert

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT, by and between Acute Care Partners, a California corporation (hereinafter, the "Consultant"), having an address at 703 Saint James Place, Newport Beach, CA 92663 and **NeoStem, Inc.,** a Delaware corporation (the "Company"), having offices at 420 Lexington Avenue, Suite 450, New York, New York 10170.

WHEREAS, the Company is engaged in the business of the collection, storage, manufacturing, therapeutic development and transportation of cells for cell based medicine and regenerative science, including cord blood and adult stem cell banking, the research and development of proprietary cellular therapies including very small embryonic like (VSEL) stem cells and other stem cell populations, and is pursuing other stem cell initiatives in the People's Republic of China and elsewhere as well as engaging in the generic pharmaceutical business in China (the "Business"); and

WHEREAS, the Consultant's sole shareholder, Edward C. Geehr, M.D., is an Independent Director on the Company's Board of Directors, and whereas after due consideration, the Company's Board of Directors has determined that the Consultant's services to the Company, whether directly or indirectly, pursuant to the Terms of this Agreement, are in accordance with, and will not affect, Dr. Geehr's status as an Independent Director to the Company.

WHEREAS, the Consultant has expertise in areas that would benefit the Company and the Company and Consultant wish for Consultant to provide services to the Company as hereinafter provided.

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Consultant hereby agree as follows:

1. Relationship. The Consultant shall serve as an advisor to the Company with regard to advancing therapeutic products developmentally and commercially and will take direction from NeoStem's CEO. It is expressly agreed that the services to be provided hereunder shall be provided through Edward C. Geehr, M.D. It is the express intention of the parties to this Agreement that the Consultant and/or its shareholder, Dr. Geehr, is an independent contractor, and not an employee or agent of the Company for any purpose whatsoever.

2. Compensation.

(a) As compensation for the Services, the Consultant shall be granted upon the full execution of this Agreement, an option under the Company's 2009 Equity Compensation Plan (the "Plan") to purchase 115,000 shares (the "Shares") of the Company's Common Stock which shall be exercisable at a per share exercise price equal to the fair market value of a share of Common Stock on the date of grant, shall vest and become exercisable as to one-quarter of the Shares on each of the first, second, third and fourth monthly anniversaries of the date of grant (each, a "Vesting Date"); provided that on each Vesting Date the consultant continues to be providing services as a Consultant under this Agreement and shall otherwise be subject to all of the terms of the Plan. It is further agreed and acknowledged that Consultant's compensation pursuant to this Agreement does not and will not exceed the NYSE Amex allowable amount of one hundred and twenty thousand dollars ($120,000) as valued by Black-Scholes option pricing model.

(b) The Consultant shall be solely responsible for all reporting and paying of any and all national, federal, state and local taxes, and for any contributions and withholding and any other claim related to or arising out of any compensation paid by the Company to the Consultant hereunder.

3. Term and Termination. The term of this Agreement shall commence immediately upon full execution by the parties hereto and shall terminate four (4) calendar months thereafter unless terminated earlier by the Company upon ten (10) days written notice to Consultant (or terminated immediately if for cause).

4. Confidentiality. The Consultant agrees to execute and perform the Confidentiality, Proprietary Information and Inventions Agreement (the "Confidentiality Agreement") in the form attached hereto as Annex A.

5. Consultant's Representations and Warranties. The Consultant represents and warrants to the Company as follows:

(a) The Consultant is not under any legal obligation, including any obligation of confidentiality or non-competition, which prevents the Consultant from executing or fully performing this Agreement, or which would render such execution or performance a breach of contract with any third party, or which would give any third party any rights in any intellectual property which might be developed by the Consultant hereunder; and

(b) The Consultant's performance hereunder will not give rise to any right or claim by any third party, including, but not limited to, any of the Consultant's employers or any person to whom the Consultant has provided or currently provides consulting services, to any intellectual or other property or rights of the Company.

6. Notices. Notices to any party hereunder shall be deemed to be sufficiently given if delivered personally or sent by first class mail, with proper postage affixed, to the address of such party set forth herein, or to such other address as may be specified by either party by notice to the other party hereto. Notices shall be deemed given when delivered, if delivered personally, or on the third business day after mailing, as provided above.

7. Severability. In the event any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, the parties will negotiate in good faith to restore the unenforceable provision to an enforceable state and to provide reasonable additions or adjustments to the terms of the other provisions of this Agreement so as to render the whole Agreement valid and binding to the fullest extent possible, and in any event, this Agreement shall be interpreted to be valid and binding to the fullest extent possible.

8. Indemnification. The Consultant shall indemnify, defend and hold harmless the Company, its members, their affiliates and their respective directors, officers, employees, representatives, agents, successors and assigns (collectively, "Indemnitees") from and against any and all claims, losses, liabilities, damages, costs, expenses (including, without limitation, attorneys fees and expenses) demands, fines, penalties, injunctions, suits and causes of action of any kind or nature whatsoever (collectively referred to as "Damages") instituted by any third party and arising out of the Consultant's performance of this Agreement, unless said Damages arise out of the negligence of the Company, its members, their affiliates and their respective directors, officers, employees, representatives, agents, successors and assigns.

In the event that said Damages arise under this Agreement due to the negligence of the Company, its members, their affiliates and their respective directors, officers, employees, representatives, agents, successors and assigns, the Company shall indemnify, defend and hold harmless Consultant from and against any and all Damages instituted by any third party.

9. Compliance with Law.

(a) The Consultant agrees that in performing this Agreement, the Consultant shall comply with the applicable rules and regulations of all federal, state or foreign laws, rules and regulations, including the federal securities laws. The Consultant acknowledges that United States securities laws and the rules and regulations promulgated thereunder prohibit any person with material, non-public information about a company from purchasing, selling, trading, or entering into options, puts, calls or other derivatives in respect of securities or such issuer or from communicating such information to any other person or entity. Recognizing that the Consultant may often be in receipt of Non-public information about the Company during the Term, the Consultant further agrees not to engage in open market transactions in the Company's securities during the Term of this Agreement; and

(b) With respect to this Agreement, the Consultant represents and warrants to the Company that neither the Consultant nor any of its agents or other persons associated with or acting on behalf of the Consultant has made or given any payments or inducements directly or indirectly to any government officials or employees in the jurisdictions in which either the Company or the Consultant conducts business in connection with any opportunity, agreement, license, permit, certificate, consent, order, approval, registration, waiver, or other authorization relating to the business of the Company or the Consultant, except for such payments or inducements as were lawful under the written laws, rules, and regulations of such jurisdictions. Neither the Consultant nor any of its agents or other persons associated with or acting on behalf of the Consultant may: (a) use any corporate funds or payments made by the Company to the Consultant under this Agreement for any unlawful contribution, gift, entertainment, or other unlawful expense relating to political activity; (b) make from such corporate funds any unlawful payment to any government official or employee either directly or indirectly (through any third party); (c) violate any provision of the Foreign Corrupt Practices Act of 1977 (the "FCPA"); (d) violate any provision of the anti-corruption and anti-bribery law of the PRC; or (e) make any bribe, unlawful rebate, pay off, influence payment, kickback, or other unlawful payment to any government official or employee in connection with the business of such party, including, without limitation, by the Consultant through the use of the fees paid and payable by the Company to the Consultant under this Agreement. The Consultant hereby certifies to the Company that it will not take any action in furtherance of an unlawful offer, promise, or payment to any public official or employee or take any other act that will cause the Company to be in violation of the FCPA and the anti-corruption and anti-bribery law of the PRC.

10. Miscellaneous.

(a) This Agreement shall be governed by, and construed pursuant to the laws of the State of New York, applicable to agreements made and performed wholly within such State. Any disputes under this Agreement shall be resolved by appropriate proceedings in the state of New York.

(b) The effectiveness of this Agreement shall be subject to any necessary approval by the Company's Board of Directors.

(c) This Agreement may not be changed orally, but may be changed only in a writing executed by the party to be charged with enforcement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Consulting Agreement as of the dates set forth below.

NEOSTEM, INC.

By: /s/ Robin L. Smith
Robin L. Smith
CEO

Dated: 3/8/2011

ACUTE CARE PARTNERS

By: /s/ Edward C. Geehr
Edward C. Geehr, M.D.

Dated: March 8, 2011

ANNEX A

NEOSTEM, INC.

Confidentiality, Proprietary Information and Inventions Agreement

I recognize that NeoStem, Inc., a Delaware corporation (the "Company"), is engaged in the business of the collection, storage, manufacturing, therapeutic development and transportation of cells for cell based medicine and regenerative science, including cord blood and adult stem cell banking, the research and development of proprietary cellular therapies including very small embryonic like (VSEL) stem cells and other stem cell populations, and is pursuing other stem cell initiatives in the People's Republic of China and elsewhere as well as engaging in the generic pharmaceutical business in China (the "Business"). Any company with which the Company enters into, or seeks or considers entering into, a business relationship in furtherance of the Business is referred to as a "Business Partner."

I understand that as part of my performance of duties as a consultant or employee to the Company (the "Engagement"), I will have access to confidential or proprietary information of the Company and the Business Partners, and I may make new contributions and inventions of value to the Company. I further understand that my Engagement creates in me a duty of trust and confidentiality to the Company with respect to any information: (1) related, applicable or useful to the business of the Company, including the Company's anticipated research and development or such activities of its Business Partners; (2) resulting from tasks performed by me for the Company; (3) resulting from the use of equipment, supplies or facilities owned, leased or contracted for by the Company; or (4) related, applicable or useful to the business of any partner, client or customer of the Company, which may be made known to me or learned by me during the period of my Engagement.

For purposes of this Agreement, the following definitions apply:

"Proprietary Information" shall mean information relating to the Business or the business of any Business Partner and generally unavailable to the public that has been created, discovered, developed or otherwise has become known to the Company or in which property rights have been assigned or otherwise conveyed to the Company or a Business Partner, which information has economic value or potential economic value to the business in which the Company is or will be engaged. Proprietary Information shall include, but not be limited to, trade secrets, processes, formulas, writings, data, know-how, negative know-how, improvements, discoveries, developments, designs, inventions, techniques, technical data, patent applications, customer and supplier lists, financial information, business plans or projections and any modifications or enhancements to any of the above.

"Inventions" shall mean all Business-related discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, writings, graphics and other data, whether or not patentable or registrable under patent, copyright or similar statutes, that are related to or useful in the business or future business of the Company or its Business Partners or result from use of premises or other property owned, leased or contracted for by the Company. Without limiting the generality of the foregoing, Inventions shall also include anything related to the Business that derives actual or potential economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

As part of the consideration for my Engagement or continued Engagement, as the case may be, and the compensation received by me from the Company from time to time, I hereby agree as follows:

1. Proprietary Information and Inventions. All Proprietary Information and Inventions related to the Business shall be the sole property of the Company and its assigns, and the Company or its Business Partners, as the case may be, and their assigns shall be the sole owner of all patents, trademarks, service marks, copyrights and other rights (collectively referred to herein as "Rights") pertaining to Proprietary Information and Inventions. I hereby assign to the Company, any rights I may have or acquire in Proprietary Information or Inventions or Rights pertaining to the Proprietary Information or Inventions which Rights arise in the course of my Engagement. I further agree as to all Proprietary Information or Inventions to which Rights arise in the course of my Engagement to assist the Company or any person designated by it in every proper way (but at the Company's expense) to obtain and from time to time enforce Rights relating to said Proprietary Information or Inventions in any and all countries. I will execute all documents for use in applying for, obtaining and enforcing such Rights in such Proprietary Information or Inventions as the Company may desire, together with any assignments thereof to the Company or persons designated by it. My obligation to assist the Company or any person designated by it in obtaining and enforcing Rights relating to Proprietary Information or Inventions shall continue beyond the cessation of my Engagement ("Cessation of my Engagement"). In the event the Company is unable, after reasonable effort, to secure my signature on any document or documents needed to apply for or enforce any Right relating to Proprietary Information or to an Invention, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact to act for and in my behalf and stead in the execution and filing of any such application and in furthering the application for and enforcement of Rights with the same legal force and effect as if such acts were performed by me. I hereby acknowledge that all original works of authorship that are made by me (solely or jointly with others) within the scope of my Engagement and which are protectable by copyright are "works for hire" as that term is defined in the United States Copyright Act (17 USCA, Section 101).

2. Confidentiality. At all times, both during my Engagement and after the Cessation of my Engagement, whether the cessation is voluntary or involuntary, for any reason or no reason, or by disability, I will keep in strictest confidence and trust all Proprietary Information, and I will not disclose or use or permit the use or disclosure of any Proprietary Information or Rights pertaining to Proprietary Information, or anything related thereto, without the prior written consent of the Company, except as may be necessary in the ordinary course of performing my duties for the Company. I recognize that the Company has received and in the future will receive from third parties (including Business Partners) their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree that I owe the Company and such third parties (including Business Partners), during my Engagement and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence, and I will not disclose or use or permit the use or disclosure of any such confidential or proprietary information without the prior written consent of the Company, except as may be necessary in the ordinary course of performing my duties.

3. Noncompetition and Nonsolicitation.

(a) During my Engagement, and for a period of two (2) years after the Cessation of my Engagement, I will not directly or indirectly, whether alone or in concert with others or as a partner, officer, director, consultant, agent, employee or stockholder of any company or commercial enterprise, directly or indirectly, engage in any activity in the United States, Canada or Asia that the Company shall determine in good faith is in competition with the Company concerning its work or any Business Partner's work in the Business. During my Engagement and for a period of two (2) years after the Cessation of my Engagement, I will not, either directly or indirectly, either alone or in concert with others, solicit or encourage any employee of or consultant to the Company or any Business Partner to leave the Company or Business Partner or engage directly or indirectly in competition with the Company or Business Partner in the Business. During my Engagement and for a period of two (2) years after the Cessation of my Engagement, I agree not to plan or otherwise take any preliminary steps, either alone or in concert with others, to set up or engage in any business enterprise that would be in competition with the Business. The following shall not be deemed to breach the foregoing obligation: (i) my ownership of stock, partnership interests or other securities of any entity not in excess of two percent (2%) of any class of such interests or securities which is publicly traded. It is understood and agreed that the restrictions contained in this Section 3 shall immediately cease to be of force and effect in the event the Company and its Business Partner ceases to be engaged in the Business.

(b) Consultant acknowledges that (i) the restrictions contained in this section are reasonable and necessary to protect the legitimate business interests of the Company, (ii) that the two (2) year term of this obligation is reasonable in scope, (iii) that Consultant is engaged in other businesses other than the Business, such that this obligation shall not prevent Consultant from being able to continue operating in other businesses, and (iv) that this obligation is a material term, without which the Company would be unwilling to enter into the Consulting Agreement entered into concurrently with this Agreement.

(c) Consultant further acknowledges that any breach or threatened breach by Consultant of any provision hereof may result in immediate and irreparable injury to the Company, and that such injury may not be readily compensable by monetary damages. In the event of any such breach or threatened breach, Consultant acknowledges that, in addition to all other remedies available at law and equity, the Company shall be entitled to seek equitable relief (including a temporary restraining order, a preliminary injunction and/or a permanent injunction), and an equitable accounting of all earnings, profits or other benefits arising from such breach and will be entitled to receive such other damages, direct or consequential, as may be appropriate. In addition, and not instead of, those rights, Consultant further acknowledges that Consultant shall be responsible for payment of the fees and expenses of the Company's attorneys and experts, as well as the Company's court costs, pertaining to any suit, action, or other proceeding, arising directly or indirectly out of Consultant's violation or threatened violation of any of the provisions of this section. The Company shall not be required to post any bond or other security in connection with any proceeding to enforce this section.

4. Delivery of Company Property and Work Product. In the event of the Cessation of my Engagement, I will deliver to the Company all biological materials, devices, records, sketches, reports, memoranda, notes, proposals, lists, correspondence, equipment, documents, photographs, photostats, negatives, undeveloped film, drawings, specifications, tape recordings or other electronic recordings, programs, data, marketing material and other materials or property of any nature belonging to the Company or clients or customers, and I will not take with me, or allow a third party to take, any of the foregoing or any reproduction of any of the foregoing.

5. Equitable Relief. I acknowledge that irreparable injury may result to the Company from my violation or continued violation of the terms of this Agreement and, in such event, I expressly agree that the Company shall be entitled, in addition to damages and any other remedies provided by law, to an injunction or other equitable remedy respecting such violation or continued violation by me.

6. Thorough Understanding of Agreement. I have read all of this Agreement and understand it completely, and by my signature below I represent that this Agreement is the only statement made by or on behalf of the Company upon which I have relied in signing this Agreement.

IN WITNESS WHEREOF, I have caused this Confidentiality, Proprietary Information and Inventions Agreement to be signed on the date written below.

DATED: March 8, 2011

ACUTE CARE PARTNERS
/s/ Edward C. Geehr
By: Edward C. Geehr, M.D.

EXHIBIT 14.1

CODE OF ETHICS
FOR
SENIOR FINANCIAL OFFICERS

PURPOSE.

The Board of Directors (the "Board") of NeoStem, Inc. (the "Company") has adopted the following Code of Ethics (the "Code") to apply to the Company's Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer or Controller, or persons performing similar functions (the "Senior Financial Officers"). This Code is intended to focus Senior Financial Officers on areas of ethical risk, provide guidance to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, foster a culture of honesty and accountability, deter wrongdoing and promote fair and accurate disclosure and financial reporting.

No code or policy can anticipate every situation that may arise. Accordingly, this Code is intended to serve as a source of guiding principles. Senior Financial Officers are encouraged to bring questions about particular circumstances that may involve one or more of the provisions of this Code to the attention of the Audit Committee, who may consult with inside or outside legal counsel as appropriate.

INTRODUCTION

Each Senior Financial Officer is expected to adhere to a high standard of ethical conduct. The good name of the Company depends on the way Senior Financial Officers conduct business and the way the public perceives that conduct. Unethical actions, or the appearance of unethical actions, are not acceptable. Senior Financial Officers are expected to be guided by the following principles in carrying out their responsibilities.

- Loyalty. Senior Financial Officers should not be, or appear to be, subject to influences, interests or relationships that conflict with the best interests of the Company.

- Compliance with Applicable Laws. Senior Financial Officers are expected to comply with all laws, rules and regulations applicable to the Company's activities.

- Observance of Ethical Standards. Senior Financial Officers must adhere to high ethical standards in the conduct of their duties. These include honesty and fairness.

INTEGRITY OF RECORDS AND FINANCIAL REPORTING.

Senior Financial Officers are responsible for the accurate and reliable preparation and maintenance of the Company's financial records. Accurate and reliable preparation of financial records is of critical importance to proper management decisions and the fulfillment of the Company's financial, legal and reporting obligations. Diligence in accurately preparing and maintaining the Company's records allows the Company to fulfill its reporting obligations and to provide stockholders, governmental authorities and the general public with full, fair, accurate, timely and understandable disclosure.

Senior Financial Officers are responsible for establishing and maintaining adequate disclosure controls and procedures, and internal controls and procedures, including procedures that are designed to enable the Company to: (a) accurately document and account for transactions on the books and records of the Company; and (b) maintain reports, vouchers, bills, invoices, payroll and service records, business measurement and performance records and other essential data with care and honesty.

Senior Financial Officers shall immediately bring to the attention of the Audit Committee any information they may have concerning:

Defects, deficiencies, or discrepancies related to the design or operation of internal controls which may affect the Company's ability to accurately record, process, summarize, report and disclose its financial data; or Any fraud, whether or not material, that involves management or other employees who have roles in the Company's financial reporting, disclosures or internal controls.

CONFLICT OF INTEREST.

Senior Financial Officers must avoid any conflicts of interest between themselves and the Company. Any situation that involves, or may involve, a conflict of interest with the Company, should be disclosed promptly to the Audit Committee, who may consult with inside or outside legal counsel as appropriate.

A "conflict of interest" can occur when an individual's personal interest is adverse to - or may appear to be adverse to - the interests of the Company as a whole. Conflicts of interest also arise when an individual, or a member of his or her family, receives improper personal benefits as a result of his or her position with the Company.

This Code does not attempt to describe all possible conflicts of interest which could develop. Some of the more common conflicts from which Senior Financial Officers must refrain, however, are set forth below:

- Improper conduct and activities. Senior Financial Officers may not engage in any conduct or activities that are inconsistent with the Company's best interests or that disrupt or impair the Company's relationship with any person or entity with which the Company has, or proposes to enter into, a business or contractual relationship.

- Compensation from non-Company sources. Senior Financial Officers may not accept compensation for services performed for the Company from any source other than the Company.

- Gifts. Senior Financial Officers and members of their immediate families may not accept gifts from persons or entities where any such gift is being made in order to influence their actions in their position with the Company, or where acceptance of the gifts could create the appearance of a conflict of interest.

- Personal use of Company assets. Senior Financial Officers may not use Company assets, labor or information for personal use, other than incidental personal use, unless approved by the Audit Committee or as part of a compensation or expense reimbursement program.

- Financial Interests in other Businesses. Senior Financial Officers should avoid having an ownership interest in any other enterprises, such as a customer, supplier or competitor, if that interest compromises the officer's loyalty to the Company.

CORPORATE OPPORTUNITIES.

Senior Financial Officers are prohibited from: (a) taking for themselves personally opportunities related to the Company's business without first presenting those opportunities to the Company and obtaining approval from the Board; (b) using the Company's property, information, or position for personal gain; or (c) competing with the Company for business opportunities.

CONFIDENTIALITY.

Senior Financial Officers should maintain the confidentiality of information entrusted to them by the Company and any other confidential information about the Company, its business or finances, customers or suppliers, that comes to them, from whatever source, except when disclosure is authorized or legally mandated. For purposes of this Code, "confidential information" includes all non-public information relating to the Company, its business or finances, customers or suppliers.

COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

Senior Financial Officers shall comply with laws, rules and regulations applicable to the Company, including insider trading laws, and all other Company policies.

ENCOURAGING THE REPORTING OF ANY ILLEGAL OR UNETHICAL BEHAVIOR.

Senior Financial Officers must promote ethical behavior and create a culture of ethical compliance. Senior Financial Officers should foster an environment in which the Company: (a) encourages employees to talk to supervisors, managers and other appropriate personnel when in doubt about the best course of action in a particular situation; (b) encourages employees to report violations of laws, rules and regulations to appropriate personnel; and (c) informs employees that the Company will not allow retaliation for reports made in good faith.

CONCLUSION.

Senior Financial Officers should communicate any suspected violations of this Code promptly to the Audit Committee. The Board or a person or persons designated by the Board will investigate violations, and appropriate disciplinary action will be taken in the event of any violation of this Code, up to and including termination. Only the Audit Committee may grant any waivers of this policy.

ACKNOWLEDGMENT

I have read NeoStem Inc.'s Code of Ethics. I understand that, if I am an employee of NeoStem or one of its subsidiaries, my failure to comply in all respects with NeoStem's policies, including the Code of Ethics set forth herein, is a basis for termination of my employment from NeoStem and any subsidiary thereof to which my employment now relates or may in the future relate.

Signature:_____

Printed Name:_____

Date:_____

This document states a policy of NeoStem, Inc. and is not intended to be regarded as the rendering of legal advice. This policy statement is intended to promote compliance with existing law and is not intended to create or impose liability that would not exist in the absence of the policy statement.

EXHIBIT 21.1

Subsidiaries of NeoStem, Inc.[1]	Jurisdiction of Incorporation/Organization
NeoStem Therapies, Inc.	Delaware
Stem Cell Technologies, Inc.	Florida
NeoStem (China), Inc.	People's Republic of China
CBH Acquisition LLC	Delaware
China Biopharmaceuticals Holdings, Inc.[2]	Delaware
Suzhou Erye Pharmaceuticals Company Ltd.[2]	People's Republic of China
Progenitor Cell Therapy, LLC	Delaware
PCT Allendale, LLC[3]	New Jersey
DomaniCell, LLC[3]	Delaware
Athelos Corporation[4]	Delaware

(1) Unless otherwise specified, each entity listed in the chart is a wholly-owned direct subsidiary of NeoStem, Inc.

(2) China Biopharmaceuticals Holdings, Inc. is a wholly-owned subsidiary of CBH Acquisition LLC and holds the 51% interest in Suzhou Erye Pharmaceutical Company Ltd. ("Erye"). Suzhou Erye Economy and Trading Co. Ltd. owns the remaining 49% interest in Erye.

(3) This entity is a wholly-owned subsidiary of Progenitor Cell Therapy, LLC.

(4) Progenitor Cell Therapy, LLC holds an 80% interest in this entity.

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-107438, 333-144265, 333-162733, and 333-159282 on Form S-8 and Registration Statement Nos. 333-145988 and 333-166169 on Form S-3 of our report dated April 5, 2011, relating to the consolidated financial statements of NeoStem, Inc. and subsidiaries appearing in this Annual Report on Form 10-K of NeoStem, Inc. for the year ended December 31, 2010.

/s/ DELOITTE & TOUCHE LLP

Parsippany, New Jersey
April 5, 2011

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference into the Registration Statements on Form S-8 (Registration No. 333-107438, Registration No. 333-144265, Registration No. 333-162733, and Registration No. 333-159282) and Registration Statement on Form S-3 (Registration No. 333-145988 and Registration No. 333-166169) of NeoStem, Inc. of our report dated March 31, 2010 (except with respect to the retrospective adjustment of the financial statements for the year ended December 31, 2009 for the final allocation of the purchase price associated with the Erye acquisition discussed in Note 4 as to which the date is April 5, 2011), with respect to the consolidated financial statements of NeoStem, Inc. and Subsidiaries appearing in this Annual Report on Form 10-K of NeoStem, Inc. for the year ended December 31, 2010.

/s/ Holtz Rubenstein Reminick LLP
Holtz Rubenstein Reminick LLP
Melville, New York
April 5, 2011

EXHIBIT 31.1

CERTIFICATIONS

I, Robin L. Smith, certify that:

1. I have reviewed this Annual Report on Form 10-K of NeoStem, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 5, 2011

/s/ Robin L. Smith M.D.

Name:

Robin L. Smith M.D.
Title: Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement required by Section 302 has been provided to the Corporation and will be retained by the Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 31.2

CERTIFICATIONS

I, Larry A. May, certify that:

1. I have reviewed this Annual Report on Form 10-K of NeoStem, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 5, 2011

/s/ Larry A. May

Name:
Larry A. May
Title: Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 302 has been provided to the Corporation and will be retained by the Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K (the "Report") of NeoStem, Inc. (the "Corporation") for the year ended December 31, 2010, as filed with the Securities and Exchange Commission on the date hereof, I, Robin L. Smith, Chief Executive Officer of the Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: April 5, 2011

/s/ Robin L. Smith M.D.

Robin L. Smith M.D.
Chief Executive Officer

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Corporation and will be retained by the Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K (the "Report") of NeoStem, Inc. (the "Corporation") for the year ended December 31, 2010, as filed with the Securities and Exchange Commission on the date hereof, I, Larry A. May, Chief Financial Officer of the Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Dated: April 5, 2011

/s/ Larry A. May

Larry A. May
Chief Financial Officer

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Corporation and will be retained by the Corporation and furnished to the Securities and Exchange Commission or its staff upon request.