

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**Amendment No. 4  
to  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**ACADIA PHARMACEUTICALS INC.**

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**06-1376651**  
(I.R.S. Employer  
Identification Number)

**3911 Sorrento Valley Boulevard, San Diego, CA 92121  
(858) 558-2871**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Uli Hacksell, Ph.D.  
Chief Executive Officer  
ACADIA Pharmaceuticals Inc.  
3911 Sorrento Valley Boulevard, San Diego, CA 92121  
(858) 558-2871**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

**Copies to:**

**D. Bradley Peck  
Glenn F. Baity  
Cooley Godward LLP  
4401 Eastgate Mall, San Diego, CA 92121-9109  
(858) 550-6000**

**Bruce Czachor  
Siang H. Chin  
Shearman & Sterling LLP  
1080 Marsh Road, Menlo Park, CA 94025-1022  
(650) 838-3600**

**Approximate Date of Commencement of Proposed Sale to the Public:**

As soon as practicable after the Registration Statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to Be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(2)
Common Stock, \$0.0001 par value	\$ 86,250,000	\$ 10,928

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.

(2) Previously paid.

**The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with**

Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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## EXPLANATORY NOTE

Acadia Pharmaceuticals Inc. has prepared this Amendment No. 4 to the Registration Statement on Form S-1 (File No. 333-113137) for the purpose of filing with the Securities and Exchange Commission certain exhibits to the Registration Statement and amending Item 15 of the Registration Statement. Amendment No. 4 does not modify any provision of the Prospectus that forms a part of the Registration Statement and accordingly such Prospectus has not been included herein.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of common stock being registered. All amounts are estimates except the registration fee and the NASD filing fee.

	<b>Amount To Be Paid</b>
Registration fee	\$ 10,928
NASD fee	9,125
Nasdaq National Market listing fee	100,000
Printing and engraving	175,000
Legal fees and expenses	550,000
Accounting fees and expenses	250,000
Blue sky fees and expenses	10,000
Transfer agent fees	25,000
Miscellaneous	169,947
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Total	\$ 1,300,000

**Item 14. Indemnification of Directors and Officers**

Section 102 of the Delaware General Corporation Law allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the Delaware General Corporation Law provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceeding to which he is or is threatened to be made a party by reason of such position, if such person shall have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation, and, in any criminal proceeding, if such person had no reasonable cause to believe his conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that such indemnification is proper under the circumstances.

The Registrant's amended and restated certificate of incorporation and bylaws includes provisions that indemnify directors and officers of the corporation for actions taken in such capacity, if the actions were taken in good faith and in a manner reasonably believed to be in the best interests of the corporation and, in a criminal proceeding, the director or officer had no reasonable cause to believe that his conduct was unlawful. A director or officer who is successful in defending a claim will be indemnified for all expenses incurred in connection with his defense. In connection with this offering, the Registrant is entering into indemnification agreements with its officers and directors that require the Registrant to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, damages, judgments, fines, settlements and other amounts incurred in connection with any action, suit or proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was or at any time becomes a director, an officer or an

employee of the Registrant or any of its affiliated enterprises, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to our best interest and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The form of underwriting agreement to be filed as Exhibit 1.1 to this registration statement will provide for indemnification for the underwriters and their controlling persons, on the one hand and of the Registrant and its controlling persons on the other hand, for certain liabilities arising under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or otherwise.

We maintain directors and officers insurance providing indemnification for certain of our directors, officers, affiliates, partners or employees for certain liabilities.

#### **Item 15. Recent Sales of Unregistered Securities**

Since January 1, 2001, the Registrant has sold and issued the following unregistered securities:

1. On October 26, 2001, the Registrant issued an aggregate of 269,811 shares of its common stock to the VækstFonden (The Danish Fund for Industrial Growth, "Growth Fund") in retirement of the aggregate outstanding loan and accrued interest balance of \$5,916,900 due the Growth Fund.
2. On May 31, 2002, the Registrant borrowed \$5,000,000 from GATX Ventures Inc. under a secured promissory note issued pursuant to a venture loan and security agreement. In connection with such loan, the Registrant issued warrants to purchase an aggregate of 74,073 shares of its Series F Preferred Stock. The warrants have an exercise price of \$8.10 per share and expire on May 31, 2012. Upon the closing of this offering, the warrants will be exercisable for 74,073 shares of the Registrant's common stock. The fair value of the warrants at the time of grant was determined by management to be \$304,000.
3. On March 27, 2003 and May 30, 2003, the Registrant issued an aggregate of 5,212,962 shares of its Series F preferred stock to 15 accredited investors for an aggregate purchase price of \$28,150,000. The shares of Series F preferred stock were sold were issued under a Series F preferred stock purchase agreement dated March 27, 2003. The Registrant also issued 375,000 shares of Series E preferred stock in connection with its Series F preferred stock financing. Upon the closing of this offering, each share of Series E preferred stock and Series F preferred stock will be converted into one share of the Registrant's common stock.
4. As of March 31, 2004, the Registrant has granted options to purchase an aggregate of 2,330,455 shares of our common stock, including options subsequently cancelled that then became available for new option grants, to directors, employees and consultants under the Registrant's 1997 stock option plan. The exercise prices for such options range from \$0.02 to \$8.00 per share. As of March 31, 2004, the Registrant has issued an aggregate of 650,858 shares of common stock upon the exercise of stock options under the Registrant's 1997 stock option plan.
5. On May 3, 2004, the Registrant issued to The Stanley Medical Research Institute a convertible promissory note in the aggregate principal amount of \$1 million. The note bears interest at 9% per annum. The principal and accrued interest under the note will automatically convert into shares of the Registrant's common stock upon the closing of this offering at a conversion price equal to the price per share in the offering.

The offers, sales and issuances of these securities were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act, and/or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act, as transactions by an issuer not involving a public offering or transactions under compensatory benefit plans and contracts relating to compensation as provided under such Rule 701. The recipients of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates issued in such transactions. All recipients had adequate access, through employment or other relationships, to information about the Registrant.

**Item 16. Exhibits and Financial Statement Schedules***(a) Exhibits*

<b>Exhibit Number</b>	<b>Description of Document</b>
1.1	Form of Underwriting Agreement
3.1(4)	Registrant's Amended and Restated Certificate of Incorporation, as currently in effect
3.2(2)	Form of Registrant's Amended and Restated Certificate of Incorporation, to be filed immediately prior to the effectiveness of this offering
3.3(2)(4)	Form of Registrant's Amended and Restated Certificate of Incorporation, to be effective upon the closing of this offering (previously filed as Exhibit 3.2)
3.4(4)	Registrant's Bylaws, as amended, as currently in effect (previously filed as Exhibit 3.3)
3.5(4)	Form of Registrant's Amended and Restated Bylaws, to be effective upon the effectiveness of this offering (previously filed as Exhibit 3.4)
4.1	Form of common stock certificate of Registrant (incorporated by reference to Exhibit 4.1 to Registration Statement No. 333-52492, dated December 21, 2000)
4.2(4)	Amended and Restated Stockholders Agreement, dated March 27, 2003, by and among the Registrant and the stockholders named therein
4.3(4)	Form of Warrants to Purchase Preferred Stock issued to GATX Ventures on May 31, 2002
4.4(4)	Convertible Promissory Note issued to The Stanley Medical Research Institute on May 3, 2004
5.1	Opinion of Cooley Godward LLP
10.1(4)	Form of Indemnity Agreement for directors and officers
10.2(4)	1997 Stock Option Plan and forms of agreement thereunder
10.3	2004 Equity Incentive Plan and forms of agreement thereunder
10.4	2004 Employee Stock Purchase Plan and initial offering thereunder
10.5(4)	401(k) Plan
10.6	Employment Letter Agreement, dated December 21, 1998, between the Registrant and Uli Hacksell, Ph.D. (incorporated by reference to Exhibit 10.7 to Registration Statement No. 333-52492, dated December 21, 2000)
10.7	Employment Agreement, dated January 31, 1997, between the Registrant and Mark R. Brann, Ph.D. (incorporated by reference to Exhibit 10.8 to Registration Statement No. 333-52492, dated December 21, 2000)
10.8	Employment Letter Agreement, dated March 4, 1998, between the Registrant and Thomas H. Aasen (incorporated by reference to Exhibit 10.9 to Registration Statement No. 333-52492, dated December 21, 2000)
10.9(4)	Employment Letter Agreement, dated February 1, 2001, between the Registrant and Robert E. Davis, Ph.D.
10.10(4)	Employment Letter Agreement, dated January 3, 2001, between the Registrant and Douglas E. Richards
10.11(4)	Employment Contract, dated November 21, 2000, between the Registrant and Bo-Ragner Tolf, Ph.D.

Exhibit Number	Description of Document
10.12(3)	Collaborative Research, Development and License Agreement, dated September 24, 1997, by and among the Registrant, Allergan, Inc. and Vision Pharmaceuticals L.P. (now Allergan Sales, Inc.) (incorporated by reference to Exhibit 10.14 to Registration Statement No. 333-52492, dated December 21, 2000)
10.13(3)(4)	Amendment to Collaboration Research, Development and License Agreement, dated March 27, 2003, by and among the Registrant, Allergan Sales LLC (as successor in interest of Vision Pharmaceuticals L.P.) and Allergan, Inc.
10.14(3)	Collaborative Research, Development and License Agreement, dated July 26, 1999, by and among the Registrant and Allergan, Inc., Allergan Pharmaceuticals (Ireland) Limited, Inc. and Allergan Sales, Inc. (incorporated by reference to Exhibit 10.15 to Registration Statement No. 333-52492, dated December 21, 2000)
10.15(3)(4)	Collaborative Research, Development and License Agreement, dated March 27, 2003, by and among the Registrant, Allergan, Inc. and Allergan Sales, Inc.
10.16	Standard Industrial/Commercial Single-Tenant Lease-Net, dated August 15, 1997, between the Registrant and R.G. Harris Co. (incorporated by reference to Exhibit 10.18 to Registration Statement No. 333-52492, dated December 21, 2000)
10.17	Assignment of Brann Intellectual Property Rights, dated January 29, 1997, by Mark R. Brann in favor of the Registrant. (incorporated by reference to Exhibit 10.17 to Registration Statement No. 333-52492, dated December 21, 2000)
10.18(3)(4)	Development Agreement, dated May 3, 2004, between the Registrant and The Stanley Medical Research Institute
10.19	General Agreement, dated April 22, 2004, between the Registrant and Medeon Fastigheter AB
21.1(4)	List of subsidiaries of the Registrant
23.1(4)	Consent of Independent Accountants
23.2	Consent of Counsel (included in Exhibit 5.1)
24.1(4)	Power of Attorney

(1) To be filed by amendment.

(2) As proposed to be filed with the Secretary of State of the State of Delaware.

(3) We have applied for confidential treatment of certain provisions of this exhibit with the SEC. The confidential portions of this exhibit are marked by an asterisk and have been omitted and filed separately with the SEC pursuant to our request for confidential treatment.

(4) Previously filed.

*(b) Financial Statement Schedules*

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

**Item 17. Undertakings**

The undersigned Registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to provisions described in Item 14 or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification

against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the Securities Act of 1933, the Registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on May 18, 2004.

ACADIA PHARMACEUTICALS INC.

By: /s/ ULI HACKSELL

\_\_\_\_\_  
Uli Hacksell  
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this amendment no. 4 to the registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ ULI HACKSELL _____ <b>Uli Hacksell</b>	Chief Executive Officer and Director (Principal executive officer)	May 18, 2004
/s/ THOMAS H. AASEN _____ <b>Thomas H. Aasen</b>	Vice President, Chief Financial Officer, Treasurer and Secretary (Principal financial and accounting officer)	May 18, 2004
* _____ <b>Mark R. Brann</b>	President, Chief Scientific Officer and Director	May 18, 2004
* _____ <b>Leslie L. Iversen</b>	Chairman of the Board	May 18, 2004
* _____ <b>Gordon Binder</b>	Director	May 18, 2004
* _____ <b>Carl L. Gordon</b>	Director	May 18, 2004
* _____ <b>Lester J. Kaplan</b>	Director	May 18, 2004
* _____ <b>Torsten Rasmussen</b>	Director	May 18, 2004
* _____ <b>Martien van Osch</b>	Director	May 18, 2004
* _____ <b>Alan Walton</b>	Director	May 18, 2004
*By: /s/ THOMAS H. AASEN _____ <b>Thomas H. Aasen</b> Attorney in fact		

## EXHIBIT INDEX

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24.1(4)	Power of Attorney

(1) To be filed by amendment.

(2) As proposed to be filed with the Secretary of State of the State of Delaware prior to the effectiveness of the offering.

(3) We have applied for confidential treatment of certain provisions of this exhibit with the SEC. The confidential portions of this exhibit are marked by an asterisk and have been omitted and filed separately with the SEC pursuant to our request for confidential treatment.

(4) Previously filed.

**ACADIA Pharmaceuticals Inc.**

**[\_\_\_\_\_] Shares**

**Common Stock**

**UNDERWRITING AGREEMENT**

**dated [\_\_\_\_\_] 2004**

## Underwriting Agreement

[ ], 2004

BANC OF AMERICA SECURITIES LLC  
PIPER JAFFRAY & CO.  
JMP SECURITIES LLC  
ADAMS, HARKNESS & HILL, INC.

As Representatives of the several Underwriters  
c/o BANC OF AMERICA SECURITIES LLC  
9 West 57<sup>th</sup> Street  
New York, NY 10019

Ladies and Gentlemen:

*Introductory.* ACADIA Pharmaceuticals Inc., a Delaware corporation (the “Company”), proposes to issue and sell to the several underwriters named in Schedule A (the “Underwriters”) an aggregate of [ ] shares (the “Firm Common Shares”) of its Common Stock, par value \$0.0001 per share (the “Common Stock”). In addition, the Company has granted to the Underwriters an option to purchase up to an additional [ ] shares (the “Optional Common Shares”) of Common Stock, as provided in Section 2. The Firm Common Shares and, if and to the extent such option is exercised, the Optional Common Shares are collectively called the “Common Shares”. Banc of America Securities LLC (“BAS”), Piper Jaffray & Co., JMP Securities LLC and Adams, Harkness & Hill, Inc. have agreed to act as representatives of the several Underwriters (in such capacity, the “Representatives”) in connection with the offering and sale of the Common Shares.

The Company and the Underwriters agree that up to [ ] of the Firm Common Shares to be purchased by the Underwriters (the “Directed Shares”) shall be reserved for sale by the Underwriters to certain eligible directors, officers and employees of the Company [and persons having business relationships with the Company] (collectively, the “Participants”), as part of the distribution of the Common Shares by the Underwriters (the “Directed Share Program”) subject to the terms of this Agreement, the applicable rules, regulations and interpretations of the National Association of Securities Dealers, Inc. (the “NASD”) and all other applicable laws, rule and regulations. One of the Underwriters (the “Designated Underwriter”) shall be selected to process the sales to the Participants under the Directed Share Program. To the extent that such Directed Shares are not orally confirmed for purchase by the Participants by the end of the first business day after the date of this Agreement, such Directed Shares may be offered to the public as part of the public offering contemplated hereby.

The Company has prepared and filed with the Securities and Exchange Commission (the “Commission”) a registration statement on Form S-1 (File No. 333-113137), which contains a form of prospectus to be used in connection with the public offering and sale of the Common

Shares. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, in the form in which it was declared effective by the Commission under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (collectively, the “Securities Act”), including any information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430A or Rule 434 under the Securities Act, is called the “Registration Statement”. Any registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act is called the “Rule 462(b) Registration Statement,” and from and after the date and time of filing of the Rule 462(b) Registration Statement the term “Registration Statement” shall include the Rule 462(b) Registration Statement. Such prospectus, in the form first used by the Underwriters to confirm sales of the Common Shares, is called the “Prospectus”; *provided, however*, that with respect to the representations and warranties of the Company made or deemed to be made as of a certain date, the term “Prospectus” shall mean the prospectus in the form first used by the Underwriters to confirm sales of the Common Shares as it may be amended and supplemented as of such date, *provided, further*, that, if the Company has, with the consent of BAS, elected to rely upon Rule 434 under the Securities Act, the term “Prospectus” shall mean the Company’s prospectus subject to completion (each, a “preliminary prospectus”) dated May 5, 2004 (such preliminary prospectus is called the “Rule 434 preliminary prospectus”), together with the applicable term sheet (the “Term Sheet”) prepared and filed by the Company with the Commission under Rules 434 and 424(b) under the Securities Act and all references in this Agreement to the date of the Prospectus shall mean the date of the Term Sheet. All references in this Agreement to the Registration Statement, the Rule 462(b) Registration Statement, a preliminary prospectus, the Prospectus or the Term Sheet, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“EDGAR”).

The Company hereby confirms its agreements with the Underwriters as follows:

Section 1. *Representations and Warranties of the Company.*

The Company hereby represents, warrants and covenants to each Underwriter as follows:

(a) *Compliance with Registration Requirements.* The Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied to the Commission’s satisfaction with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

Each preliminary prospectus and the Prospectus when filed complied in all material respects with the Securities Act and, if filed by electronic transmission pursuant to EDGAR (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Underwriters for use in connection with the offer and sale of the Common Shares. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at all subsequent times, complied and will comply in all material respects with the Securities Act and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to

be stated therein or necessary to make the statements therein not misleading. The Prospectus (including any Prospectus wrapper), as amended or supplemented, as of its date and at all subsequent times, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by the Representatives expressly for use therein. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement that have not been described or filed as required.

(b) *Offering Materials Furnished to Underwriters.* The Company has delivered to the Representatives one complete manually signed copy of the Registration Statement and of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and preliminary prospectuses and the Prospectus, as amended or supplemented, in such quantities and at such places as the Representatives have reasonably requested for each of the Underwriters.

(c) *Distribution of Offering Material By the Company.* The Company has not distributed and will not distribute, prior to the completion of the Underwriters' distribution of the Common Shares or, if later, the Second Closing Date (as defined below), any offering material in connection with the offering and sale of the Common Shares other than a preliminary prospectus, the Prospectus or the Registration Statement.

(d) *The Underwriting Agreement.* This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

(e) *Authorization of the Common Shares.* The Common Shares to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement, will be validly issued, fully paid and nonassessable.

(f) *No Applicable Registration or Other Similar Rights.* There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering contemplated by this Agreement, except for such rights as have been duly waived.

(g) *No Material Adverse Change.* Except as otherwise disclosed in the Prospectus, subsequent to the respective dates as of which information is given in the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings,

business, operations or business prospects of the Company and its subsidiaries, considered as one entity, whether or not arising from transactions in the ordinary course of business (any such change is called a “Material Adverse Change”); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock; and (iv) there has not been any change in the capital stock, short-term debt or long-term debt of the Company and its subsidiaries, taken as a whole.

(h) *Independent Accountants.* PricewaterhouseCoopers LLP, who have expressed their opinion with respect to the financial statements (which term as used in this Agreement includes the related notes thereto) filed with the Commission as a part of the Registration Statement and included in the Prospectus, are independent public or certified public accountants as required by the Securities Act.

(i) *Preparation of the Financial Statements.* The financial statements filed with the Commission as a part of the Registration Statement and included in the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of and at the dates indicated and the results of their operations and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement. The financial data set forth in the Prospectus, as amended or supplemented, under the captions “Summary—Summary Consolidated Financial Data,” “Capitalization” and “Selected Consolidated Financial Data” fairly present the information set forth therein on a basis consistent with that of the audited financial statements contained in the Registration Statement.

(j) *Incorporation and Good Standing of the Company and its Subsidiaries.* Each of the Company and its subsidiary has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus, and, in the case of the Company, to enter into and perform its obligations under this Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of California and each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions (other than the State of California) where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. All of the issued and outstanding capital stock of each subsidiary has been duly authorized and validly issued, is fully paid and nonassessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiary listed in Exhibit 21.1 to the Registration Statement.

(k) *Capitalization and Other Capital Stock Matters.* The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus under the caption “Capitalization” (other than for subsequent issuances, if any, pursuant to employee benefit plans described in the Prospectus or upon exercise of outstanding options or warrants described in the Prospectus). The Common Stock (including the Common Shares) conforms in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding shares of Common Stock have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of Common Stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those accurately described in the Prospectus. The description of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights.

(l) *Quotation.* The Common Shares have been approved for inclusion on the Nasdaq National Market, subject only to official notice of issuance.

(m) *Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.* Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws or is in default (or, with the giving of notice or lapse of time, would be in default) (“**Default**”) under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or any of its subsidiaries is subject (each, an “**Existing Instrument**”), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Change. The Company’s execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws of the Company or any subsidiary, (ii) will not conflict with or constitute a breach of, or Default or Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except for such conflicts, breaches, Defaults, liens, charges or encumbrances as would not, individually or in the aggregate, result in a Material Adverse Change and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any subsidiary. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company’s execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Prospectus, except (A) such as have been obtained or made by the Company and are in full force and effect under the Securities Act, applicable state securities or blue sky laws and from the NASD and (B) such as have been obtained under the laws and regulations of jurisdictions outside the United States in which Directed Shares are offered. As used herein, a “Debt Repayment Triggering Event”

means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(n) *No Material Actions or Proceedings.* There are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's knowledge, threatened (i) against or affecting the Company or any of its subsidiaries, (ii) which has as the subject thereof any officer or director of, or property owned or leased by, the Company or any of its subsidiaries or (iii) relating to environmental or discrimination matters, where in any such case (A) there is a reasonable possibility that such action, suit or proceeding might be determined adversely to the Company or such subsidiary and (B) any such action, suit or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change or adversely affect the consummation of the transactions contemplated by this Agreement. No material labor dispute with the employees of the Company or any of its subsidiaries exists or, to the best of the Company's knowledge, is threatened or imminent.

(o) *Intellectual Property Rights.* The Company and its subsidiary own or possess the right to use sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other similar rights (collectively, "Intellectual Property Rights") as are necessary or material (i) to conduct their businesses as now conducted, (ii) in connection with the commercialization of the drug candidates described in the Prospectus as being under development by the Company independently and (iii) in connection with the development of the drug candidates described in the Prospectus as being under development by the Company in collaboration with third parties. Except as set forth in the Prospectus, (a) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding, or claim by others challenging the Company's rights in or to any Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (b) there is no pending, or to the Company's knowledge, threatened action, suit, proceeding, or claim by others that the Company infringes, misappropriates, or otherwise violates any Intellectual Property Rights of others, and the Company is unaware of any other facts which would form a reasonable basis for any such claim; (c) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding, or claim by others challenging the validity or scope of any such Intellectual Property Rights owned by the Company and the Company is unaware of any facts which would form a reasonable basis for any such claim; (d) to the Company's knowledge, the operation of Company's business as now conducted and in connection with the development and commercialization of the drug candidates described in the Prospectus, as being under development by the Company (either independently or in collaboration with third parties), does not infringe any claim of any patent or published patent application; (e) there is no prior art of which the Company is aware that may render any patent owned or licensed by the Company invalid or any patent application owned or licensed by the Company unpatentable which has not been disclosed to the applicable government patent office; and (f) the patents, trademarks, and copyrights granted or issued to the Company have been duly maintained and are in full force and in effect, and none of such patents, trademarks and copyrights have been adjudged invalid or unenforceable in whole or in part. The Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the Prospectus and are not described therein in all material respects.

(p) *Patent Applications.* The Company has duly and properly filed or caused to be filed with the U. S. Patent and Trademark Office (the “PTO”) and applicable foreign and international patent authorities all patent applications owned by the Company (the “Company Patent Applications”). To the knowledge of the Company, the Company has complied with the PTO’s duty of candor and disclosure for the Company Patent Applications and has made no material misrepresentation in the Company Patent Applications. To the Company’s knowledge, the Company Patent Applications disclose patentable subject matters, and the Company has not been notified of any inventorship challenges nor has any interference been declared or provoked nor is any material fact known by the Company that would preclude the issuance of patents with respect to the Company Patent Applications or would render such patents invalid or unenforceable. To the Company’s knowledge, no third party possesses rights to the Company’s Intellectual Property Rights that, if exercised, could enable such party to develop products competitive to those the Company intends to develop as described in the Prospectus.

(q) *Trials.* The studies, tests and preclinical and clinical trials conducted by or on behalf of the Company that are described in the Prospectus were and, if still pending, are being, conducted in all material respects in accordance with experimental protocols, procedures and controls pursuant to, where applicable, accepted professional and scientific standards. The descriptions of such studies, tests and trials contained in the Registration Statement and the Prospectus are accurate in all material respects. Neither the Company nor any third party or consultant engaged by the Company in connection with the conduct of the Company’s studies, tests, preclinical and clinical trials have received any notices or correspondence from the U.S. Food and Drug Administration (the “FDA”) or any foreign, state or local governmental or self-regulatory body exercising comparable authority requiring the termination, suspension or material modification of any studies, tests or preclinical or clinical trials conducted by or on behalf of the Company, which termination, suspension or material modification would reasonably be expected to result in a Material Adverse Change. To the Company’s knowledge, there is no termination, suspension or material indemnification of any studies, tests or preclinical or clinical trials conducted by others on any active ingredient contained in the existing products of the Company, or the drug candidates described in the Prospectus as being under development.

(r) *Proposed FDA or PTO Rules.* To the best of the Company’s knowledge, there are no rulemaking or similar proceedings before the FDA or PTO which affect or involve the Company or any of the processes or drug candidates that the Company has developed, is developing or proposes to develop or uses or proposes to use which, if the subject of an action unfavorable to the Company, would result in a Material Adverse Change.

(s) *All Necessary Permits, etc.* The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory or self-regulatory agencies or bodies necessary to conduct their respective businesses including, without limitation, all such certificates, authorizations and permits required by the FDA and any state, federal or foreign or self-regulatory agencies or bodies engaged in the regulation of pharmaceuticals or biohazardous materials, and neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of,

or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Change.

(t) *Title to Properties.* Except as otherwise disclosed in the Prospectus, the Company and each of its subsidiaries has good and marketable title to all the properties and assets reflected as owned in the financial statements referred to in Section 1(i) above, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company or such subsidiary. The real property, improvements, equipment and personal property held under lease by the Company or any subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(u) *Tax Law Compliance.* The Company and its consolidated subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 1(i) above in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its consolidated subsidiaries has not been finally determined.

(v) *Company Not an "Investment Company".* The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and after receipt of payment for the Common Shares will not be, an "investment company" within the meaning of Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(w) *Insurance.* Each of the Company and its subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, and acts of vandalism. The Company has no reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change. Neither of the Company nor any subsidiary has been denied any material insurance coverage which it has sought or for which it has applied.

(x) *No Price Stabilization or Manipulation.* The Company has not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Common Shares.

(y) *Related Party Transactions.* There are no business relationships or related-party transactions involving the Company or any subsidiary or any other person required to be described in the Prospectus that have not been described as required.

(z) *Disclosure Controls and Procedures.* The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act of 1934, as amended (the “Exchange Act”)), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act will be prepared, (ii) have been evaluated for effectiveness as of the end of the Company’s most recent fiscal quarter and (iii) are effective in all material respects to perform the functions for which they were established. Based on the evaluation of the Company’s disclosure controls and procedures described above, the Company is not aware of any deficiencies in the design or operation of the Company’s disclosure controls and procedures.

(aa) *No Unlawful Contributions or Other Payments.* Neither the Company nor any of its subsidiaries nor, to the best of the Company’s knowledge, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Prospectus.

(bb) *Company’s Internal Control over Financial Reporting.* The Company maintains a system of internal controls over financial reporting sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of reliable financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) records are maintained in sufficient detail to accurately and fairly reflect the transactions and dispositions of the Company’s assets (iv) access to assets is permitted only in accordance with management’s general or specific authorization; and (v) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of (a) any significant deficiency in the design or operation of internal control over financial reporting which could adversely affect the Company’s ability to record, process, summarize and report financial data or any material weaknesses in internal controls or (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls. There have been no significant changes in internal controls or in other factors that could significantly affect internal controls since December 31, 2003.

(cc) *Compliance with Environmental Laws.* Except as would not, individually or in the aggregate, result in a Material Adverse Change (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation,

ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "Materials of Environmental Concern"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environment Concern (collectively, "Environmental Laws"), which violation includes, but is not limited to, noncompliance with any permits or other governmental authorizations required for the operation of the business of the Company or its subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company or any of its subsidiaries received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company or any of its subsidiaries is in violation of any Environmental Law; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company has received written notice, and no written notice to the Company by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental responses costs, natural resources damages, property damages, personal injuries, attorneys' fees or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Material of Environmental Concern at any location owned, leased or operated by the Company or any of its subsidiaries, now or in the past (collectively, "Environmental Claims"), pending or, to the best of the Company's knowledge, threatened against the Company or any of its subsidiaries or any person or entity whose liability for any Environmental Claim the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the best of the Company's knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that reasonably could result in a violation of any Environmental Law or form the basis of a potential Environmental Claim against the Company or any of its subsidiaries or against any person or entity whose liability for any Environmental Claim the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law.

(dd) *Periodic Review of Costs of Environmental Compliance.* In the ordinary course of its business, the Company conducts a periodic review of the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review and the amount of its established reserves, the Company has reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, result in a Material Adverse Change.

(ee) *ERISA Compliance.* The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company, its subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the

Company or a subsidiary, any member of any group of organizations described in Sections 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “Code”) of which the Company or such subsidiary is a member. No “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. No “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such “employee benefit plan” were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA). Neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “employee benefit plan” or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each “employee benefit plan” established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(ff) *Brokers*. There is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder’s fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(gg) *No Outstanding Loans or Other Indebtedness*. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of the members of any of them, except as disclosed in the Prospectus.

(hh) *Strategic Agreements*. Except as otherwise disclosed in the Prospectus, each of the collaboration or strategic alliance agreements, including without limitation, license and supply agreements, described in the Prospectus, under the caption “Business—Collaboration Agreements,” (collectively, the “Strategic Agreements”) is in full force and effect and constitutes a valid and binding agreement between the parties thereto, enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency and reorganization, and there has not occurred any breach or default under any such Strategic Agreement or any event that with the giving of notice or lapse of time would constitute a breach or default thereunder.

(ii) *Prospectus Statements*. The statements set forth in the Prospectus under the caption “Business—Collaboration Agreements,” insofar as they purport to describe the provisions of the agreements referred to therein, under the caption “Business —Government Regulation,” insofar as they purport to describe the provisions of the laws and regulations referred to therein, and under the caption “Underwriting,” insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate descriptions or summaries in all material respects.

(jj) *Compliance with Laws*. The Company has not been advised, and has no reason to believe, that it and each of its subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not result in a Material Adverse Change.

(kk) *Statistical Data.* The statistical and market-related data included in the Registration Statement and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree with the sources from which they are derived.

(ll) *Directed Share Program.* (i) The Registration Statement, the Prospectus and any preliminary prospectus comply, and any further amendments or supplements thereto will comply, with any applicable laws or regulations of foreign jurisdictions in which the Prospectus or any preliminary prospectus, as amended or supplemented, if applicable, are distributed in connection with the Directed Share Program, and (ii) no authorization, approval, consent, license, order registration or qualification of or with any government, governmental instrumentality or court, other than such as have been obtained, is necessary under the securities laws and regulations of foreign jurisdictions in which the Directed Shares are offered outside the United States. The Company has not offered, or caused the Underwriters to offer, any Common Shares to any person pursuant to the Directed Share Program with the intent to unlawfully influence (i) a customer or supplier of the Company to alter the customer's or supplier's level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about the Company or its products. The Company has not offered the Common Shares in connection with the Directed Share Program in contravention of the Securities Act.

Any certificate signed by an officer of the Company and delivered to the Representatives or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters set forth therein.

The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 5 hereof, counsel to the Company and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

*Section 2. Purchase, Sale and Delivery of the Common Shares.*

(a) *The Firm Common Shares.* The Company agrees to issue and sell to the several Underwriters the Firm Common Shares upon the terms herein set forth. On the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Underwriters agree, severally and not jointly, to purchase from the Company the respective number of Firm Common Shares set forth opposite their names on Schedule A. The purchase price per Firm Common Share to be paid by the several Underwriters to the Company shall be \$[\_\_\_\_\_] per share.

(b) *The First Closing Date.* Delivery of the Firm Common Shares to be purchased by the Underwriters and payment therefor shall be made at the offices of Shearman & Sterling LLP, 1080 Marsh Road, Menlo Park, California (or such other place as may be agreed to by the Company and the Representatives) at 6:00 a.m. San Francisco time, on [\_\_\_\_], 2004, or such other time and date not later than 10:30 a.m. San Francisco time, on [\_\_\_\_], 2004 as the Representatives shall designate by notice to the Company (the time and date of such closing are called the "First Closing Date").

(c) *The Optional Common Shares; the Second Closing Date.* In addition, on the basis of the representations, warranties and agreements herein contained, and upon the terms but subject to the conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to an aggregate of [\_\_\_\_\_] Optional Common Shares from the Company at the purchase price per share to be paid by the Underwriters for the Firm Common Shares. The option granted hereunder is for use by the Underwriters solely in covering any over-allotments in connection with the sale and distribution of the Firm Common Shares. The option granted hereunder may be exercised at any time (but not more than once) upon notice by the Representatives to the Company, which notice may be given at any time within 30 days from the date of this Agreement. Such notice shall set forth (i) the aggregate number of Optional Common Shares as to which the Underwriters are exercising the option, (ii) the names and denominations in which the certificates for the Optional Common Shares are to be registered and (iii) the time, date and place at which such certificates will be delivered (which time and date may be simultaneous with, but not earlier than, the First Closing Date; and in such case the term “First Closing Date” shall refer to the time and date of delivery of certificates for the Firm Common Shares and the Optional Common Shares). Such time and date of delivery shall be determined by the Representatives and shall not be earlier than three nor later than five full business days after delivery of such notice of exercise. Such time and date of delivery, if subsequent to the First Closing Date, is called the “Second Closing Date.” If any Optional Common Shares are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the number of Optional Common Shares (subject to such adjustments to eliminate fractional shares as the Representatives may determine) that bears the same proportion to the total number of Optional Common Shares to be purchased as the number of Firm Common Shares set forth on Schedule A opposite the name of such Underwriter bears to the total number of Firm Common Shares. BAS, on behalf of the several Underwriters, may, in its sole discretion, cancel the option at any time prior to its expiration by giving written notice of such cancellation to the Company.

(d) *Public Offering of the Common Shares.* The Representatives hereby advise the Company that the Underwriters intend to offer for sale to the public, as described in the Prospectus, their respective portions of the Common Shares as soon after this Agreement has been executed and the Registration Statement has been declared effective as the Representatives, in their sole judgment, have determined is advisable and practicable.

(e) *Payment for the Common Shares.* Payment for the Common Shares shall be made at the First Closing Date (and, if applicable, at the Second Closing Date) by wire transfer of immediately available funds to the order of the Company.

It is understood that the Representatives have been authorized, for their own account and the accounts of the several Underwriters, to accept delivery of and receipt for, and make payment of the purchase price for, the Firm Common Shares and any Optional Common Shares the Underwriters have agreed to purchase. BAS, individually and not as the Representative of the Underwriters, may (but shall not be obligated to) make payment for any Common Shares to be purchased by any Underwriter whose funds shall not have been received by the Representatives by the First Closing Date or the Second Closing Date, as the case may be, for the account of such Underwriter, but any such payment shall not relieve such Underwriter from any of its obligations under this Agreement.

(f) *Delivery of the Common Shares.* The Company shall deliver, or cause to be delivered, to the Representatives for the accounts of the several Underwriters the Firm Common Shares at the First Closing Date, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The Company shall also deliver, or cause to be delivered, to the Representatives for the accounts of the several Underwriters the Optional Common Shares the Underwriters have agreed to purchase at the First Closing Date or the Second Closing Date, as the case may be, against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor.

(g) *Delivery of Prospectus to the Underwriters.* Not later than 12:00 p.m. on the second business day following the date the Firm Common Shares are first released by the Underwriters for sale to the public, the Company shall deliver or cause to be delivered, copies of the Prospectus in such quantities and at such places as the Representatives shall request.

Section 3. *Additional Covenants of the Company.* The Company further covenants and agrees with each Underwriter as follows:

(a) *Representatives' Review of Proposed Amendments and Supplements.* During such period beginning on the date hereof and ending on the later of the First Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales by an Underwriter or dealer (the "Prospectus Delivery Period"), prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act) or the Prospectus, the Company shall furnish to the Representatives for review a copy of each such proposed amendment or supplement, and the Company shall not file any such proposed amendment or supplement to which the Representatives reasonably object.

(b) *Securities Act Compliance.* After the date of this Agreement, the Company shall promptly advise the Representatives in writing (i) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (ii) of the time and date of any filing of any amendment to the Registration Statement or any amendment or supplement to any preliminary prospectus or the Prospectus, (iii) of the time and date that any amendment to the Registration Statement becomes effective and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order preventing or suspending the use of any preliminary prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. If the Commission shall enter any such stop order at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment. Additionally, the Company agrees that it shall comply with the provisions of Rules 424(b), 430A and 434, as applicable, under the Securities Act and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) were received in a timely manner by the Commission.

(c) *Amendments and Supplements to the Prospectus and Other Securities Act Matters.* If, during the Prospectus Delivery Period, any event shall occur or condition exist as a result of

which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if in the opinion of the Representatives or counsel for the Underwriters it is otherwise necessary to amend or supplement the Prospectus to comply with law, the Company agrees to promptly prepare (subject to Section 3(a) hereof), file with the Commission and furnish at its own expense to the Underwriters and to dealers, amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law.

(d) *Copies of any Amendments and Supplements to the Prospectus.* The Company agrees to furnish the Representatives, without charge, during the Prospectus Delivery Period, as many copies of the Prospectus and any amendments and supplements thereto as the Representatives may reasonably request.

(e) *Blue Sky Compliance.* The Company shall cooperate with the Representatives and counsel for the Underwriters to qualify or register the Common Shares for sale under (or obtain exemptions from the application of) the state securities or blue sky laws or Canadian provincial Securities laws or other foreign laws of those jurisdictions reasonably designated by the Representatives, shall comply with such laws and shall continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Common Shares. The Company shall not be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation; *provided*, that if the Company requests that the Common Shares be sold in a particular jurisdiction, the Company shall take such actions as are necessary to effect sales into such jurisdiction. The Company will advise the Representatives promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Common Shares for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(f) *Use of Proceeds.* The Company shall apply the net proceeds from the sale of the Common Shares sold by it in the manner described under the caption "Use of Proceeds" in the Prospectus.

(g) *Transfer Agent.* The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Common Stock.

(h) *Earnings Statement.* As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement (which need not be audited) covering the twelve-month period ending [June 30, 2005] that satisfies the provisions of Section 11(a) of the Securities Act.

(i) *Periodic Reporting Obligations.* During the Prospectus Delivery Period the Company shall file, on a timely basis, with the Commission and the Nasdaq National Market all reports and documents required to be filed under the Exchange Act. Additionally, the Company shall report the use of proceeds from the issuance of the Common Shares as may be required under Rule 463 under the Securities Act.

(j) *Company to Provide Interim Financial Statements.* Prior to the First Closing Date, the Company will furnish the Representatives, as soon as they have been prepared by or are available to the Company, a copy of any unaudited interim financial statements of the Company for any quarterly period subsequent to the period covered by the most recent financial statements appearing in the Registration Statement and the Prospectus.

(k) *Directed Share Program.* In connection with the Directed Share Program, the Company will ensure that the Directed Shares will be restricted to the extent required by the NASD or the NASD rules from sale, transfer, assignment, pledge or hypothecation for a period of three months following the date of the effectiveness of the Registration Statement. The Designated Underwriter will notify the Company as to which Participants will need to be so restricted. The Company will direct its transfer agent to place stop transfer restrictions upon such securities for such period of time. Should the Company release, or seek to release, from such restrictions any of the Directed Shares, the Company agrees to reimburse the Underwriters for any reasonable expenses (including, without limitation, legal expenses) they incur in connection with such release.

(l) *Quotation.* The Company will use its reasonable best efforts to include the Common Shares on the Nasdaq National Market.

(m) *Agreement Not to Offer or Sell Additional Securities.* During the period commencing on the date hereof and ending on the 180th day following the date of the Prospectus, the Company will not, without the prior written consent of BAS (which consent may be withheld at the sole discretion of BAS), directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, or otherwise dispose of or transfer, or announce the offering of, or file any registration statement under the Securities Act in respect of, any shares of Common Stock, options or warrants to acquire shares of the Common Stock or securities exchangeable or exercisable for or convertible into shares of Common Stock (other than as contemplated by this Agreement with respect to the Common Shares); *provided, however*, that the Company may file a registration statement on Form S-8 and issue shares of its Common Stock or options to purchase its Common Stock, or Common Stock upon exercise of options, pursuant to any stock option, stock bonus or other stock plan or arrangement described in the Prospectus, but only if the holders of such shares, options, or shares issued upon exercise of such options, agree in writing not to sell, offer, dispose of or otherwise transfer any such shares or options during such 180 day period without the prior written consent of BAS (which consent may be withheld at the sole discretion of the BAS).

(n) *Future Reports to the Representatives.* During the period of five years hereafter the Company will furnish to the Representatives at 9 West 57<sup>th</sup> Street, New York, New York 10019 Attention: David Carbajal: (i) as soon as reasonably practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, stockholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified

public accountants; (ii) as soon as reasonably practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission, the NASD or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company mailed generally to holders of its capital stock.

(o) *Investment Limitation.* Prior to the date that is three years from the date hereof, the Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Common Shares in such a manner as would require the Company or any of its subsidiaries to register as an investment company under the Investment Company Act.

(p) *No Manipulation of Price.* Prior to the date that is three years from the date hereof, the Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

(q) *Existing Lock-Up Agreement.* The Company will enforce all existing agreements between the Company and any of its security holders that prohibit the sale, transfer, assignment, pledge or hypothecation of any of the Company's securities in connection with the Company's initial public offering. In addition, the Company will direct the transfer agent to place stop transfer restrictions upon any such securities of the Company that are bound by such existing "lock-up" agreements for the duration of the periods contemplated in such agreements.

BAS, on behalf of the several Underwriters, may, in its sole discretion, waive in writing the performance by the Company of any one or more of the foregoing covenants or extend the time for their performance. Notwithstanding the foregoing, BAS, for the benefit of each of the other Underwriters, agrees not to consent to any action proposed to be taken by the Company or any other holder of the Company's securities that would otherwise be prohibited by, or to waive compliance by the Company or any such other security holder with the provisions of, Section 3(m) above or any lock-up agreement delivered pursuant to Section 5(j) below without giving each of the other Representatives at least 17 days prior notice (or such shorter notice as each of the other Representatives may deem acceptable to permit compliance with applicable provisions of NASD Conduct Rule 2711(f) restricting publication and distribution of research and public appearances by research analysts before and after the expiration, waiver or termination of a lock-up agreement).

Section 4. *Payment of Expenses.* The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including without limitation (i) all expenses incident to the issuance and delivery of the Common Shares (including all printing and engraving costs), (ii) all fees and expenses of the registrar and transfer agent of the Common Stock, (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Common Shares to the Underwriters, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), each preliminary prospectus and the Prospectus, and all amendments and supplements

thereto, and this Agreement, (vi) all filing fees, attorneys' fees and expenses incurred by the Company or the Underwriters in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Common Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Representative, preparing and printing a "Blue Sky Survey" or memorandum, and any supplements thereto, advising the Underwriters of such qualifications, registrations and exemptions, (vii) the filing fees incident to, and the reasonable fees and expenses of counsel for the Underwriters in connection with, the NASD's review and approval of the Underwriters' participation in the offering and distribution of the Common Shares, (viii) the fees and expenses associated with including the Common Shares on the Nasdaq National Market, and (ix) all other fees, costs and expenses referred to in Item 13 of Part II of the Registration Statement and (x) all costs and expenses of the Underwriters, including the fees and disbursements of counsel for the Underwriters, in connection with matters related to the Directed Shares which are designated by the Company for sale to Participants. Except as provided in this Section 4, Section 6, Section 8 and Section 9 hereof, the Underwriters shall pay their own expenses, including the fees and disbursements of their counsel.

Section 5. *Conditions of the Obligations of the Underwriters.* The obligations of the several Underwriters to purchase and pay for the Common Shares as provided herein on the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date, shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 1 hereof as of the date hereof and as of the First Closing Date as though then made and, with respect to the Optional Common Shares, as of the Second Closing Date as though then made, to the timely performance by the Company of its covenants and other obligations hereunder, and to each of the following additional conditions:

(a) *Accountants' Comfort Letter.* At the date of closing, PricewaterhouseCoopers LLP shall have furnished to you a letter, dated the date hereof, in form and substance satisfactory to you and PricewaterhouseCoopers LLP, that shall include, but not limited to, the following:

(i) They are independent certified public accountants with respect to the Company within the meaning of the Act and the applicable rules and regulations thereunder adopted by the SEC:

(ii) In their opinion, the consolidated financial statements of the Company and its subsidiaries audited by them and included in the Registration Statement comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC;

(iii) On the basis of procedures (but not an audit in accordance with generally accepted auditing standards) consisting of:

(A) Reading the minutes of meetings of the stockholders and the Board of Directors of the Company and its consolidated subsidiaries since December 31, 2003 as set forth in the minute books through a specified date not more than three business days prior to the date of delivery of such letter;

(B) Performing the procedures specified by the American Institute of Certified Public Accountants for a review of interim financial information as described in SAS 100, Interim Financial Information, on the unaudited condensed interim financial statements of the Company and its consolidated subsidiaries included in the Registration Statement and reading the unaudited interim financial data for the period from the date of the latest balance sheet included in the Registration Statement to the date of the latest available interim financial data; and

(C) Making inquiries of certain officials of the Company who have responsibility for financial and accounting matters regarding the specific items for which representations are requested below; nothing has come to their attention as a result of the foregoing procedures that caused them to believe that:

(1) the unaudited condensed interim financial statements, included in the Registration Statement, do not comply as to form in all material respects with the applicable accounting requirements of the Act and the related rules and regulations adopted by the SEC;

(2) any material modifications should be made to the unaudited condensed interim financial statements, included in the Registration Statement, for them to be in conformity with generally accepted accounting principles;

(3) (i) at the date of the latest available interim financial data and at a specified date not more than three business days prior to the date of delivery of such letter, there was any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets (working capital) or stockholders' equity of the Company and subsidiaries consolidated as compared with amounts shown in the latest balance sheet included in the Registration Statement, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur, or (ii) for the period from the date of the latest income statement included in the Registration Statement to the date of the latest available financial data and for the period from the date of the latest income statement included in the Registration Statement to a specified date not more than three business days prior to delivery of such letter, there were any decreases, as compared with the corresponding period in the preceding year, in consolidated net sales or in the total or per-share amounts of net income, except in all instances for changes, increases or decreases which the Registration Statement discloses have occurred or may occur, or they shall state any specific changes, increases or decreases.

(iv) The letter shall also state that the information set forth in the Prospectus under the captions "Summary- Summary Consolidated Financial Data", "Capitalization", "Selected Financial Data", "Management's Discussion and Analysis of Financial Condition and Results of Operations", "Business – Collaboration Agreements", "Management – Director Compensation" and "Management – Executive Compensation" which is expressed in dollars (or percentages derived from such dollar amounts) and has been obtained from accounting records which are subject to controls over financial reporting or which has been derived directly from such accounting records by analysis or computation, is in agreement with such records or computations made therefrom.

(b) *Compliance with Registration Requirements; No Stop Order; No Objection from NASD.* For the period from and after effectiveness of this Agreement and prior to the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date:

(i) the Company shall have filed the Prospectus with the Commission (including the information required by Rule 430A under the Securities Act) in the manner and within the time period required by Rule 424(b) under the Securities Act; or the Company shall have filed a post-effective amendment to the Registration Statement containing the information required by such Rule 430A, and such post-effective amendment shall have become effective; or, if the Company elected to rely upon Rule 434 under the Securities Act and obtained the Representatives' consent thereto, the Company shall have filed a Term Sheet with the Commission in the manner and within the time period required by such Rule 424(b);

(ii) no stop order suspending the effectiveness of the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment to the Registration Statement, shall be in effect and no proceedings for such purpose shall have been instituted or threatened by the Commission; and

(iii) the NASD shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(c) *No Material Adverse Change.* For the period from and after the date of this Agreement and prior to the First Closing Date and, with respect to the Optional Common Shares, the Second Closing Date, in the judgment of the Representatives there shall not have occurred any Material Adverse Change.

(d) *Opinion of Counsel for the Company.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received the opinion of Cooley Godward LLP, counsel for the Company, dated as of such Closing Date, the form of which is attached as Exhibit A (and the Representatives shall have received an additional three conformed copies of such counsel's legal opinion for each of the several Underwriters).

(e) *Opinion of Special Patent Counsel for the Company.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received the opinion of Knobbe Martens Olson & Bear, LLP, special patent counsel for the Company, dated as of such Closing Date, in the form which is attached as Exhibit B (and the Representatives shall have received an additional three conformed copies of such counsel's legal opinion for each of the several Underwriters).

(f) *Opinion of Special Regulatory Counsel for the Company.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received the opinion of Covington & Burling, special regulatory counsel for the Company, dated as of such Closing Date, the form of which is attached hereto as Exhibit C (and the Representatives shall have received an additional three conformed copies of such counsel's legal opinion for each of the several Underwriters).

(g) *Opinion of Counsel for the Subsidiary.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received the opinion of the Jonas Bruun law firm, counsel for ACADIA Pharmaceuticals A/S, the Company's wholly owned subsidiary, dated as of such Closing Date, the form of which is attached as Exhibit D (and the Representatives shall have received an additional three conformed copies of such counsel's legal opinion for each of the several Underwriters).

(h) *Opinion of Counsel for the Underwriters.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received the opinion of Shearman & Sterling LLP, counsel for the Underwriters, dated as of such Closing Date, in form and substance satisfactory to the Underwriters (and the Representatives shall have received an additional three conformed copies of such counsel's legal opinion for each of the several Underwriters).

(i) *Officers' Certificate.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received a written certificate executed by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, dated as of such Closing Date, to the effect set forth in subsection (b) of this Section 5, and further to the effect that:

(i) for the period from and after the date of this Agreement and prior to such Closing Date, there has not occurred any Material Adverse Change;

(ii) the representations, warranties and covenants of the Company set forth in Section 1 of this Agreement are true and correct with the same force and effect as though expressly made on and as of such Closing Date; and

(iii) the Company has complied with all the agreements hereunder and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to such Closing Date.

(j) *Bring-down Comfort Letter.* On each of the First Closing Date and the Second Closing Date the Representatives shall have received from PricewaterhouseCoopers LLP, independent public or certified public accountants for the Company, a letter dated such date, in form and substance satisfactory to the Representatives, to the effect that they reaffirm the statements made in the letter furnished by them pursuant to subsection (a) of this Section 5, except that the specified date referred to therein for the carrying out of procedures shall be no more than three business days prior to the First Closing Date or Second Closing Date, as the case may be (and the Representatives shall have received an additional three conformed copies of such accountants' letter for each of the several Underwriters).

(k) *Lock-Up Agreement from Certain Securityholders of the Company.* On or prior to the date hereof, the Company shall have furnished to the Representatives an agreement in the form of Exhibit E hereto from each director, officer and each other beneficial owner of Common Stock that BAS has reasonably requested enter into such agreement, and such agreement shall be in full force and effect on each of the First Closing Date and the Second Closing Date.

(l) *Additional Documents.* On or before each of the First Closing Date and the Second Closing Date, the Representatives and counsel for the Underwriters shall have received such

information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Common Shares as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representatives by notice to the Company at any time on or prior to the First Closing Date and, with respect to the Optional Common Shares, at any time prior to the Second Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 4, Section 6, Section 8 and Section 9 shall at all times be effective and shall survive such termination.

*Section 6. Reimbursement of Underwriters' Expenses.* If this Agreement is terminated by the Representatives pursuant to Section 5, Section 7, Section 10 or Section 11, or if the sale to the Underwriters of the Common Shares on the First Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company agrees to reimburse the Representatives and the other Underwriters (or such Underwriters as have terminated this Agreement with respect to themselves), severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Representatives and the Underwriters in connection with the proposed purchase and the offering and sale of the Common Shares, including but not limited to fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

*Section 7. Effectiveness of this Agreement.* This Agreement shall not become effective until the later of (i) the execution of this Agreement by the parties hereto and (ii) notification by the Commission to the Company and the Representatives of the effectiveness of the Registration Statement under the Securities Act.

Prior to such effectiveness, this Agreement may be terminated by any party by notice to each of the other parties hereto, and any such termination shall be without liability on the part of (a) the Company to any Underwriter, except that the Company shall be obligated to reimburse the expenses of the Representatives and the Underwriters pursuant to Sections 4 and 6 hereof, (b) any Underwriter to the Company, or (c) any party hereto to any other party except that the provisions of Section 8 and Section 9 shall at all times be effective and shall survive such termination.

*Section 8. Indemnification.*

(a) *Indemnification of the Underwriters.* The Company agrees to indemnify and hold harmless each Underwriter, its officers and employees, and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Underwriter or such controlling person may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, or the laws or regulations of foreign jurisdictions where Directed Shares have been offered or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such

loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based (A) (i) upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430A or Rule 434 under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) upon any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) or any prospectus wrapper material distributed in connection with the reservation and sale of Directed Shares to the Participants, or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (iii) in whole or in part upon any inaccuracy in the representations and warranties of the Company contained herein; (iv) in whole or in part upon any failure of the Company to perform its obligations hereunder or under law; or (v) any act or failure to act or any alleged act or failure to act by any Underwriter in connection with, or relating in any manner to, the Common Stock or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, damage, liability or action arising out of or based upon any matter covered by clause (i) or (ii) above, *provided* that the Company shall not be liable under this clause (v) to the extent that a court of competent jurisdiction shall have determined by a final judgment that such loss, claim, damage, liability or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by any Underwriter through its bad faith or willful misconduct and (B) the violation of any applicable laws or regulations of foreign jurisdictions where Directed Shares have been offered; and to reimburse each Underwriter and each such controlling person for any and all expenses (including the fees and disbursements of counsel chosen by BAS) as such expenses are reasonably incurred by such Underwriter or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; *provided, however*, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Representatives expressly for use in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto); and *provided, further*, that with respect to any preliminary prospectus, the foregoing indemnity agreement shall not inure to the benefit of any Underwriter from whom the person asserting any loss, claim, damage, liability or expense purchased Common Shares, or any person controlling such Underwriter, if copies of the Prospectus were timely delivered to the Underwriter pursuant to Section 2 and a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Common Shares to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage, liability or expense. The indemnity agreement set forth in this Section 8(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) *Indemnification of the Company, its Directors and Officers.* Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, each of its directors, each of its officers who signed the Registration Statement, and each person, if any,

who controls the Company within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, or any such director, officer or controlling person may become subject, under the Securities Act, the Exchange Act, or other federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or arises out of or is based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any preliminary prospectus, the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company by the Representatives expressly for use therein; and to reimburse the Company, or any such director, officer or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The Company hereby acknowledges that the only information that the Underwriters have furnished to the Company expressly for use in the Registration Statement, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto) are the statements set forth in the table in the first paragraph under the caption "Underwriting" in the Prospectus, the statements set forth under the captions "Underwriting – Stabilization", "Underwriting – Market Making" and "Underwriting – Discretionary Accounts" in the Prospectus; and the Underwriters confirm that such statements are correct. The indemnity agreement set forth in this Section 8(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) *Notifications and Other Indemnification Procedures.* Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 8 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; *provided, however*, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate

counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party (BAS in the case of Section 8(b) and Section 9) representing the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) *Settlements.* The indemnifying party under this Section 8 shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by Section 8(c) hereof, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding.

(d) *Indemnification for Directed Shares.* In connection with the offer and sale of the Directed Shares, the Company agrees, promptly upon a request in writing, to indemnify and hold harmless the Underwriters from and against any and all losses, liabilities, claims, damages and expenses incurred by them as a result of the failure of the Participants to pay for and accept delivery of Directed Shares which, by the end of the first business day following the date of this Agreement, were subject to a properly confirmed agreement to purchase. The Company agrees to indemnify and hold harmless the Designated Underwriter, its officer and employees, and each person, if any, who controls the Designated Underwriter within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Designated Underwriter or such controlling person may become subject, which is (i) caused by any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to Participants in connection with the Directed Share Program or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not

misleading; (ii) caused by the failure of any Participant to pay for and accept delivery of Directed Shares that such Participant agreed to purchase; or (iii) related to, arising out of, or in connection with the Directed Share Program. The indemnity agreement set forth in this paragraph shall be in addition to any liabilities that the Company may otherwise have.

Section 9. *Contribution.* If the indemnification provided for in Section 8 is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, from the offering of the Common Shares pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions or inaccuracies in the representations and warranties herein which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other hand, in connection with the offering of the Common Shares pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Common Shares pursuant to this Agreement (before deducting expenses) received by the Company, and the total underwriting discount received by the Underwriters, in each case as set forth on the front cover page of the Prospectus (or, if Rule 434 under the Securities Act is used, the corresponding location on the Term Sheet) bear to the aggregate initial public offering price of the Common Shares as set forth on such cover. The relative fault of the Company, on the one hand, and the Underwriters, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 8(c), any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 8(c) with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 9; *provided, however*, that no additional notice shall be required with respect to any action for which notice has been given under Section 8(c) for purposes of indemnification.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 9.

Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the underwriting commissions received by such Underwriter in connection with the Common Shares underwritten by it and distributed to the public. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section 9 are several, and not joint, in proportion to their respective underwriting commitments as set forth opposite their names in Schedule A. For purposes of this Section 9, each officer and employee of an Underwriter and each person, if any, who controls an Underwriter within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company with the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company.

Section 10. *Default of One or More of the Several Underwriters.* If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the several Underwriters shall fail or refuse to purchase Common Shares that it or they have agreed to purchase hereunder on such date, and the aggregate number of Common Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase does not exceed 10% of the aggregate number of the Common Shares to be purchased on such date, the other Underwriters shall be obligated, severally, in the proportions that the number of Firm Common Shares set forth opposite their respective names on Schedule A bears to the aggregate number of Firm Common Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as may be specified by the Representatives with the consent of the non-defaulting Underwriters, to purchase the Common Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date. If, on the First Closing Date or the Second Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Common Shares and the aggregate number of Common Shares with respect to which such default occurs exceeds 10% of the aggregate number of Common Shares to be purchased on such date, and arrangements satisfactory to the Representatives and the Company for the purchase of such Common Shares are not made within 48 hours after such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Section 4, Section 6, Section 8 and Section 9 shall at all times be effective and shall survive such termination. In any such case either the Representatives or the Company shall have the right to postpone the First Closing Date or the Second Closing Date, as the case may be, but in no event for longer than seven days in order that the required changes, if any, to the Registration Statement and the Prospectus or any other documents or arrangements may be effected.

As used in this Agreement, the term "Underwriter" shall be deemed to include any person substituted for a defaulting Underwriter under this Section 10. Any action taken under this Section 10 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

Section 11. *Termination of this Agreement.* Prior to the First Closing Date this Agreement may be terminated by the Representatives by notice given to the Company if at any

time (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq National Market, or trading in securities generally on either the Nasdaq Stock Market or the New York Stock Exchange shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such stock exchanges by the Commission or the NASD; (ii) a general banking moratorium shall have been declared by any of federal, New York, Delaware or California authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representatives is material and adverse and makes it impracticable to market the Common Shares in the manner and on the terms described in the Prospectus or to enforce contracts for the sale of securities; (iv) in the judgment of the Representatives there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other calamity of such character as in the judgment of the Representatives may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 11 shall be without liability on the part of (a) the Company to any Underwriter, except that the Company shall be obligated to reimburse the expenses of the Representatives and the Underwriters pursuant to Sections 4 and 6 hereof, (b) any Underwriter to the Company, or (c) any party hereto to any other party except that the provisions of Section 8 and Section 9 shall at all times be effective and shall survive such termination.

Section 12. *Representations and Indemnities to Survive Delivery.* The respective indemnities, agreements, representations, warranties and other statements of the Company, of its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of its or their partners, officers or directors or any controlling person, and will survive delivery of and payment for the Common Shares sold hereunder and any termination of this Agreement.

Section 13. *Notices.* All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Representatives:

Banc of America Securities LLC  
9 West 57th Street  
New York, New York 10019  
Facsimile: (415) 913-5558  
Attention: Thomas M. Morrison

with a copy to:

Banc of America Securities LLC  
9 West 57th Street  
New York, New York 10019  
Facsimile: (212) 583-8567  
Attention: Legal Department

and

Shearman & Sterling LLP  
1080 Marsh Road  
Menlo Park, CA 94025  
Facsimile: (650) 838-3699  
Attention: Bruce Czachor

If to the Company:

ACADIA Pharmaceuticals Inc.  
3911 Sorrento Valley Boulevard  
San Diego, California 92121  
Facsimile: (858) 455-1751  
Attention: Chief Financial Officer

with a copy to:

Cooley Godward LLP  
4401 Eastgate Mall  
San Diego, California 92121-9109  
Facsimile: (858) 550-6420  
Attention: Bradley Peck

Any party hereto may change the address for receipt of communications by giving written notice to the others.

Section 14. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto, including any substitute Underwriters pursuant to Section 10 hereof, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 8 and Section 9, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Common Shares as such from any of the Underwriters merely by reason of such purchase.

Section 15. *Partial Unenforceability.* The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 16. *Governing Law Provisions.* (a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE.

(b) *Consent to Jurisdiction.* Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby (“Related Proceedings”) may be instituted in the federal courts of the United States of America located in the City and County of New York or the courts of the State of New York in each case located in the City and County of New York (collectively, the “Specified Courts”), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court (a “Related Judgment”), as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party’s address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum.

Section 17. *General Provisions.* This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Table of Contents and the Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Each of the parties hereto acknowledges that it is a sophisticated business person who was adequately represented by counsel during negotiations regarding the provisions hereof, including, without limitation, the indemnification provisions of Section 8 and the contribution provisions of Section 9, and is fully informed regarding said provisions. Each of the parties hereto further acknowledges that the provisions of Sections 8 and 9 hereto fairly allocate the risks in light of the ability of the parties to investigate the Company, its affairs and its business in order to assure that adequate disclosure has been made in the Registration Statement, any preliminary prospectus and the Prospectus (and any amendments and supplements thereto), as required by the Securities Act and the Exchange Act.

The respective indemnities, contribution agreements, representations, warranties and other statements of the Company and the several Underwriters set forth in or made pursuant to this Agreement shall remain operative and in full force and effect, regardless of (i) any

investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the officers or employees of any Underwriter, any person controlling any Underwriter, the Company, the officers or employees of the Company, or any person controlling the Company, (ii) acceptance of the Common Shares and payment for them hereunder and (iii) termination of this Agreement.

Except as otherwise provided, this Agreement has been and is made solely for the benefit of and shall be binding upon the Company, the Underwriters, the Underwriters' officers and employees, any controlling persons referred to herein, the Company's directors and the Company's officers who sign the Registration Statement and their respective successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement. The term "successors and assigns" shall not include a purchaser of any of the Shares from any of the several Underwriters merely because of such purchase.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

ACADIA PHARMACEUTICALS INC.

By: \_\_\_\_\_

Name: Uli Hacksell  
Title: Chief Executive Officer

The foregoing Underwriting Agreement is hereby confirmed and accepted by the Representatives in San Francisco, California as of the date first above written.

BANC OF AMERICA SECURITIES LLC  
PIPER JAFFRAY & CO.  
JMP SECURITIES LLC  
ADAMS, HARKNESS & HILL, INC.

Acting as Representatives of the  
several Underwriters named in  
the attached Schedule A.

By: Banc of America Securities LLC

By: \_\_\_\_\_

Managing Director

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ACADIA PHARMACEUTICALS INC.**

ACADIA Pharmaceuticals 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:

**FIRST:** The name of the Corporation is ACADIA Pharmaceuticals Inc.

**SECOND:** The Corporation's original Certificate of Incorporation was filed with the Secretary of State on January 16, 1997 under the name Receptor Technologies, Inc.

**THIRD:** The Amended and Restated Certificate of Incorporation of this Corporation, in the form attached hereto as **Exhibit A**, has been duly adopted by the Board of Directors and stockholders in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware. At least two-thirds of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock of the Corporation, voting together as a separate class, and a majority of all outstanding capital stock of the Company approved this Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware and written notice of such was given by the Corporation in accordance with said Section 228.

**FOURTH:** The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in **Exhibit A** attached hereto and is hereby incorporated by reference.

**IN WITNESS WHEREOF**, ACADIA Pharmaceuticals Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this \_\_\_\_ day of \_\_\_\_\_, 2004.

**ACADIA PHARMACEUTICALS INC.**

By: \_\_\_\_\_

**Uli Hacksell, Ph.D.**  
Chief Executive Officer

EXHIBIT A

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
ACADIA PHARMACEUTICALS INC.

I.

The name of this Corporation is ACADIA Pharmaceuticals Inc.

II.

The address of its registered office in the State of Delaware is Corporation Service Company, 1013 Centre Road, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

III.

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the "**DGCL**").

IV.

This Corporation is authorized to issue two classes of stock to be designated, respectively, "**Common Stock**" and "**Preferred Stock**". The total number of shares which the Corporation is authorized to issue is 61,169,067 shares, of which (i) 40,000,000 shares shall be Common Stock, each having a par value of \$0.0001 and (ii) 21,169,067 shares shall be Preferred Stock, each having a par value of \$0.01. Effective immediately upon the filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "**Effective Time**"): (i) each two (2) shares of Common Stock issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Common Stock; (ii) each two (2) shares of Series A Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series A Preferred Stock; (iii) each two (2) shares of Series B Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series B Preferred Stock; (iv) each two (2) shares of Series C Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series C Preferred Stock; (v) each two (2) shares of Series D Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series D Preferred Stock; (vi) each two (2) shares of Series E Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series E Preferred Stock; and (vii) each two (2) shares of Series F Preferred Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be converted and combined into and shall become one (1) share of Series F Preferred Stock. No fractional shares shall be issued and, in lieu thereof, any holder of less than one share of Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and/or Series F Preferred Stock shall be entitled to receive cash for such holder's fractional share based upon the fair market value of such fractional share as of the Effective Time.

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

**A. COMMON STOCK**

**1. General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

**2. Voting.** Subject to Section C.3. of this Article IV, the holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding or issuable upon the exercise or conversion of any securities exercisable for or convertible into Common Stock) by the affirmative vote of the holders of majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

**3. Dividends.** Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

**4. Liquidation.** Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

**B. PREFERRED STOCK.**

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

**C. SERIES PREFERRED STOCK.**

An aggregate of 2,372,548 shares of the authorized shares of Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**"; an aggregate of 738,384 shares of the authorized shares of Preferred Stock are hereby designated "**Series B Preferred Stock**"; an aggregate of 1,000,000 shares of the authorized shares of Preferred Stock are hereby designated "**Series C Preferred Stock**"; an aggregate of 1,908,135 shares of the authorized shares of Preferred Stock are hereby designated "**Series D Preferred Stock**"; an aggregate of 4,000,000 shares of Preferred Stock are hereby designated "**Series E Preferred Stock**"; and an aggregate of 11,150,000 shares of Preferred Stock are hereby designated "**Series F Preferred Stock**". The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock and the Series F Preferred Stock are collectively referred to herein as the "**Series Preferred Stock**" with the following rights, preferences, powers, privileges, restrictions, qualifications and limitations.

**1. Dividends.**

a. The Corporation shall not declare or pay any distributions (as defined below) on shares of Common Stock until the holders of the Series Preferred Stock then outstanding shall have first received, or simultaneously receive, a distribution on each outstanding share of Series Preferred Stock in an amount at least equal to the product of (i) the per share amount, if any, of the dividends or other distributions to be declared, paid or set aside for the Common Stock, multiplied by (ii) the number of whole shares of Common Stock into which such share of Preferred Stock would then (a) with respect to the Series A, Series B, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, be reclassified had the payment of the Special Dividend (as defined in subsection c. below) been declared and paid and had the expiry of the Series Preferred Stock preferences occurred immediately prior to the declaration and payment of such distribution, and (b) with respect to Series C Preferred Stock, be convertible into.

b. For purposes of this Section C.1., unless the context requires otherwise, “**distribution**” shall mean the transfer of cash or property without consideration, whether by way of dividend or otherwise, payable other than in Common Stock or other securities of the Corporation, or the purchase or redemption of shares of the Corporation (other than repurchases of Common Stock held by employees, officers or directors of, or consultants to, the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase at a price equal to the original issue price of such shares and other than redemptions in liquidation or dissolution of the Corporation) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation.

c. The Corporation shall, immediately prior to the effectiveness of a Qualified Offering (as defined in Section C.5.a. below), declare and pay on the Series Preferred Stock a “**Special Dividend**”, payable as follows:

(a) with respect to each holder of the Series A Preferred Stock, payable in shares of Series A Preferred Stock, equal to  $X = [A * B]$  -

A, where

(1) A equals the aggregate number of shares of Series A Preferred Stock held by such holder immediately prior to the declaration of the Special Dividend;

(2) B equals \$4.50 divided by the then current Series A Adjustment Factor (as defined below); and

(3) X equals the number of shares of Series A Preferred Stock to be issued to such holder in the dividend.

(b) with respect to each holder of the Series B Preferred Stock, payable in shares of Series B Preferred Stock, equal to  $X = [A * B]$  -

A, where

(1) A equals the aggregate number of shares of Series B Preferred Stock held by such holder immediately prior to the declaration of the Special Dividend;

(2) B equals \$6.82 divided by the then current Series B Adjustment Factor (as defined below); and

(3) X equals the number of shares of Series B Preferred Stock to be issued to such holder in the dividend.

(c) with respect to each holder of the Series D Preferred Stock, payable in shares of Series D Preferred Stock, equal to  $X = [A * B] -$

A, where

(1) A equals the aggregate number of shares of Series D Preferred Stock held by such holder immediately prior to the declaration of the Special Dividend;

(2) B equals \$10.74 divided by the then current Series D Adjustment Factor (as defined below); and

(3) X equals the number of shares of Series D Preferred Stock to be issued to such holder in the dividend.

(d) with respect to each holder of the Series E Preferred Stock, payable in shares of Series E Preferred Stock, equal to  $X = [A * B] -$

A, where

(1) A equals the aggregate number of shares of Series E Preferred Stock held by such holder immediately prior to the declaration of the Special Dividend;

(2) B equals \$10.08 divided by the then current Series E Adjustment Factor (as defined below); and

(3) X equals the number of shares of Series E Preferred Stock to be issued to such holder in the dividend; and

(e) with respect to each holder of the Series F Preferred Stock, payable in shares of Series F Preferred Stock, equal to  $X = [A * B] - A,$

where

(1) A equals the aggregate number of shares of Series F Preferred Stock held by such holder immediately prior to the declaration of the Special Dividend;

(2) B equals \$5.40 divided by the then current Series F Adjustment Factor (as defined below); and

(3) X equals the number of shares of Series F Preferred Stock to be issued to such holder in the dividend.

The aggregate Special Dividends payable with respect to the Series A Preferred Stock is referred to herein as the “**Special Series A Dividend**”, the aggregate Special Dividends payable with respect to the Series B Preferred Stock is referred to herein as the “**Special Series B Dividend**”, the aggregate Special Dividends payable with respect to the Series D Preferred Stock is referred to herein as the “**Special Series D Dividend**”, the aggregate Special Dividends payable with respect to the Series E Preferred Stock is referred to herein as the “**Special Series E Dividend**” and the aggregate Special Dividends payable with respect to the Series F Preferred Stock is referred to herein as the “**Special Series F Dividend**”. Any fraction of a share of Series Preferred Shares shall be adjusted upward to the nearest full number of shares and no fraction of a share shall be payable in cash.

Notwithstanding any provision herein to the contrary, if on or after June 1, 2003, the Corporation engages in a subsequent round of financing (other than any debt financings from a bank or similar financial institution) in which the board of directors has allocated for purchase part of such round to a particular series of the Series Preferred Stock, and a holder of any shares of such series fails to purchase 100% of such holder's pro rata share of such allocation (such pro rata share being based upon the shares of such series of Series Preferred Stock such holder holds in relation to the issued and outstanding shares of such series), then the Special Dividend with respect to such holder's shares of such series shall be calculated based on the Adjustment Factor for such series without taking into effect any adjustments pursuant to Section C.4.a. for such series at any time after the Original Issue Date (as defined below) through the date of payment of the Special Dividend and the holder shall be deemed to have forfeited the right to receive any and all adjustments to the such Adjustment Factor pursuant to Section C.4.a.

**2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.**

a. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation,

(i) the holders of shares of Series F Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series A, Series B, Series C, Series D, Series E Preferred Stock and Common Stock or any other class or series of stock ranking on liquidation junior to the Series F Preferred Stock by reason of their ownership thereof, an amount equal to the greater of (A) \$8.10 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Effective Time affecting such shares) plus a rate of return on such amount equal to 10% per annum from the Original Issue Date (as defined below) until the date of payment thereof to the holders of the Series F Preferred Stock or (B) such amount per share as would have been payable had the Special Series F Dividend been declared and paid and had each such share of Series F Preferred Stock been reclassified into Common Stock pursuant to Section C.5 immediately prior to such liquidation, dissolution or winding up. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series F Preferred Stock the full amount to which they shall be entitled, then the holders of shares of Series F Preferred Stock shall share ratably in any distribution of such remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(ii) the holders of shares of Series A, Series B, Series C, Series D and Series E Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock, an amount equal to the greater of: (x)(A) with respect to the Series A Preferred Stock, \$4.50 per share, with respect to the Series B Preferred Stock, \$6.82 per share, with respect to the Series C Preferred Stock, \$10.16 per share, with respect to the Series D Preferred Stock, \$10.74 per share, and with respect to the Series E Preferred Stock, \$10.08 per share (in each case, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Effective Time affecting such shares), plus any dividends declared but unpaid thereon, plus (B) a rate of return on the amount determined under the foregoing clause (A) equal to 10% per annum from the

Original Issue Date (as defined below) until the date of payment thereof to the holders of such series or (y) such amount per share as would have been payable had the Special Series A Dividend, Special Series B Dividend, Special Series D Dividend and Special Series E Dividend been declared and paid and had each such share been reclassified or converted, as the case may be, into Common Stock pursuant to Section C.5 immediately prior to such liquidation, dissolution or winding up. If upon any such liquidation, dissolution or winding up of the Corporation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of such series of Series Preferred Stock the full amount to which they shall be entitled, then the holders of shares of such series shall share ratably in any distribution of such remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

b. Upon completion of the distribution provided for in Subsection 2.a. above, all of the assets remaining in the Corporation, if any, shall be distributed pro rata among the holders of the Common Stock, based upon the number of shares of Common Stock held by such holder.

c. In the event of any merger or consolidation of the Corporation into or with another corporation (except one in which the holders of capital stock of the Corporation immediately prior to such merger or consolidation continue to hold at least 80% by voting power of the capital stock of the surviving corporation), or the sale of all or substantially all the assets of the Corporation, if the holders of at least a majority of the outstanding shares of the Series Preferred Stock, voting collectively as a single class, and a majority of the outstanding shares of the Series F Preferred Stock, voting as a separate class, so elect by giving written notice thereof to the Corporation at least three days before the effective date of such event, then such merger, consolidation or asset sale shall be deemed to be a liquidation of the Corporation with respect to all of the Series Preferred Stock, and all consideration payable to the holders of shares of Series Preferred Stock (in the case of a merger or consolidation), or all consideration payable to the Corporation and allocable to the holders of shares of Series Preferred Stock, together with all other available assets of the Corporation which are allocable to the holders of shares of Series Preferred Stock (in the case of an asset sale), shall be distributed to the holders of shares of Series Preferred Stock in accordance with Subsection 2.a. above. The Corporation shall promptly provide to the holders of shares of Series Preferred Stock such information concerning the terms of such merger, consolidation or asset sale and the value of the assets of the Corporation as may reasonably be requested by the holders of Series Preferred Stock in order to assist them in determining whether to make such an election. If the holders of a majority of the Series Preferred Stock and a majority of the Series F Preferred Stock make such an election, the Corporation shall use its best efforts to amend the agreement or plan of merger or consolidation to adjust the rate at which the shares of capital stock of the Corporation are converted into or exchanged for cash, new securities or other property to give effect to such election. The amount deemed distributed to the holders of Series Preferred Stock upon any such merger or consolidation shall be the cash or the value of the property, rights or securities distributed to such holders by the acquiring person, firm or other entity. The value of such property, rights or other securities shall be determined in good faith by the Board of Directors of the Corporation. Upon the distribution of assets to the holders of Series Preferred Stock making the election under this Subsection 2.c., the shares of Series Preferred Stock held by such holders shall be deemed surrendered and shall be canceled. If no notice of the election permitted by this Subsection 2.c. is given, the provisions of Subsection 4.f. shall apply.

### **3. Voting.**

a. Each holder of outstanding shares of Series Preferred Stock shall be entitled at any meeting of stockholders, or pursuant to an action by written consent in lieu of a meeting, to the number of votes equal to the number of whole shares of Common Stock into which the shares of Series Preferred Stock held by such holder would be reclassified had the issuance of the Special Dividend

and the expiry of the preferences or the conversion, as the case may be, of the Series Preferred Stock pursuant to Section C.5. herein occurred immediately prior to the record date for such meeting of stockholders of the Corporation (and written actions of stockholders in lieu of meetings) with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration. Except as provided by law or by the provisions of Subsections 3.b. and 3.c. below, holders of Series A, Series B, Series C, Series D, Series E and Series F Preferred Stock shall vote together with the holders of Common Stock as a single class.

b. Subject to Section C.5. herein, in addition to any votes otherwise required by law, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series Preferred Stock taken as a whole so as to affect adversely each of the series of Series Preferred Stock in the same manner, without the written consent or affirmative vote of holders of at least two-thirds (2/3) of the then outstanding shares of Series Preferred Stock, taken collectively as a single class, given in writing or by vote at a meeting, consenting or voting (as the case may be) collectively as a single class, including but not limited to any of the following:

(i) authorizing any shares of capital stock with preference, priority over and/or on parity with every series of the Series Preferred Stock (except with respect to shares authorized for and issued to Corporate Partners) as to voting or the right to receive either dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation;

(ii) any sale, conveyance, or other disposition of or encumbrance (other than pursuant to a credit arrangement in the ordinary course of business) of all or substantially all of the Corporation's property or business or merging into or consolidating with any other corporation (other than a wholly owned subsidiary corporation) or effecting any transaction or series of related transactions in which more than 50% of the voting power of the Corporation is disposed of or effecting any reorganization or recapitalization of the Corporation;

(iii) increasing the aggregate authorized number of shares of Series Preferred Stock; or

(iv) except with respect to a change in the authorized number of shares of Common Stock necessary in connection with any adjustment pursuant to the antidilution protections or Special Dividend provisions hereof, increasing the authorized number of shares of Common Stock.

For purposes of this Section C.3, the term "**Corporate Partner**" shall mean a third party with whom the Corporation has entered into a strategic relationship pursuant to a written *bona fide* collaboration agreement involving payments to the Corporation and diligence obligations by such third party.

c. The holders of the Series F Preferred Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation. The holders of the Series A, Series B and Series D Preferred Stock, voting collectively as a separate class, shall be entitled to elect two (2) directors of the Corporation. The holders of the Series C Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation. The holders of the Series E Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director of the Corporation. The holders of the Series Preferred Stock and the holders of Common Stock, voting collectively as a single class, shall be entitled to elect the remaining directors of the Corporation. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of a majority of the shares of the one or more series entitled to elect such director or directors

shall constitute a quorum for the election of the director or directors to be elected solely by the holders of such series. A vacancy in any directorship elected by the holders of one or more series shall be filled only by vote or written consent of the holders of a majority of the shares of the series that elected such director and a director may only be removed, with or without cause, by the holders of a majority of the shares of the series that elected such director. Notwithstanding anything to the contrary herein, the foregoing provisions of this Section C.3.c. of Article IV shall terminate and cease to apply effective upon the closing of the IPO (as defined in Section A.2. of Article V below).

#### 4. Adjustment Factor

The Corporation shall at all times calculate an adjustment factor (the “**Adjustment Factor**”). The Adjustment Factor with respect to the Series A Preferred Stock shall initially be \$4.50 (the “**Series A Adjustment Factor**”); the Adjustment Factor with respect to the Series B Preferred Stock shall initially be \$6.82 (the “**Series B Adjustment Factor**”); the Adjustment Factor with respect to the Series C Preferred Stock shall initially be \$10.16 (the “**Series C Adjustment Factor**”); the Adjustment Factor with respect to the Series D Preferred Stock shall initially be \$10.74 (the “**Series D Adjustment Factor**”), the Adjustment Factor with respect to the Series E Preferred Stock shall initially be \$10.08 (the “**Series E Adjustment Factor**”) and the Adjustment Factor with respect to the Series F Preferred Stock shall initially be \$5.40 (the “**Series F Adjustment Factor**”). Such initial Adjustment Factor shall be subject to adjustment after the Effective Time as provided below.

##### a. Adjustments to Adjustment Factor for Diluting Issues:

(i) **Special Definitions.** For purposes of this Section 4, the following definitions shall apply:

(a) “**Option**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities, excluding options or warrants described in subsection 4.a.(i)(d)(4) below.

(b) “**Original Issue Date**” with respect to each series of Series Preferred Stock shall mean the date on which the first share of Series F Preferred Stock was issued.

(c) “**Convertible Securities**” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible or reclassifiable into or exchangeable for Common Stock.

(d) “**Additional Shares of Common Stock**” shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.a.(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of any Convertible Securities outstanding on the Original Issue Date, or upon exercise of any Option outstanding on the Original Issue Date (including Options issued on such date);

(2) as a dividend or distribution on Series Preferred Stock or in connection with the reclassification or conversion, as the case may be, of the Series Preferred Stock pursuant to Section C.5. herein;

Subsection 4.b. or 4.c. below;

(3) by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by

Board of Directors of the Corporation;

(4) to employees or directors of, or consultants to, the Corporation pursuant to a plan or arrangement adopted by the

(5) in connection with bona fide strategic transactions involving the Corporation and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements, or (ii) collaboration or technology transfer arrangements; provided that each such transaction and the issuance of shares pursuant thereto has been approved by the Corporation's Board of Directors and the arrangement involves due diligence obligations (if applicable);

(6) upon the exercise of all warrants outstanding as of the Original Issue Date;

(7) upon issuance of any shares of Series F Preferred Stock;

(8) up to 750,000 shares of Series E Preferred Stock issued to the holders of Series A, Series B, Series C, Series D and Series E Preferred Stock in connection with their purchase of Series F Preferred Stock; or

(9) in an underwritten public offering pursuant to the Registration Statement on Form S-1 (No. 333-113137), as amended, initially filed with the Securities and Exchange Commission on February 27, 2004 (the "**Proposed Offering**").

**(ii) No Adjustment of Adjustment Factor.** No adjustment in the Adjustment Factor shall be made under this Section 4.a unless (a) the consideration per share (determined pursuant to Subsection 4.a(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the applicable Adjustment Factor with respect to the applicable series of Series Preferred Stock in effect on the date of, and immediately prior to, the issue of such Additional Shares of Common Stock, and (b) prior to such issuance, the Corporation did not receive written consent from the holders of all the then outstanding shares of the applicable series of Series Preferred Stock otherwise subject to such adjustment that no such adjustment shall be made as the result of the issuance of Additional Shares of Common Stock.

**(iii) Deemed Issuance of Additional Shares of Common Stock.** If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to Subsection 4.a(v) hereof) of such Additional Shares of Common Stock would be less than the applicable Adjustment Factor in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) No further adjustment in the Adjustment Factor shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(b) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Corporation, upon the exercise, conversion or exchange thereof, the Adjustment Factor computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase becoming effective, be recomputed to reflect such increase insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(c) Upon the expiration or termination of any unexercised Option, the Adjustment Factor shall not be readjusted, but the Additional Shares of Common Stock deemed issued as the result of the original issue of such Option shall not be deemed issued for the purposes of any subsequent adjustment of the Adjustment Factor;

(d) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Adjustment Factor then in effect shall forthwith be readjusted to such Adjustment Factor as would have been obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised or converted prior to such change been made upon the basis of such change; and

(e) No readjustment pursuant to clause (b) or (d) above shall have the effect of increasing the Adjustment Factor to an amount which exceeds the lower of (i) the Adjustment Factor on the original adjustment date, or (ii) the Adjustment Factor that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends the terms of any Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after the Original Issue Date), then such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 4.a. shall apply.

**(iv) Adjustment of Adjustment Factor Upon Issuance of Additional Shares of Common Stock.** In the event the Corporation shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.a(iii)), but excluding shares issued as a stock split or combination as provided in Subsection 4.b or upon a dividend or distribution as provided in Subsection 4.c), without consideration or for a consideration per share less than the applicable Adjustment Factor in effect on the date of and immediately prior to such issue, then and in such event, such Adjustment Factor shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Adjustment Factor by a fraction, (A) the numerator of which shall be (1) the number of shares of Common Stock outstanding immediately prior to such issue plus (2) the number of shares of Common Stock which the aggregate consideration received or to be received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Adjustment Factor; and (B) the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; *provided that*, (i) for the purpose of this subsection 4.a(iv), all shares of Common Stock

issuable upon exercise or conversion of options or Convertible Securities outstanding immediately prior to such issue shall be deemed to be outstanding, and (ii) the number of shares of Common Stock deemed issuable upon exercise or conversion of such outstanding options and Convertible Securities shall not give effect to any adjustments to the exercise price or conversion rate of such options or Convertible Securities resulting from the issuance of Additional Shares of Common Stock that is the subject of this calculation.

**(v) Determination of Consideration.** For purposes of this Subsection 4.a, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

**(a) Cash and Property:** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(2) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(3) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of such Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

**(b) Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.a.(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

**(vi) Multiple Closing Dates.** In the event the Corporation shall issue on more than one date Additional Shares of Common Stock which are comprised of shares of the same series or class of Preferred Stock, and such issuance dates occur within a period of no more than 120 days, then the Adjustment Factor shall be adjusted only once on account of such issuances, with such adjustment to occur upon the final such issuance and to give effect to all such issuances as if they occurred on the date of the final such issuance.

**b. Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the Effective Time effect a subdivision of the outstanding

Common Stock, the Adjustment Factors then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Effective Time combine the outstanding shares of Common Stock, the Adjustment Factors then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

**c. Adjustment for Certain Dividends and Distributions.** In the event the Corporation at any time, or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Adjustment Factors then in effect shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Adjustment Factors then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

*provided, however,* if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Adjustment Factor shall be recomputed accordingly as of the close of business on such record date and thereafter the Adjustment Factor shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions.

**d. Adjustments for Other Dividends and Distributions.** In the event the Corporation at any time or from time to time after the Original Issue Date for the Series Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, then and in each such event provision shall be made so that the holders of the Series Preferred Stock shall receive upon the issuance of the Special Dividend in addition to the number of shares of Series Preferred Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the issuance of the Special Dividend occurred and the preferences of the Series Preferred Stock expired or converted, as the case may be, pursuant to Section C.5. herein immediately before the record date of such event and had they thereafter, during the period from the date of such event to and including the date of issue of the Special Dividend, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Series Preferred Stock.

**e. Adjustment for Reclassification, Exchange, or Substitution.** If the Common Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares or stock dividend provided for above, or a reorganization, merger, consolidation, or sale of assets provided for below), then and in each such event upon the expiry of the preferences or conversion, as the case may be, of the Series Preferred Stock pursuant to Section C.5. herein each such share of Series Preferred Stock shall have the rights, privileges and obligations of the kind and amount of

shares of stock and other securities and property receivable upon such reorganization, reclassification, or other change, by holders of the number of shares of Common Stock into which such shares of Series Preferred Stock have been transformed had the issue of the Special Dividend and the expiry of the preferences or conversion, as the case may be, of the Series Preferred Stock pursuant to Section C.5. herein occurred immediately prior to such reorganization, reclassification, or change, all subject to further adjustment as provided herein.

**f. Adjustment for Merger or Reorganization, etc.** In case of any consolidation or merger of the Corporation with or into another corporation or the sale of all or substantially all of the assets of the Corporation to another corporation (other than a consolidation, merger or sale which is covered by Subsection 2.c.), each holder of shares of Series Preferred Stock will be entitled to receive in the merger, consolidation or sale the kind and amount of shares of stock or other securities to which such holder would be entitled if (x), with respect to the holders of Series A, Series B, Series D, Series E and Series F Preferred Stock, the Special Dividend had been declared and paid immediately before the effective date of such merger, consolidation or sale; and (y) such holder was, on the effective date of such merger, consolidation or sale, the holder of that number of shares of Common Stock into which the holder's shares of Series Preferred Stock are convertible or the number of shares of Common Stock equal to the sum of the number of its Series Preferred Stock and the number of shares of Series Preferred Stock it would have received pursuant to the Special Dividend, as the case may be.

**g. No Impairment.** The Corporation will not, by amendment of this Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series Preferred Stock against impairment.

**h. Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Adjustment Factor pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series Preferred Stock, furnish or cause to be furnished to such holder a similar certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Adjustment Factor then in effect, and (iii) the number of shares of Series Preferred Stock and the amount, if any, of other property which then would be received upon the declaration and payment of the Special Dividend.

**i. Notice of Record Date.** In the event:

(i) that the Corporation declares a dividend (or any other distribution) on its Common Stock payable in Common Stock or other securities of the Corporation;

(ii) that the Corporation subdivides or combines its outstanding shares of Common Stock;

(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 a stock dividend or stock distribution thereon), or of any consolidation or merger of the Corporation into or with another corporation, or of the sale of all or substantially all of the assets of the Corporation; or

(iv) of the involuntary or voluntary dissolution, liquidation or winding up of the Corporation;

then the Corporation shall cause to be filed at its principal office or at the office of the transfer agent of the Series Preferred Stock, and shall cause to be mailed to the holders of the Series Preferred Stock at their last addresses as shown on the records of the Corporation or such transfer agent, at least ten days prior to the date specified in (a) below or twenty days before the date specified in (b) below, a notice stating

(a) the record date of such dividend, distribution, subdivision or combination, 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, subdivision or combination are to be determined, or

(b) the date on which such reclassification, consolidation, merger, sale, 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 or other property deliverable upon such reclassification, consolidation, merger, sale, dissolution or winding up.

#### **5. Expiry of Preferences of Series A, B, D, E and F Preferred Stock; Conversion of Series C Preferred Stock.**

**a. Expiry of Preferences of Series A, Series B, Series D, Series E and Series F Preferred Stock.** Upon (i) either (A) the closing of the sale of shares of Common Stock, at a price of at least \$13.50 per share (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations after the Effective Time affecting such shares), in a public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "**Act**"), resulting in at least \$25,000,000 of gross proceeds to the Corporation, or (B) the closing of the Proposed Offering if such closing occurs on or before December 31, 2004 and results in at least \$30,000,000 of gross proceeds to the Corporation (in either case, a "**Qualified Offering**"), or (ii) the vote or written consent of the holders of a majority of the issued and outstanding shares of the Series A, Series B, Series D, Series E and Series F Preferred Stock, voting together as a single class, (A) each and every preference or senior right of the Series A, Series B, Series D, Series E and Series F Preferred Stock relative to the Common Stock, including without limitation as set forth in Sections C.1, C.2, C.3 and C.4 herein, shall expire and be of no further force or effect and (B) the Corporation may in reference to (i) above, and shall in reference to (ii) above, reclassify all shares of Series A, Series B, Series D, Series E and Series F Preferred Stock having rights and privileges on a parity with the Common Stock as Common Stock whereupon the number of authorized shares of Preferred Stock shall be automatically reduced by a number of shares of Preferred Stock that had been designated as Series A, Series B, Series D, Series E, and Series F Preferred Stock, and all provisions included under the caption "Series Preferred Stock", and all references to the Series Preferred Stock, shall be of no further force or effect with respect to the Series A, Series B, Series D, Series E and Series F Preferred Stock.

(i) All holders of record of shares of Series A, Series B, Series D, Series E and Series F Preferred Stock shall be given written notice of the effective date or the expiry of the preferences of such series, no less than 60 days in advance thereof; *provided, however*, that no notice shall be required to be delivered to such holders of the effective date or the expiry of such preferences in connection with the Proposed Offering. If such notice is required, such notice shall be sent by first class or registered mail, postage prepaid, to each record holder of Series A, Series B, Series D, Series E and Series F Preferred Stock at such holder's address last shown on the records of the transfer agent for the

Series Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). The notice, if required, shall include a calculation of the Special Dividend in detail sufficient to permit the holders of Series A, Series B, Series D, Series E and Series F Preferred Stock to verify the conformity of the amount of the dividend to the terms hereof. Within 30 days of receipt of such notice, the Board of Directors shall forward to each holder of the shares of the aforesaid series a certificate for the number of shares of Series A, Series B, Series D, Series E, and Series F Preferred Stock to which such holder is entitled pursuant to the Special Dividend, if any. Upon receipt of such shares, each holder of shares of the aforesaid series of Series Preferred Stock may surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter at the option of such holder, receive either (i) the certificate(s) for such shares duly endorsed to evidence the expiry of any preference rights, or (ii) certificates for a comparable number of shares of Common Stock. After the expiry of the preferences of such series of Series Preferred Stock the Corporation may demand, in connection with the reclassification of such shares pursuant to Section C.5.a. herein, that all holders of certificates for such series so expired surrender to the Corporation their certificate or certificates for Series A, Series B, Series D, Series E and Series F Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, a certificate or certificates for a comparable number of full shares of Common Stock.

(ii) All certificates evidencing shares of Series A, Series B, Series D, Series E and Series F Preferred Stock, from and after the expiry of the preferences of such series, shall be deemed to represent shares of Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized shares of such series accordingly.

**b. Conversion of Series C Preferred Stock.** The holders of the Series C Preferred Stock shall have conversion rights as follows (the “*Conversion Rights*”):

(i) **Optional Conversion.** Each share of Series C Preferred Stock shall be convertible at the option of the holder thereof, without payment of additional consideration at any time, at the office of the Corporation or any transfer agent for the Series C Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing \$10.16 by the Series C Adjustment Factor then in effect for such share; *provided, however,* that the Adjustment Factor for the Series C Preferred Stock shall be subject to adjustment as set forth in subsection C.4.

(ii) **Automatic Conversion.** Each share of Series C Preferred Stock shall automatically be converted into the number of shares of Common Stock into which such share of Series C Preferred Stock is then convertible pursuant to Section 5.b(i): (1) in the event that the holders of not less than sixty-seven percent (67%) of the outstanding Series C Preferred Stock consent to such conversion, or (2) upon a Qualified Offering.

(ii) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of the Series C Preferred Stock. In lieu of any fractional share, the Corporation shall pay cash equal to such fraction multiplied by the then current fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Before any holder of Series C Preferred Stock shall be entitled to convert the same into shares of Common Stock, it shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series C Preferred Stock, and shall give written notice to the Corporation at such office that it elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section 5.b(ii)). The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series C Preferred

Stock a certificate or certificates, registered in such names as specified by the holder, for the number of shares of Common Stock to which such holder shall be entitled as aforesaid, and a check payable to the holder in the amount of any amounts payable for fractional shares and any declared and unpaid dividends on the converted Series C Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of the Series C Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date (except that in the event of an automatic conversion pursuant to Section 5.b.(ii)(1), such conversion shall be deemed to have been made at the close of business on the date fixed in the vote approving such automatic conversion and in the event of automatic conversion pursuant to Section 5.b.(ii)(2), such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in Section 5.b.(ii)(2). If the conversion is in connection with an underwritten offer of securities registered pursuant to the Act, the conversion may, at the option of any holder tendering Series C Preferred Stock for conversion, be conditioned upon the closing with the underwriter of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the closing of such sale of securities. If such conversion is in connection with a merger, consolidation or sale of assets which would be treated as a liquidation, dissolution or winding up of the Corporation in accordance with and for purposes of Section C.2., the conversion may, at the option of the holder tendering Series C Preferred Stock for conversion, be conditioned upon the consummation of such transaction, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of Series C Preferred Stock shall not be deemed to have converted such Series C Preferred Stock until immediately prior to the consummation of such transaction.

**(iv) Reservation of Stock Issuable Upon Conversion.** This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series C Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series C Preferred Stock in addition to such other remedies as shall be available to the holder of such Series C Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

## V.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

### A. BOARD OF DIRECTORS.

**1. Powers and Numbers of Directors.** The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted by the Board of Directors and not inconsistent with the Certificate of Incorporation of the Corporation.

**2. Classification.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public (the “*IPO*”), the directors shall be divided into three classes designated as “*Class I*”, “*Class II*” and “*Class III*”, respectively. Directors shall initially be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the closing of the IPO, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the closing of the IPO, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the closing of the IPO, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**3. Removal of Directors.**

a. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the IPO, neither the Board of Directors nor any individual director may be removed without cause.

b. Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally at an election of directors.

**4. Vacancies.** Subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified.

**B. BYLAW AMENDMENTS.** The Board is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

**C. STOCKHOLDER ACTION.** No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws. No action shall be taken by the stockholders by written consent or electronic transmission.

**D. ADVANCE NOTICE.** Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

## **VI.**

**A.** The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated to the fullest extent permitted by the DGCL, as so amended

**B.** Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

## **VII.**

**A.** 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 statute, except as provided in paragraph B. of this Article VII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

**B.** Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law, this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI or VII.



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May 18, 2004

ACADIA Pharmaceuticals Inc.  
3911 Sorrento Valley Boulevard  
San Diego, CA 92121

Dear Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by ACADIA Pharmaceuticals Inc. (the "Company") of a Registration Statement (No. 333-113137) on Form S-1 (the "Registration Statement") with the Securities and Exchange Commission, including a related prospectus filed with the Registration Statement (the "Prospectus"), covering an underwritten public offering of up to 5,750,000 shares (the "Shares") of the Company's common stock, par value \$.0001, including 750,000 shares of common stock that may be sold pursuant to the exercise of an over-allotment option.

In connection with this opinion, we have examined and relied upon the Registration Statement and Prospectus, the Company's Amended and Restated Certificate of Incorporation and Bylaws, its form of Amended and Restated Certificate of Incorporation to be filed prior to effectiveness of the Registration Statement and its forms of Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws to be effective upon the closing of the offering of the Shares in accordance with the Registration Statement and Prospectus, and the originals or copies certified to our satisfaction of such records, documents, certificates, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Registration Statement and the Prospectus will be validly issued, fully paid and nonassessable.

We consent to the reference to our firm under the caption "Legal Matters" in the Prospectus and to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

Cooley Godward LLP

By: /s/ D. BRADLEY PECK

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D. Bradley Peck

ACADIA PHARMACEUTICALS INC.  
2004 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS ON FEBRUARY 25, 2004  
AMENDED BY THE BOARD OF DIRECTORS ON MARCH 12, 2004  
APPROVED BY STOCKHOLDERS ON MAY 5, 2004  
TERMINATION DATE: FEBRUARY 24, 2014

1. PURPOSES.

(a) **Eligible Stock Award Recipients.** The persons eligible to receive Stock Awards are Employees, Directors and Consultants.

(b) **Available Stock Awards.** The purpose of the Plan is to provide a means by which eligible recipients of Stock Awards may be given an opportunity to benefit from increases in value of the Common Stock through the granting of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Bonus Awards, (iv) Restricted Stock Awards, (v) Stock Appreciation Rights, (vi) Phantom Stock Awards and (vii) Other Stock Awards.

(c) **General Purpose.** The Company, by means of the Plan, seeks to retain the services of the group of persons eligible to receive Stock Awards, to secure and retain the services of new members of this group and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

2. DEFINITIONS.

(a) **"Affiliate"** means any parent corporation or subsidiary corporation of the Company, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(b) **"Annual Meeting"** means the annual meeting of the stockholders of the Company.

(c) **"Board"** means the Board of Directors of the Company.

(d) **"Capitalization Adjustment"** has the meaning ascribed to that term in Section 11(a).

(e) **"Change in Control"** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person from the Company in a transaction or series of related transactions the primary purpose of which is to obtain financing

for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange Act Person (the “**Subject Person**”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur;

(iv) there is consummated a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date this Plan is adopted by the Board, are members of the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement (it being understood, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply).

(f) **“Code”** means the Internal Revenue Code of 1986, as amended.

(g) **“Committee”** means a committee of one or more members of the Board appointed by the Board in accordance with Section 3(c).

(h) **“Common Stock”** means the common stock of the Company.

(i) **“Company”** means ACADIA Pharmaceuticals Inc., a Delaware corporation.

(j) **“Consultant”** means any person, including an advisor, who (i) is engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services or (ii) is serving as a member of the Board of Directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such services shall not cause a Director to be considered a “Consultant” for purposes of the Plan.

(k) **“Continuous Service”** means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, shall not terminate a Participant’s Continuous Service. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director shall not constitute an interruption of Continuous Service. The Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company’s leave of absence policy or in the written terms of the Participant’s leave of absence.

(l) **“Corporate Transaction”** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) **“Covered Employee”** means the chief executive officer and the four (4) other highest compensated officers of the Company for whom total compensation is required to be reported to stockholders under the Exchange Act, as determined for purposes of Section 162(m) of the Code.

(n) **“Director”** means a member of the Board.

(o) **“Disability”** means the permanent and total disability of a person within the meaning of Section 22(e)(3) of the Code.

(p) **“Employee”** means any person employed by the Company or an Affiliate. However, service solely as a Director or payment of a fee for such services, shall not cause a Director to be considered an “Employee” for purposes of the Plan.

(q) **“Entity”** means a corporation, partnership or other entity.

(r) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

(s) **“Exchange Act Person”** means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” shall not include (A) the Company or any Subsidiary of the Company, (B) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (C) an underwriter temporarily holding securities pursuant to an offering of such securities, or (D) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company.

(t) **“Fair Market Value”** means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the last market trading day prior to the day of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined in good faith by the Board.

(u) **“Incentive Stock Option”** means an Option to purchase shares of Common Stock intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(v) **“IPO Date”** means the effective date of the initial public offering of the Common Stock.

(w) **“Non-Employee Director”** means a Director who either (i) is not a current Employee or Officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate, for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (**“Regulation S-K”**)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

(x) **“Nonstatutory Stock Option”** means an Option to purchase shares of Common Stock not intended to qualify as an Incentive Stock Option.

(y) **“Officer”** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(z) **“Option”** means an Incentive Stock Option or a Nonstatutory Stock Option granted pursuant to the Plan.

(aa) **“Option Agreement”** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(bb) **“Optionholder”** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(cc) **“Other Stock Award”** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 7(e).

(dd) **“Other Stock Award Agreement”** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an individual Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ee) **“Outside Director”** means a Director who either (i) is not a current employee of the Company or an “affiliated corporation” (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an “affiliated corporation” who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an “affiliated corporation”, and does not receive remuneration from the Company or an “affiliated corporation,” either directly or indirectly, in any capacity other than as a Director or (ii) is otherwise considered an “outside director” for purposes of Section 162(m) of the Code.

**(ff) “Own,” “Owned,” “Owner,” “Ownership”** A person or Entity shall be deemed to “Own,” to have “Owned,” to be the “Owner” of, or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**(gg) “Participant”** means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

**(hh) “Phantom Stock Award”** means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(c).

**(ii) “Phantom Stock Award Agreement”** means a written agreement between the Company and a holder of a Phantom Stock Award evidencing the terms and conditions of an individual Phantom Stock Award grant. Each Phantom Stock Award Agreement shall be subject to the terms and conditions of the Plan.

**(jj) “Plan”** means this ACADIA Pharmaceuticals Inc. 2004 Equity Incentive Plan.

**(kk) “Restricted Stock Award”** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(b).

**(ll) “Restricted Stock Award Agreement”** means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

**(mm) “Rule 16b-3”** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

**(nn) “Securities Act”** means the Securities Act of 1933, as amended.

**(oo) “Stock Appreciation Right”** means a right to receive the appreciation of Common Stock that is granted pursuant to the terms and conditions of Section 7(d).

**(pp) “Stock Appreciation Right Agreement”** means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

**(qq) “Stock Award”** means any right granted under the Plan, including an Option, a Stock Bonus Award, a Restricted Stock Award, a Stock Appreciation Right, a Phantom Stock Award or any Other Stock Award.

**(rr) “Stock Award Agreement”** means a written agreement between the Company and a holder of a Stock Award evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ss) **“Stock Bonus Award”** means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 7(a).

(tt) **“Stock Bonus Award Agreement”** means a written agreement between the Company and a holder of a Stock Bonus Award evidencing the terms and conditions of a Stock Bonus Award grant. Each Stock Bonus Award Agreement shall be subject to the terms and conditions of the Plan.

(uu) **“Subsidiary”** means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(vv) **“Ten Percent Stockholder”** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates.

### 3. ADMINISTRATION.

(a) **Administration by Board.** The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee, as provided in Section 3(c).

(b) **Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which of the persons eligible under the Plan shall be granted Stock Awards; when and how each Stock Award shall be granted; what type or combination of types of Stock Award shall be granted; the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive Common Stock pursuant to a Stock Award; and the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(c) To effect, at any time and from time to time, with the consent of any adversely affected Optionholder, (1) the reduction of the exercise price of any outstanding Option under the Plan, (2) the cancellation of any outstanding Option under the Plan and the grant in substitution therefor of (A) a new Option under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (B) a Restricted Stock Award, (C) a Stock Bonus Award, (D) a Stock Appreciation Right, (E) a Phantom Stock Award

(F) an Other Stock Award, (G) cash and/or (H) other valuable consideration (as determined by the Board, in its sole discretion), or (3) any other action that is treated as a repricing under generally accepted accounting principles.

(i) To amend the Plan or a Stock Award as provided in Section 12.

(ii) To terminate or suspend the Plan as provided in Section 13.

(iii) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan.

(iv) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside the United States.

**(d) Delegation to Committee.**

**(i) General.** The Board may delegate administration of the Plan to a Committee or Committees of one (1) or more members of the Board, and the term “**Committee**” shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Committee may abolish the subcommittee at any time and revest in the Committee the administration of the Plan. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan.

**(ii) Section 162(m) and Rule 16b-3 Compliance.** In the discretion of the Board, the Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, and/or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3. In addition, the Board or the Committee, in their discretion, may (1) delegate to a committee of one or more members of the Board who need not be Outside Directors the authority to grant Stock Awards to eligible persons who are either (a) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Stock Award, or (b) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code, and/or (2) delegate to a committee of one or more members of the Board who need not be Non-Employee Directors the authority to grant Stock Awards to eligible persons who are not then subject to Section 16 of the Exchange Act.

**(e) Delegation to an Officer.** The Board may delegate to one or more Officers of the Company the authority to do one or both of the following (i) designate Officers and Employees of the Company or any of its Subsidiaries to be recipients of Stock Awards and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Officers and Employees of the Company; *provided, however*, that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding anything to the contrary in this Section 3(d), the Board may not delegate to an Officer authority to determine the Fair Market Value of the Common Stock pursuant to Section 2(t)(ii) above.

**(f) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

**4. SHARES SUBJECT TO THE PLAN.**

**(a) Share Reserve.** Subject to the provisions of Section 11(a) relating to Capitalization Adjustments after the IPO Date, the shares of Common Stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate two hundred thousand (200,000) shares of Common Stock plus the number of shares of Common Stock remaining available for award under the Company's 1997 Stock Option Plan (the "1997 Plan") as of the closing of the initial public offering of the Common Stock, plus an automatic annual increase to be added on the day of each Annual Meeting, beginning with the Annual Meeting in 2005 and ending in (and including) the Annual Meeting in 2009, equal to the least of the following amounts: (i) three percent (3%) of the Company's outstanding shares of Common Stock on the record date for the Annual Meeting (rounded to the nearest whole share), (ii) seven hundred fifty thousand (750,000) shares of Common Stock, or (iii) an amount as may be determined by the Board. In addition, the share reserve under this Plan shall be increased from time to time by such number of shares of Common Stock as is equal to the number of shares of Common Stock that: (A) are issuable pursuant to options or stock award agreements outstanding under the 1997 Plan as of the IPO Date; and (B) but for the termination of the 1997 Plan as of the IPO Date, would otherwise have reverted to the share reserve under the 1997 Plan pursuant to the terms thereof.

**(b) Reversion of Shares to the Share Reserve.** If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, or if any shares of Common Stock issued to a Participant pursuant to a Stock Award are forfeited to or repurchased by the Company, including, but not limited to, any repurchase or forfeiture caused by the failure to meet a contingency or condition required for the vesting of such shares, then the shares of Common Stock not issued under such Stock Award, or forfeited to or repurchased by the Company, shall revert to and again become available for issuance under the Plan. If any shares subject to a Stock Award are not delivered to a Participant because such shares are withheld for the payment of taxes or the Stock Award is exercised through a reduction of shares subject to the Stock Award (*i.e.*, "net exercised"), the number of shares that are not delivered to the Participant shall remain available for issuance under the Plan. If the exercise price of any Stock Award is satisfied by tendering shares of Common Stock held by the Participant (either by actual delivery or attestation), then the number of shares so tendered shall remain available for issuance under the Plan. Notwithstanding anything to the contrary in this Section 4(b), subject to the provisions of Section 11(a) relating to Capitalization Adjustments the aggregate maximum number of shares of Common Stock that may be issued as Incentive Stock Options shall be three million five hundred thousand (3,500,000) shares of Common Stock.

**(c) Source of Shares.** The shares of Common Stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

**5. ELIGIBILITY.**

**(a) Eligibility for Specific Stock Awards.** Incentive Stock Options may be granted only to Employees. Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

**(b) Ten Percent Stockholders.** A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

**(c) Section 162(m) Limitation on Annual Grants.** Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code, no Employee shall be eligible to be granted Options or Stock Appreciation Rights covering more than one million (1,000,000) shares of Common Stock during any calendar year.

**(d) Consultants.** A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, a Form S-8 Registration Statement under the Securities Act ("**Form S-8**") is not available to register either the offer or the sale of the Company's securities to such Consultant because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other rule governing the use of Form S-8, unless the Company determines both (i) that such grant (A) shall be registered in another manner under the Securities Act (*e.g.*, on a Form S-3 Registration Statement) or (B) does not require registration under the Securities Act in order to comply with the requirements of the Securities Act, if applicable, and (ii) that such grant complies with the securities laws of all other relevant jurisdictions.

**6. OPTION PROVISIONS.**

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

**(a) Term.** The Board shall determine the term of an Option; *provided that*, subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, no Incentive Stock Option shall be exercisable after the expiration of ten (10) years from the date on which it was granted.

**(b) Exercise Price of Options.** Subject to the provisions of Section 5(b) regarding Ten Percent Stockholders, the exercise price of each Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

**(c) Consideration.** The purchase price of Common Stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable law, either (i) in cash at the time the Option is exercised or (ii) at the discretion of the Board at the time of the grant of the Option (or subsequently in the case of a Nonstatutory Stock Option) (1) by delivery to the Company of other Common Stock (either by actual delivery or attestation), (2) by a “net exercise” of the Option (as further described below), (3) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds or (4) in any other form of legal consideration that may be acceptable to the Board. Unless otherwise specifically provided in the Option, the purchase price of Common Stock acquired pursuant to an Option that is paid by delivery to the Company of other Common Stock acquired, directly or indirectly from the Company, shall be paid only by shares of the Common Stock of the Company that have been held for more than six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes). At any time that the Company is incorporated in Delaware, payment of the Common Stock’s “par value,” as defined in the Delaware General Corporation Law, shall not be made by deferred payment. The value of any Common Stock delivered to the Company pursuant to this Subsection (c) shall be the Fair Market Value on the date of exercise.

In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid (1) the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement and (2) the treatment of the Option as a variable award for financial accounting purposes.

In the case of a “net exercise” of an Option, the Company will not require a payment of the exercise price of the Option from the Participant but will reduce the number of shares of Common Stock issued upon the exercise by the largest number of whole shares that has a Fair Market Value that does not exceed the aggregate exercise price. With respect to any remaining balance of the aggregate exercise price, the Company shall accept a cash payment from the Participant. The shares of Common Stock used to pay the exercise price of an Option under a “net exercise,” the shares actually delivered to the Participant as a result of such exercise and any shares withheld for purposes of tax withholding, in each case, will no longer be outstanding under such Option and will not thereafter be available for exercise under such Option.

**(d) Transferability of an Incentive Stock Option.** An Incentive Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

**(e) Transferability of a Nonstatutory Stock Option.** A Nonstatutory Stock Option shall be transferable to the extent provided in the Option Agreement. If the Nonstatutory Stock Option does not provide for transferability, then the Nonstatutory Stock Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

**(f) Vesting Generally.** The total number of shares of Common Stock subject to an Option may, but need not, vest and therefore become exercisable in periodic installments that may, but need not, be equal. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section 6(f) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

**(g) Termination of Continuous Service.** In the event that an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate.

**(h) Extension of Termination Date.** An Optionholder's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in the Option Agreement or (ii) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements.

**(i) Disability of Optionholder.** In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period specified in the Option Agreement or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein, the Option shall terminate.

**(j) Death of Optionholder.** In the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder's death pursuant to Section 6(d) or 6(e), but only within the period ending on the earlier of (1) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement) or (2) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein, the Option shall terminate.

**(k) Early Exercise.** The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate. The Company shall not be required to exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option.

#### **7. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.**

**(a) Stock Bonus Awards.** Each Stock Bonus Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Stock Bonus Award Agreements may change from time to time, and the terms and conditions of separate Stock Bonus Award Agreements need not be identical, but each Stock Bonus Award Agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Stock Bonus Award may be awarded in consideration for past services actually rendered to the Company or an Affiliate.

**(ii) Vesting.** Shares of Common Stock awarded under the Stock Bonus Award Agreement may, but need not, be subject to a forfeiture right in favor of the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Participant's Continuous Service.** In the event a Participant's Continuous Service terminates, the Company may reacquire via a forfeiture right any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination under the terms of the Stock Bonus Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under the Stock Bonus Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Stock Bonus Award Agreement, as the Board shall determine in its discretion, so long as Common Stock awarded under the Stock Bonus Award Agreement remains subject to the terms of the Stock Bonus Award Agreement.

**(b) Restricted Stock Awards.** Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. At the Board's election, shares of Common Stock may be (i) held in book-entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (ii) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical, *provided, however*, that each Restricted Stock Award Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Purchase Price.** At the time of the grant of a Restricted Stock Award, the Board will determine the price to be paid by the Participant for each share subject to the Restricted Stock Award. To the extent required by law, the price to be paid by the Participant for each share of the Restricted Stock Award will not be less than the par value of a share of Common Stock.

**(ii) Consideration.** At the time of the grant of a Restricted Stock Award, the Board will determine the consideration permissible for the payment of the purchase price of the Restricted Stock Award. The purchase price of Common Stock acquired pursuant to the Restricted Stock Award shall be paid in one of the following ways: (i) in cash at the time of purchase or (ii) in any other form of legal consideration that may be acceptable to the Board and is permissible under the Delaware General Corporation Law.

**(iii) Vesting.** Shares of Common Stock acquired under a Restricted Stock Award may, but need not, be subject to a share repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board.

**(iv) Termination of Participant's Continuous Service.** In the event that a Participant's Continuous Service terminates, the Company shall have the right, but not the obligation, to repurchase or otherwise reacquire any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination under the terms of the Restricted Stock Award Agreement. At the Board's election, the repurchase right may be at the least of: (i) the Fair Market Value on the relevant date; (ii) the Participant's original cost; or (iii) if the Participant paid the purchase price for the shares of Common Stock with services rendered, then for no consideration. The Company shall not be required to exercise its repurchase option

until at least six (6) months (or such longer or shorter period of time required to avoid a charge to earnings for financial accounting purposes) have elapsed following the purchase of the restricted stock unless otherwise determined by the Board or provided in the Restricted Stock Award Agreement.

**(v) Transferability.** Rights to purchase or receive shares of Common Stock granted under a Restricted Stock Award shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its discretion, and so long as Common Stock awarded under the Restricted Stock Award remains subject to the terms of the Restricted Stock Award Agreement.

**(c) Phantom Stock.** Each Phantom Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Phantom Stock Award Agreements may change from time to time, and the terms and conditions of separate Phantom Stock Award Agreements need not be identical, *provided, however*, that each Phantom Stock Award Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** At the time of grant of a Phantom Stock Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Phantom Stock Award. To the extent required by applicable law, the consideration to be paid by the Participant for each share of Common Stock subject to a Phantom Stock Award will not be less than the par value of a share of Common Stock. Such consideration may be paid in any form permitted under applicable law.

**(ii) Vesting.** At the time of the grant of a Phantom Stock Award, the Board may impose such restrictions or conditions to the vesting of the Phantom Stock Award as it, in its absolute discretion, deems appropriate.

**(iii) Payment.** A Phantom Stock Award may be settled by the delivery of shares of Common Stock, their cash equivalent, or any combination of the two, as the Board deems appropriate.

**(iv) Additional Restrictions.** At the time of the grant of a Phantom Stock Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Phantom Stock Award after the vesting of such Phantom Stock Award.

**(v) Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Phantom Stock Award, as determined by the Board and contained in the Phantom Stock Award Agreement. At the discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Phantom Stock Award in such manner as determined by the Board. Any additional shares covered by the Phantom Stock Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Phantom Stock Award Agreement to which they relate.

**(vi) Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Phantom Stock Award Agreement, such portion of the Phantom Stock Award that has not vested will be forfeited upon the Participant's termination of Continuous Service for any reason.

**(d) Stock Appreciation Rights.** Each Stock Appreciation Right Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Stock Appreciation Right Agreements may change from time to time, and the terms and conditions of separate Stock Appreciation Right Agreements need not be identical, but each Stock Appreciation Right Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Strike Price and Calculation of Appreciation.** Each Stock Appreciation Right will be denominated in share of Common Stock equivalents. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of share of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) an amount (the strike price) that will be determined by the Board at the time of grant of the Stock Appreciation Right.

**(ii) Vesting.** At the time of the grant of a Stock Appreciation Right, the Board may impose such restrictions or conditions to the vesting of such Stock Appreciate Right as it, in its absolute discretion, deems appropriate.

**(iii) Exercise.** To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

**(iv) Payment.** The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, or any combination of the two, or in any other form of consideration as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

**(v) Termination of Continuous Service.** In the event that a Participant's Continuous Service terminates, the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement) or (ii) the expiration of the

term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination, the Participant does not exercise his or her Stock Appreciation Right within the time specified in the Stock Appreciation Right Agreement, the Stock Appreciation Right shall terminate.

**(e) Other Stock Awards.** Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock may be granted either alone or in addition to Stock Awards provided for under Section 6 and the preceding provisions of this Section 7. Subject to the provisions of the Plan, the Board shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

#### **8. COVENANTS OF THE COMPANY.**

**(a) Availability of Shares.** During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

**(b) Securities Law Compliance.** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however*, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

#### **9. USE OF PROCEEDS FROM STOCK.**

Proceeds from the sale of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

#### **10. MISCELLANEOUS.**

**(a) Acceleration of Exercisability and Vesting.** The Board shall have the power to accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

**(b) Stockholder Rights.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms.

**(c) No Employment or Other Service Rights.** Nothing in the Plan or any instrument executed or Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

**(d) Incentive Stock Option \$100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and its Affiliates) exceeds one hundred thousand dollars (\$100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(e) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (1) the issuance of the shares of Common Stock upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act or (2) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(f) Withholding Obligations.** To the extent provided by the terms of a Stock Award Agreement, the Participant may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares of Common Stock from the shares of Common Stock otherwise issuable to the Participant as a result of the exercise or acquisition of Common Stock under the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid variable award accounting); or (iii) delivering to the Company owned and unencumbered shares of Common Stock.

## 11. ADJUSTMENTS UPON CHANGES IN STOCK.

**(a) Capitalization Adjustments.** If, after the IPO Date, any change is made in, or other event occurs with respect to, the Common Stock subject to the Plan or subject to any Stock Award without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company (each a “*Capitalization Adjustment*”), the Plan will be appropriately adjusted in the class(es) and maximum number of securities subject to the Plan pursuant to Sections 4(a) and 4(b) and the maximum number of securities subject to award to any person pursuant to Section 5(c), and the outstanding Stock Awards will be appropriately adjusted in the class(es) and number of securities and price per share of Common Stock subject to such outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a transaction “without receipt of consideration” by the Company.)

**(b) Dissolution or Liquidation.** In the event of a dissolution or liquidation of the Company, then all outstanding Stock Awards shall terminate immediately prior to the completion of such dissolution or liquidation.

**(c) Corporate Transaction.** In the event of a Corporate Transaction, any surviving corporation or acquiring corporation may assume or continue any or all Stock Awards outstanding under the Plan or may substitute similar stock awards for Stock Awards outstanding under the Plan (it being understood that similar stock awards include, but are not limited to, awards to acquire the same consideration paid to the stockholders of the Company, as the case may be, pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Stock Awards may be assigned by the Company to the successor of the Company (or the successor’s parent company), if any, in connection with such Corporate Transaction. In the event that any surviving corporation or acquiring corporation does not assume or continue all such outstanding Stock Awards or substitute similar stock awards for all such outstanding Stock Awards, then with respect to Stock Awards that have been not assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Awards may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and such Stock Awards shall terminate if not exercised (if applicable) at or prior to such effective time, and any reacquisition or repurchase rights held by the Company with respect to such Stock Awards shall (contingent upon the effectiveness of the Corporate Transaction) lapse. With respect to any other Stock Awards outstanding under the Plan that have not been assumed, continued or substituted, the vesting of such Stock Awards (and, if applicable, the time at which such Stock Award may be exercised)

shall not be accelerated, unless otherwise provided in a written agreement between the Company or any Affiliate and the holder of such Stock Award, and such Stock Awards shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction.

**(d) Change in Control.** A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

## **12. AMENDMENT OF THE PLAN AND STOCK AWARDS.**

**(a) Amendment of Plan.** Subject to the limitations, if any, of applicable law the Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 11(a) relating to Capitalization Adjustments, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy applicable law.

**(b) Stockholder Approval.** The Board, in its sole discretion, may submit any other amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) of the Code and the regulations thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees.

**(c) Contemplated Amendments.** It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

**(d) No Impairment of Rights.** Rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

**(e) Amendment of Stock Awards.** The Board at any time, and from time to time, may amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable than previously provided in the agreement evidencing a Stock Award, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however*, that the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the Participant and (ii) the Participant consents in writing.

## **13. TERMINATION OR SUSPENSION OF THE PLAN.**

**(a) Plan Term.** The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate on the day before the tenth (10th) anniversary of the date the Plan is adopted by the Board or approved by the stockholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**(b) No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the Participant.

**14. EFFECTIVE DATE OF PLAN.**

The Plan shall become effective as determined by the Board, but no Stock Award shall be exercised (or, in the case of a stock bonus, shall be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

**15. CHOICE OF LAW.**

The laws of the State of California shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to such state's conflict of laws rules.

**ACADIA PHARMACEUTICALS INC.  
2004 EQUITY INCENTIVE PLAN**

**STOCK OPTION AGREEMENT  
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)**

Pursuant to your Stock Option Grant Notice (“**Grant Notice**”) and this Stock Option Agreement, ACADIA Pharmaceuticals Inc. (the “**Company**”) has granted you an option under its 2004 Equity Incentive Plan (the “**Plan**”) to purchase the number of shares of the Company’s Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Stock Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

**1. VESTING.** Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

**2. NUMBER OF SHARES AND EXERCISE PRICE.** The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

**3. METHOD OF PAYMENT.** Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any other manner **permitted by your Grant Notice**, which may include one or more of the following:

**a.** In the Company’s sole discretion at the time your option is exercised and provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

**b.** Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, by delivery of already-owned shares of Common Stock either that you have held for the period required to avoid a charge to the Company’s reported earnings (generally six (6) months) or that you did not acquire, directly or indirectly from the Company, that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. “Delivery” for these purposes, in the sole discretion of the Company at the time you exercise your option, shall include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company’s stock.

**4. WHOLE SHARES.** You may exercise your option only for whole shares of Common Stock.

**5. SECURITIES LAW COMPLIANCE.** Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

**6. TERM.** You may not exercise your option before the commencement of its term or after its term expires. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

**a.** three (3) months after the termination of your Continuous Service for any reason other than Disability or death, provided that if during any part of such three- (3-) month period you may not exercise your option solely because of the condition set forth in the preceding paragraph relating to “Securities Law Compliance,” your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service;

**b.** twelve (12) months after the termination of your Continuous Service due to your Disability;

**c.** eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates;

**d.** the Expiration Date indicated in your Grant Notice; or

**e.** the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your option’s exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or your permanent and total disability, as defined in Section 22(e) of the Code. (The definition of disability in Section 22(e) of the Code is different from the definition of the Disability under the Plan). The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

## **7. EXERCISE.**

**a.** You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

**b.** By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of your option, (2) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (3) the disposition of shares of Common Stock acquired upon such exercise.

**c.** If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

## **8. TRANSFERABILITY.**

**a.** If your option is an Incentive Stock Option, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option.

**b.** If your option is a Nonstatutory Stock Option, your option is not transferable, except (i) by will or by the laws of descent and distribution, (ii) with the prior written approval of the Company, by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in which the option is to be passed to beneficiaries upon the death of the trustor (settlor) and (iii) with the prior written approval of the Company, by gift, in a form accepted by the Company, to a permitted transferee under Rule 701 of the Securities Act.

**9. OPTION NOT A SERVICE CONTRACT.** Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

## **10. WITHHOLDING OBLIGATIONS.**

**a.** At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any

other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

**b.** Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid variable award accounting). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

**c.** You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein unless such obligations are satisfied.

**11. NOTICES.** Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**12. GOVERNING PLAN DOCUMENT.** Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

**ACADIA PHARMACEUTICALS INC.  
STOCK OPTION GRANT NOTICE  
(2004 EQUITY INCENTIVE PLAN)**

ACADIA PHARMACEUTICALS INC. (the "Company"), pursuant to its 2004 Equity Incentive Plan (the "Plan"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Stock Option Agreement, the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder: \_\_\_\_\_  
Date of Grant: \_\_\_\_\_  
Vesting Commencement Date: \_\_\_\_\_  
Number of Shares Subject to Option: \_\_\_\_\_  
Exercise Price (Per Share): \_\_\_\_\_  
Total Exercise Price: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

**Type of Grant:**       Incentive Stock Option<sup>1</sup>                       Nonstatutory Stock Option

**Exercise Schedule:**      Same as Vesting Schedule

**Vesting Schedule:**      [1/4<sup>th</sup> of the shares vest one year after the Vesting Commencement Date.  
1/48<sup>th</sup> of the shares vest monthly thereafter over the next three years.]

**Payment:**                      By one or a combination of the following items (described in the Stock Option Agreement):

- By cash or check
- Pursuant to a Regulation T Program if the Shares are publicly traded
- By delivery of already-owned shares if the Shares are publicly traded

**Additional Terms/Acknowledgements:** The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Grant Notice, the Stock Option Agreement and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Grant Notice, the Stock Option Agreement and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder under the Plan, and (ii) the following agreements only:

**OTHER AGREEMENTS:**

\_\_\_\_\_  
\_\_\_\_\_

**ACADIA PHARMACEUTICALS INC.**

**OPTIONHOLDER:**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENTS:** Stock Option Agreement, 2004 Equity Incentive Plan and Notice of Exercise

<sup>1</sup> If this is an incentive stock option, it (plus your other outstanding incentive stock options) cannot be first exercisable for more than \$100,000 in any calendar year. Any excess over \$100,000 is a nonstatutory stock option.

**NOTICE OF EXERCISE**

ACADIA Pharmaceuticals Inc.  
3911 Sorrento Valley Blvd.  
San Diego, CA 92121

Date of Exercise: \_\_\_\_\_

Ladies and Gentlemen:

This constitutes notice under my stock option that I elect to purchase the number of shares for the price set forth below.

Type of option (check one):	Incentive <input type="checkbox"/>	Nonstatutory <input type="checkbox"/>
Stock option dated:	_____	
Number of shares as to which option is exercised:	_____	
Certificates to be issued in name of:	_____	
Total exercise price:	\$	_____
Cash payment delivered herewith:	\$	_____
[Promissory note delivered herewith:	\$	_____ ]
Value of _____ shares of ACADIA Pharmaceuticals Inc. common stock delivered herewith <sup>1</sup>	\$	_____

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the ACADIA Pharmaceuticals Inc. 2004 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within fifteen (15) days after the date of any disposition of any of the shares of Common Stock issued upon exercise of this option that occurs within two (2) years after the date of grant of this option or within one (1) year after such shares of Common Stock are issued upon exercise of this option.

Very truly yours,

\_\_\_\_\_

<sup>1</sup> Shares must meet the public trading requirements set forth in the option. Shares must be valued in accordance with the terms of the option being exercised, must have been owned for the minimum period required in the option, and must be owned free and clear of any liens, claims, encumbrances or security interests. Certificates must be endorsed or accompanied by an executed assignment separate from certificate.

## ACADIA PHARMACEUTICALS INC.

## 2004 EMPLOYEE STOCK PURCHASE PLAN

ADOPTED BY THE BOARD OF DIRECTORS ON FEBRUARY 25, 2004

APPROVED BY STOCKHOLDERS ON MAY 5, 2004

## 1. PURPOSE.

(a) The purpose of the Plan is to provide a means by which Employees of the Company and certain designated Related Corporations may be given an opportunity to purchase shares of the Common Stock of the Company.

(b) The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations.

(c) The Company intends that the Purchase Rights be considered options issued under an Employee Stock Purchase Plan.

## 2. DEFINITIONS.

As used in the Plan and any Offering, unless otherwise specified, the following terms have the meanings set forth below:

(a) “**Annual Meeting**” means the annual meeting of the stockholders of the Company.

(b) “**Board**” means the Board of Directors of the Company.

(c) “**Code**” means the Internal Revenue Code of 1986, as amended.

(d) “**Committee**” means a committee appointed by the Board in accordance with Section 3(c) of the Plan.

(e) “**Common Stock**” means the common stock of the Company.

(f) “**Company**” means ACADIA Pharmaceuticals Inc., a Delaware corporation.

(g) “**Contributions**” means the payroll deductions and other additional payments that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make payments not through payroll deductions only if specifically provided for in the Offering, and then only if the Participant has not already had the maximum permitted amount withheld through payroll deductions during the Offering.

(h) **“Corporate Transaction”** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale, exchange, lease, license or other disposition of all or substantially all of the consolidated assets of the Company;

(ii) a sale, exchange or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(i) **“Director”** means a member of the Board.

(j) **“Eligible Employee”** means an Employee who meets the requirements set forth in the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

(k) **“Employee”** means any person, including Officers and Directors, who is employed for purposes of Section 423(b)(4) of the Code by the Company or a Related Corporation. Neither service as a Director nor payment of a director’s fee shall be sufficient to make an individual an Employee of the Company or a Related Corporation.

(l) **“Employee Stock Purchase Plan”** means a plan that grants Purchase Rights intended to be options issued under an “employee stock purchase plan,” as that term is defined in Section 423(b) of the Code.

(m) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended.

(n) **“Fair Market Value”** means the value of a security, as determined in good faith by the Board. If the security is listed on any established stock exchange or traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of the security, unless otherwise determined by the Board, shall be the closing sales price (rounded up where necessary to the nearest whole cent) for such security (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the relevant security of the Company) on the Trading Day prior to the relevant determination date, as reported in *The Wall Street Journal* or such other source as the Board deems reliable.

(o) **“IPO Date”** means the effective date of the initial public offering of the Common Stock.

(p) **“Offering”** means the grant of Purchase Rights to purchase shares of Common Stock under the Plan to Eligible Employees.

(q) **“Offering Date”** means a date selected by the Board for an Offering to commence.

(r) **“Officer”** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(s) **“Participant”** means an Eligible Employee who holds an outstanding Purchase Right granted pursuant to the Plan.

(t) **“Plan”** means this ACADIA Pharmaceuticals Inc. 2004 Employee Stock Purchase Plan.

(u) **“Purchase Date”** means one or more dates during an Offering established by the Board on which Purchase Rights shall be exercised and as of which purchases of shares of Common Stock shall be carried out in accordance with such Offering.

(v) **“Purchase Period”** means a period of time specified within an Offering beginning on the Offering Date or on the next day following a Purchase Date within an Offering and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

(w) **“Purchase Right”** means an option to purchase shares of Common Stock granted pursuant to the Plan.

(x) **“Related Corporation”** means any parent corporation or subsidiary corporation, whether now or hereafter existing, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(y) **“Securities Act”** means the Securities Act of 1933, as amended.

(z) **“Trading Day”** means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, whether it be an established stock exchange, the Nasdaq National Market, the Nasdaq SmallCap Market or otherwise, is open for trading.

### 3. ADMINISTRATION.

(a) The Board shall administer the Plan unless and until the Board delegates administration to a Committee, as provided in Section 3(c). Whether or not the Board has delegated administration, the Board shall have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

(b) The Board (or the Committee) shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine when and how Purchase Rights to purchase shares of Common Stock shall be granted and the provisions of each Offering of such Purchase Rights (which need not be identical).

(ii) To designate from time to time which Related Corporations of the Company shall be eligible to participate in the Plan.

(iii) To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for the administration of the Plan. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iv) To amend the Plan as provided in Section 15.

(v) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company and its Related Corporations and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan.

(vi) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside the United States.

(c) The Board may delegate administration of the Plan to a Committee of the Board composed of one (1) or more members of the Board. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and re-vest in the Board the administration of the Plan. If administration is delegated to a Committee, references to the Board in this Plan and in the Offering document shall thereafter be deemed to be to the Board or the Committee, as the case may be.

(d) All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

#### **4. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.**

(a) Subject to the provisions of Section 14 relating to adjustments upon changes in stock after the IPO Date, the shares of Common Stock that may be sold pursuant to Purchase Rights shall not exceed in the aggregate one hundred twenty-five thousand (125,000) shares of Common Stock, plus an automatic annual increase to be added on the day of each Annual Meeting beginning in 2005 and ending in (and including) 2014, equal to the least of the following amounts: (i) one percent (1%) of the Company's outstanding shares of Common Stock on the record date for the Annual Meeting; (ii) one hundred fifty thousand (150,000) shares of Common Stock; or (iii) such number of shares of Common Stock as may be determined by the Board.

(b) The shares of Common Stock subject to the Plan may be unissued shares or shares that have been bought on the open market at prevailing market prices or otherwise.

#### **5. GRANT OF PURCHASE RIGHTS; OFFERING.**

(a) The Board may from time to time grant or provide for the grant of Purchase Rights to purchase shares of Common Stock under the Plan to Eligible Employees in an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering shall be in such form and shall contain such terms and conditions as

the Board shall deem appropriate, which shall comply with the requirement of Section 423(b)(5) of the Code that all Employees granted Purchase Rights shall have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering shall include (through incorporation of the provisions of this Plan by reference in the document comprising the Offering or otherwise) the period during which the Offering shall be effective, which period shall not exceed twenty-seven (27) months beginning with the Offering Date, and the substance of the provisions contained in Sections 6 through 9, inclusive.

(b) If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in agreements or notices delivered hereunder: (i) each agreement or notice delivered by that Participant shall be deemed to apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) shall be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) shall be exercised.

## **6. ELIGIBILITY.**

(a) Purchase Rights may be granted only to Employees of the Company or, as the Board may designate as provided in Section 3(b), to Employees of a Related Corporation. Except as provided in Section 6(b), an Employee shall not be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee has been in the employ of the Company or the Related Corporation, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event shall the required period of continuous employment be greater than two (2) years. In addition, the Board may provide that no Employee shall be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee's customary employment with the Company or the Related Corporation is more than twenty (20) hours per week and more than five (5) months per calendar year.

(b) The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee shall, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right shall thereafter be deemed to be a part of that Offering. Such Purchase Right shall have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

(i) the date on which such Purchase Right is granted shall be the "Offering Date" of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

(ii) the period of the Offering with respect to such Purchase Right shall begin on its Offering Date and end coincident with the end of such Offering;

and

**(iii)** the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she shall not receive any Purchase Right under that Offering.

**(c)** No Employee shall be eligible for the grant of any Purchase Rights under the Plan if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 6(c), the rules of Section 424(d) of the Code shall apply in determining the stock ownership of any Employee, and stock which such Employee may purchase under all outstanding Purchase Rights and options shall be treated as stock owned by such Employee.

**(d)** As specified by Section 423(b)(8) of the Code, an Eligible Employee may be granted Purchase Rights under the Plan only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation to accrue at a rate which exceeds twenty five thousand dollars (\$25,000) of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, shall be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

**(e)** Officers of the Company and any designated Related Corporation, if they are otherwise Eligible Employees, shall be eligible to participate in Offerings under the Plan. Notwithstanding the foregoing, the Board may provide in an Offering that Employees who are highly compensated Employees within the meaning of Section 423(b)(4)(D) of the Code shall not be eligible to participate.

#### **7. PURCHASE RIGHTS; PURCHASE PRICE.**

**(a)** On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, shall be granted a Purchase Right to purchase up to that number of shares of Common Stock purchasable either with a percentage or with a maximum dollar amount, as designated by the Board, but in either case not exceeding fifteen percent (15%), of such Employee's Earnings (as defined by the Board in each Offering) during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date shall be no later than the end of the Offering.

**(b)** The Board shall establish one (1) or more Purchase Dates during an Offering as of which Purchase Rights granted pursuant to that Offering shall be exercised and purchases of shares of Common Stock shall be carried out in accordance with such Offering.

**(c)** In connection with each Offering made under the Plan, the Board may specify a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering. In connection with each Offering made under the Plan, the Board may specify a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering. In addition, in connection with each Offering that contains more than one Purchase Date, the Board may specify a maximum

aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata allocation of the shares of Common Stock available shall be made in as nearly a uniform manner as shall be practicable and equitable.

(d) The purchase price of shares of Common Stock acquired pursuant to Purchase Rights shall be not less than the lesser of:

(i) an amount equal to eighty-five percent (85%) of the Fair Market Value of the shares of Common Stock on the Offering Date; or

(ii) an amount equal to eighty-five percent (85%) of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

#### **8. PARTICIPATION; WITHDRAWAL; TERMINATION.**

(a) A Participant may elect to authorize payroll deductions pursuant to an Offering under the Plan by completing and delivering to the Company, within the time specified in the Offering, an enrollment form (in such form as the Company may provide). Each such enrollment form shall authorize an amount of Contributions expressed as a percentage of the submitting Participant's Earnings (as defined in each Offering) during the Offering (not to exceed the maximum percentage specified by the Board). Each Participant's Contributions shall remain the property of the Participant at all times prior to the purchase of Common Stock, but such Contributions may be commingled with the assets of the Company and used for general corporate purposes except where applicable law requires that Contributions be deposited with an independent third party. To the extent provided in the Offering, a Participant may begin making Contributions after the beginning of the Offering. To the extent provided in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. To the extent specifically provided in the Offering, in addition to making Contributions by payroll deductions, a Participant may make Contributions through the payment by cash or check prior to each Purchase Date of the Offering.

(b) During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company a notice of withdrawal in such form as the Company may provide. Such withdrawal may be elected at any time prior to the end of the Offering, except as provided otherwise in the Offering. Upon such withdrawal from the Offering by a Participant, the Company shall distribute to such Participant all of his or her accumulated Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock for the Participant) under the Offering, and such Participant's Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from an Offering shall have no effect upon such Participant's eligibility to participate in any other Offerings under the Plan, but such Participant shall be required to deliver a new enrollment form in order to participate in subsequent Offerings.

(c) Purchase Rights granted pursuant to any Offering under the Plan shall terminate immediately upon a Participant ceasing to be an Employee for any reason or for no reason (subject to any post-employment participation period required by law) or other lack of eligibility. The Company shall distribute to such terminated or otherwise ineligible Employee all of his or her accumulated Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock for the terminated or otherwise ineligible Employee) under the Offering.

(d) Purchase Rights shall not be transferable by a Participant otherwise than by will, the laws of descent and distribution, or a beneficiary designation as provided in Section 13. During a Participant's lifetime, Purchase Rights shall be exercisable only by such Participant.

(e) Unless otherwise specified in an Offering, the Company shall have no obligation to pay interest on Contributions, including, but not limited to, any amounts distributed to Participants pursuant to Sections 8(b), 8(c) and 9(b) hereof.

#### **9. EXERCISE.**

(a) On each Purchase Date during an Offering, each Participant's accumulated Contributions shall be applied to the purchase of shares of Common Stock up to the maximum number of shares of Common Stock permitted pursuant to the terms of the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares shall be issued upon the exercise of Purchase Rights unless specifically provided for in the Offering.

(b) If any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock and such remaining amount is less than the amount required to purchase one share of Common Stock on the final Purchase Date of an Offering, then such remaining amount shall be held in such Participant's account for the purchase of shares of Common Stock under the next Offering under the Plan, unless such Participant withdraws from such next Offering, as provided in Section 8(b), or is not eligible to participate in such Offering, as provided in Section 6, in which case such amount shall be distributed to such Participant after the final Purchase Date, without interest. If the amount of Contributions remaining in a Participant's account after the purchase of shares of Common Stock is at least equal to the amount required to purchase one (1) whole share of Common Stock on the final Purchase Date of the Offering, then such remaining amount shall be distributed in full to such Participant at the end of the Offering.

(c) No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all laws applicable to the Plan. If on a Purchase Date during any Offering hereunder the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights or any Offering shall be exercised on such Purchase Date, and the Purchase Date shall be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in such compliance, except that the Purchase Date shall not be delayed more than twelve (12) months and the Purchase Date shall in no event be more than twenty-seven (27) months from the Offering Date. If, on the Purchase Date under any Offering hereunder, as delayed to the

maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in such compliance, no Purchase Rights or any Offering shall be exercised and all Contributions accumulated during the Offering (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock) shall be distributed to the Participants.

**10. COVENANTS OF THE COMPANY.**

The Company shall seek to obtain from each federal, state, foreign or other regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of Common Stock upon exercise of the Purchase Rights. If, after commercially reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of shares of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell shares of Common Stock upon exercise of such Purchase Rights unless and until such authority is obtained.

**11. USE OF PROCEEDS FROM SHARES OF COMMON STOCK.**

Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights shall constitute general funds of the Company.

**12. RIGHTS AS A STOCKHOLDER.**

A Participant shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent).

**13. DESIGNATION OF BENEFICIARY.**

(a) A Participant may file a written designation of a beneficiary who is to receive any shares of Common Stock and/or cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to the end of an Offering but prior to delivery to the Participant of such shares of Common Stock or cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death during an Offering. Any such designation shall be on a form provided by or otherwise acceptable to the Company.

(b) The Participant may change such designation of beneficiary at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such shares of Common Stock and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

**14. ADJUSTMENTS UPON CHANGES IN SECURITIES; CORPORATE TRANSACTIONS.**

(a) If, after the IPO Date, any change is made in the shares of Common Stock, subject to the Plan, or subject to any Purchase Right, without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan shall be appropriately adjusted in the type(s), class(es) and maximum number of shares of Common Stock subject to the Plan pursuant to Section 4(a), and the outstanding Purchase Rights shall be appropriately adjusted in the type(s), class(es), number of shares and purchase limits of such outstanding Purchase Rights. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a “transaction not involving the receipt of consideration by the Company.”)

(b) In the event of a Corporate Transaction, then: (i) any surviving or acquiring corporation may continue or assume Purchase Rights outstanding under the Plan or may substitute similar rights (including a right to acquire the same consideration paid to stockholders in the Corporate Transaction) for those outstanding under the Plan, or (ii) if any surviving or acquiring corporation does not continue or assume such Purchase Rights or does not substitute similar rights for Purchase Rights outstanding under the Plan, then, the Participants’ accumulated Contributions shall be used to purchase shares of Common Stock within ten (10) business days prior to the Corporate Transaction under the ongoing Offering, and the Participants’ Purchase Rights under the ongoing Offering shall terminate immediately after such purchase.

**15. AMENDMENT OF THE PLAN.**

(a) The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 14 relating to adjustments upon changes in securities and except as to amendments solely to benefit the administration of the Plan, to take account of a change in legislation or to obtain or maintain favorable tax, exchange control or regulatory treatment for Participants or the Company or any Related Corporation, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary for the Plan to satisfy the requirements of Section 423 of the Code or other applicable laws or regulations.

(b) It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Employee Stock Purchase Plans or to bring the Plan and/or Purchase Rights into compliance therewith.

(c) The rights and obligations under any Purchase Rights granted before amendment of the Plan shall not be impaired by any amendment of the Plan except: (i) with the consent of the person to whom such Purchase Rights were granted, or (ii) as necessary to comply with any laws or governmental regulations (including, without limitation, the provisions of the Code and the regulations promulgated thereunder relating to Employee Stock Purchase Plans).

**16. TERMINATION OR SUSPENSION OF THE PLAN.**

(a) The Board in its discretion may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate at the time that all of the shares of Common Stock reserved for issuance under the Plan, as increased and/or adjusted from time to time, have been issued under the terms of the Plan. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) Any benefits, privileges, entitlements and obligations under any Purchase Rights while the Plan is in effect shall not be impaired by suspension or termination of the Plan except (i) as expressly provided in the Plan or with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to comply with any laws, regulations, or listing requirements, or (iii) as necessary to ensure that the Plan and/or Purchase Rights comply with the requirements of Section 423 of the Code.

**17. EFFECTIVE DATE OF PLAN.**

The Plan shall become effective as determined by the Board, but no Purchase Rights shall be exercised unless and until the Plan has been approved by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted by the Board.

**18. MISCELLANEOUS PROVISIONS.**

(a) The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering shall in any way alter the at will nature of a Participant's employment or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company or a Related Corporation, or on the part of the Company or a Related Corporation to continue the employment of a Participant.

(b) The provisions of the Plan shall be governed by the laws of the State of California without resort to that state's conflicts of laws rules.

ACADIA PHARMACEUTICALS INC.

2004 EMPLOYEE STOCK PURCHASE PLAN

OFFERING

Adopted by the Board of Directors on February 25, 2004

In this document, capitalized terms not otherwise defined shall have the same definitions of such terms as in the ACADIA Pharmaceuticals Inc. 2004 Employee Stock Purchase Plan.

**1. Grant; Offering Date.**

(a) The Board hereby authorizes a series of Offerings pursuant to the terms of this Offering document.

(b) The first Offering hereunder (the "Initial Offering") shall begin on the date the Company's Common Stock is first offered to the public under a registration statement declared effective under the Securities Act (the "IPO Date") and shall end twenty-four (24) months following the IPO Date, unless terminated earlier as provided below. After the Initial Offering, an Offering shall begin on the day after the first Purchase Date of the immediately preceding Offering. The first day of an Offering is that Offering's "Offering Date." Except as provided below, each Offering shall be approximately twenty-four (24) months in duration and include four (4) Purchase Periods which, except for the first Purchase Period of the Initial Offering (which may be longer or shorter than six (6) months) shall be approximately six (6) months in length. Except as provided below, a Purchase Date is the last day of a Purchase Period or of an Offering, as the case may be. The Initial Offering shall consist of four (4) Purchase Periods with the first Purchase Period of the Initial Offering ending on [the date approximately six (6) months following the IPO Date].

(c) Notwithstanding the foregoing: (i) if any Offering Date falls on a day that is not a Trading Day, then such Offering Date shall instead fall on the next subsequent Trading Day, and (ii) if any Purchase Date falls on a day that is not a Trading Day, then such Purchase Date shall instead fall on the immediately preceding Trading Day.

(d) Prior to the commencement of any Offering, the Board may change any or all terms of such Offering and any subsequent Offerings. The granting of Purchase Rights pursuant to each Offering hereunder shall occur on each respective Offering Date unless prior to such date (i) the Board determines that such Offering shall not occur, or (ii) no shares of Common Stock remain available for issuance under the Plan in connection with the Offering.

(e) Notwithstanding anything in this Section 1 to the contrary, if on the first day of a Purchase Period during an Offering the Fair Market Value of the shares of Common Stock is less than it was on the Offering Date for that Offering, that day shall become the next Offering Date, and the Offering that would otherwise have continued in effect shall immediately terminate and the Employees who were enrolled in the terminated Offering shall automatically be enrolled in the new Offering that starts such day.

(f) If the Company's accountants advise the Company that the accounting treatment of purchases under the Plan will change or has changed in a manner that the Company determines is detrimental to its best interests, then the Company may, in its discretion, take any or all of the following actions: (i) terminate each ongoing Offering as of the next Purchase Date (after the purchase of stock on such Purchase Date) under such Offering; (ii) set a new Purchase Date for each ongoing Offering and terminate each such Offering after the purchase of stock on such Purchase Date; (iii) amend the Plan and each ongoing Offering to reduce or eliminate an accounting treatment that is detrimental to the Company's best interests; and (iv) terminate each ongoing Offering and refund any money contributed by the participants.

## 2. Eligible Employees.

(a) Each Employee who meets the employment requirements of Section 6(a) of the Plan, is employed as provided in this Section 2(a) prior to an Offering Date and who is (i) an employee of the Company that resides in the United States; (ii) an employee of a Related Corporation incorporated in the United States; (iii) an employee of the Company that resides outside of the United States; or (iv) an employee of a Related Corporation that is not incorporated in the United States, shall be granted a Purchase Right on the Offering Date of such Offering, provided, in the case of clause (iii) or (iv), that the Board or Committee has designated that such employees are eligible to participate in the Offering.

(b) Notwithstanding the foregoing, the following Employees shall not be Eligible Employees or be granted Purchase Rights under an Offering:

(i) part-time or seasonal Employees whose customary employment is twenty (20) hours per week or less or five (5) months per calendar year or less;

(ii) five percent (5%) stockholders (including ownership through unexercised and/or unvested stock options) as described in Section 6(c) of the Plan;

or

(iii) Employees in jurisdictions outside of the United States if, as of the Offering Date of the Offering, the grant of such Purchase Rights would not be in compliance with the applicable laws of any jurisdiction in which the Employee resides or is employed.

(c) Notwithstanding the foregoing, each person who first becomes an Eligible Employee during an ongoing Offering shall, not be able to participate in such Offering, but shall be eligible to participate, pursuant to the terms of this Section 2 and the Plan, in the first Offering that commences on or after the first day of his or her employment.

### 3. Purchase Rights.

(a) Subject to the limitations herein and in the Plan, a Participant's Purchase Right shall permit the purchase of the number of shares of Common Stock purchasable with up to fifteen percent (15%) of such Participant's Earnings paid during the period of such Offering beginning immediately after such Participant first commences participation; *provided, however*, that no Participant may have more than fifteen percent (15%) of such Participant's Earnings applied to purchase shares of Common Stock under all ongoing Offerings under the Plan and all other plans of the Company and Related Corporations that are intended to qualify as Employee Stock Purchase Plans.

(b) For Offerings hereunder, "Earnings" means the base compensation paid to a Participant, including all salary and wages (including amounts elected to be deferred by the Participant, that would otherwise have been paid, under any cash or deferred arrangement or other deferred compensation program established by the Company or a Related Corporation), overtime pay, commissions, bonuses; but excluding all other remuneration paid directly to such Participant, profit sharing, the cost of employee benefits paid for by the Company or a Related Corporation, education or tuition reimbursements, imputed income arising under any Company or Related Corporation group insurance or benefit program, traveling expenses, business and moving expense reimbursements, income received in connection with stock options, contributions made by the Company or a Related Corporation under any employee benefit plan, and similar items of compensation.

(c) Notwithstanding the foregoing, the maximum number of shares of Common Stock that a Participant may purchase on any Purchase Date in an Offering shall be such number of shares as has a Fair Market Value (determined as of the Offering Date for such Offering) equal to (x) twenty five thousand dollars (\$25,000) multiplied by the number of calendar years in which the Purchase Right under such Offering has been outstanding at any time, minus (y) the Fair Market Value of any other shares of Common Stock (determined as of the relevant Offering Date with respect to such shares) that, for purposes of the limitation of Section 423(b)(8) of the Code, are attributed to any of such calendar years in which the Purchase Right is outstanding. The amount in clause (y) of the previous sentence shall be determined in accordance with regulations applicable under Section 423(b)(8) of the Code based on (i) the number of shares previously purchased with respect to such calendar years pursuant to such Offering or any other Offering under the Plan, or pursuant to any other Company or Related Corporation plans intended to qualify as Employee Stock Purchase Plans, and (ii) the number of shares subject to other Purchase Rights outstanding on the Offering Date for such Offering pursuant to the Plan or any other such Company or Related Corporation Employee Stock Purchase Plan.

(d) The maximum aggregate number of shares of Common Stock available to be purchased by all Participants under an Offering shall be the number of shares of Common Stock remaining available under the Plan on the Offering Date. If the aggregate purchase of shares of Common Stock upon exercise of Purchase Rights granted under the Offering would exceed the maximum aggregate number of shares available, the Board shall make a pro rata allocation of the shares available in a uniform and equitable manner.

(e) Notwithstanding the foregoing, the maximum number of shares of Common Stock that a Participant may purchase on any Purchase Date during any Offering shall not exceed ten thousand (10,000) shares.

**4. Purchase Price.**

The purchase price of shares of Common Stock under an Offering shall be the lesser of: (i) eighty-five percent (85%) of the Fair Market Value of such shares of Common Stock on the applicable Offering Date, or (ii) eighty-five percent (85%) of the Fair Market Value of such shares of Common Stock on the applicable Purchase Date, in each case rounded up to the nearest whole cent per share. For the Initial Offering, the Fair Market Value of the shares of Common Stock at the time when the Offering commences shall be the price per share at which shares are first sold to the public in the Company's initial public offering as specified in the final prospectus for that initial public offering.

**5. Participation.**

(a) An Eligible Employee may elect to participate in an Offering on the Offering Date or as of the first day following any Purchase Date; provided, however, that a person who first becomes an Eligible Employee during an Offering may elect to participate at the Offering Date applicable to such Eligible Employee in accordance with Section 2(c) herein. An Eligible Employee shall become a Participant in an Offering by delivering an enrollment form authorizing payroll deductions. Such deductions must be in whole percentages of Earnings, with a minimum percentage of one percent (1%) and a maximum percentage of fifteen percent (15%). Except as provided in paragraph (e) below, Contributions may be made only by way of payroll deductions and a Participant may not make additional payments into his or her account. The agreement shall be made on such enrollment form as the Company provides, and must be delivered to the Company prior to the date participation is to be effective, unless a later time for filing the enrollment form is set by the Company for all Eligible Employees with respect to a given Offering.

(b) A Participant may increase or reduce (including to zero percent) his or her participation level once during each Purchase Period, excluding only each ten (10) business day period immediately preceding a Purchase Date (or such shorter period of time as determined by the Company and communicated to Participants). In addition, a Participant may reduce his or her participation level to zero percent (0%) at any time during the course of an Offering, excluding only each ten (10) business day period immediately preceding a Purchase Date (or such shorter period of time as determined by the Company and communicated to Participants). Any such change in participation shall be made by delivering a notice to the Company or a designated Related Corporation in such form and at such time as the Company provides.

(c) A Participant may withdraw from an Offering and receive a refund of his or her Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares

of Common Stock for the Participant on any prior Purchase Date) without interest, at any time prior to the end of the Offering, excluding only each ten (10) business day period immediately preceding a Purchase Date (or such shorter period of time determined by the Company and communicated to Participants), by delivering a withdrawal notice to the Company or a designated Related Corporation in such form as the Company provides. A Participant who has withdrawn from an Offering shall not again participate in such Offering, but may participate in subsequent Offerings under the Plan in accordance with the terms of the Plan and the terms of such subsequent Offerings.

(d) Notwithstanding the foregoing or any other provision of this Offering document or of the Plan to the contrary, neither the enrollment of any Eligible Employee in the Plan nor any forms relating to participation in the Plan shall be given effect until such time as a registration statement covering the registration of the shares under the Plan that are subject to the Offering has been filed by the Company and has become effective.

(e) Notwithstanding the foregoing or any other provision of this Offering document or of the Plan to the contrary, with respect to the Initial Offering only, each Eligible Employee who is employed on the IPO Date automatically shall be enrolled in the Initial Offering, with a Purchase Right to purchase up to the number of shares of Common Stock that are purchasable with fifteen percent (15%) of the Eligible Employee's Earnings, subject to the limitations set forth in Section 3 above. Following the filing of an effective registration statement pursuant to a Form S-8, such Eligible Employee shall be provided a certain period of time, as determined by the Company in its sole discretion, within which to elect to authorize payroll deductions for the purchase of shares during the Initial Offering (which may be for a percentage that is less than fifteen percent (15%) of the Eligible Employee's Earnings). If such Eligible Employee elects not to authorize such payroll deductions, the Eligible Employee instead may purchase shares of Common Stock under the Plan by delivering a single cash payment for the purchase of such shares to the Company or a designated Related Corporation prior to the ten (10) business day period (or such shorter period of time as determined by the Company and communicated to Participants) immediately preceding the first Purchase Date under the Initial Offering. If an Eligible Employee neither elects to authorize payroll deductions (or fails to do so in a timely manner) nor chooses to make a cash payment in accordance with the foregoing sentence, then the Eligible Employee shall not purchase any shares of Common Stock during the Initial Offering. After the end of the Initial Offering, in order to participate in any subsequent Offerings, an Eligible Employee must enroll and authorize payroll deductions prior to the commencement of the Offering, in accordance with paragraph (a) above; *provided, however*, that once an Eligible Employee enrolls in an Offering and authorizes payroll deductions (including in connection with the Initial Offering), the Eligible Employee automatically shall be enrolled for all subsequent Offerings until he or she elects to withdraw from an Offering pursuant to paragraph (c) above or terminates his or her participation in the Plan.

## **6. Purchases.**

Subject to the limitations contained herein, on each Purchase Date, each Participant's Contributions (without any increase for interest) shall be applied to the purchase of whole shares, up to the maximum number of shares permitted under the Plan and the Offering.

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**7. Notices and Agreements.**

Any notices or agreements provided for in an Offering or the Plan shall be given in writing, in a form provided by the Company, and unless specifically provided for in the Plan or this Offering, shall be deemed effectively given upon receipt or, in the case of notices and agreements delivered by the Company, five (5) days after deposit in the United States mail, postage prepaid.

**8. Exercise Contingent on Stockholder Approval.**

The Purchase Rights granted under an Offering are subject to the approval of the Plan by the stockholders of the Company as required for the Plan to obtain treatment as an Employee Stock Purchase Plan.

**9. Offering Subject to Plan.**

Each Offering is subject to all the provisions of the Plan, and the provisions of the Plan are hereby made a part of the Offering. The Offering is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of an Offering and those of the Plan (including interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan), the provisions of the Plan shall control.

# GENERAL AGREEMENT

between

**Medeon Fastigheter AB**

and

**ACADIA Pharmaceuticals Inc.**

## General Agreement

### 1 Parties

- 1.1 Medeon Fastigheter AB, Reg no 556034-1140, c/o Wihlborgs Fastigheter AB ("Medeon"), Box 97, 201 20 Malmö, fully owned by Wihlborgs Fastigheter AB (publ).
- 1.2 ACADIA Pharmaceuticals Inc., 3911 Sorrento Valley Boulevard, San Diego, CA 92121, USA ("Acadia").
- 1.3 Medeon and Acadia are jointly referred to as "the Parties" or individually a "Party".

### 2 Background

- 2.1 Acadia has declared an interest in renting new premises located at the real estate "Forskaren 1", in Malmö. The address of the premises is Per Albin Hanssons väg 41, Malmö. The premises, which have not yet been built, shall house a laboratory used by Acadia within the frame of its enterprise. Medeon, on the other hand, has declared a will to build the premises required and, when the construction has been completed, to lease them to Acadia.

### 3 The Lease Object

- 3.1 The premises will include the space needed by Acadia to run the enterprise, in addition to necessary service areas, cloakrooms etc (hereinafter referred to as the "Lease Object").
- 3.2 A detailed description of the shape of the Lease Object, along with building plans, as well as a full description of the division of production and construction costs between Medeon and Acadia, is to be found in the "Programhandling" enclosed to this Agreement, see [Appendix 3.2](#).
- 3.3 Deviations from the shape and extent of the Lease Object, as described in Appendix 3.2, require the consent from both parties.
- 3.4 Cost-saving measures agreed upon between the Parties shall have a corresponding impact on the lease fee.

#### **4 Time Schedule**

- 4.1 Acadia shall take possession of the Lease Object on 1 June, 2005 (the "Date of Taking Possession"). Medeon guarantees that the construction of the Lease Object has been completed and that the building has been subject to and approved at a final inspection, performed in accordance with the conditions and terms applicable on the contract work until the Date of Taking Possession. Medeon shall during the month of June 2005 have full access to all parts of the Lease Object for the purpose of remedying defects that have been noted in the inspection report. Should Medeon require access to the Lease Object thereafter for remedying of such defects, Acadia shall be entitled to rights including compensation in accordance with the applicable law of tenancy. Medeon undertakes to indemnify and hold harmless Acadia for any and all damages, claims, losses, liabilities and costs incurred or suffered by Acadia arising out of Medeon's breach of its undertaking in this Section 4.1. Medeon's liability under this Section 4.1 shall under no circumstances exceed an amount corresponding to one percent of the contract price in total for each week that Acadia's taking of possession is delayed.

#### **5 Signing of the Lease Contract and Terms of Leasing**

- 5.1 The Parties undertake to sign a Lease Agreement regarding the Lease Object in accordance with the draft agreement, with appurtenant appendixes and exhibits, presented in Appendix 5.1 to this Agreement. The Lease Agreement shall be signed at the time when Acadia takes possession of the Lease Object.

#### **6 Construction, Contract Work**

- 6.1 In the light of Acadia's undertaking, Medeon shall construct a building in accordance with the documents in Appendix 3.2. Medeon shall manage the contract work and all decisions related to the construction of the Lease Object shall be made by Medeon. As soon as possible after the signing of this Agreement, the parties shall form a project group (*Sw: styrgrupp*) with one representative from each party. Acadia may appoint one representative who shall be entitled to attend project- and construction meetings (*Sw: projekt- och byggmöten*). It is understood and agreed between the Parties that the Date of Taking Possession of the Lease Object stated in Article 4 here above, is based on the assumption that no changes or additions, ordered by Acadia, will be made in the governed documents concerning the contract work. The Date of Taking Possession shall be postponed in case Acadia has ordered changes or additions and provided that that Medeon has notified Acadia in writing that such ordered changes and additions are subject to postponement of the Date of Taking Possession of the Lease Object, specifying the new date of taking possession. The Parties shall jointly appoint an inspector, at the expense of Medeon, who shall decide the condition of the Lease Object both in the relation between the contractor and Medeon and in the relation between Medeon and Acadia.

## **7 Conditions**

- 7.1 The validity of this Agreement is conditional upon the occurrence of the following events:
- a. The Municipal council Malmö kommun decides to adopt a new detailed development plan (*Sw: detaljplan*) allowing for the Lease Object, as described in Appendix 3.2, to be built at the latest 1 June, 2004;
  - b. Medeon receives permit (*Sw: bygglov*) to build the Lease Object at the latest 1 June, 2004;
  - c. All necessary permits for Acadia's business at the Lease Object to be received at the latest 1 June 2004; and
  - d. The board of directors of Acadia accepts this Agreement at the latest three (3) weeks after signing by both Parties of this Agreement.
- 7.2 It is noted that the board of directors of Wihlborgs Fastigheter AB has accepted this Agreement.
- 7.3 The Parties shall use their best endeavours to ensure that the conditions in Section 7.1 are fulfilled.
- 7.4 If any of the conditions in Section 7.1 is not fulfilled by the said date, this Agreement shall cease to have effect and each Party shall have no claims under it against the other, save in respect of any prior breach.

## **8 Option**

- 8.1 Acadia has a substantial interest in a further rational expansion of its business activities on the site of Medeon Science Park in Malmö, i.e. an expansion in direct connection with or in the close proximity of the building that is the subject matter of this Agreement. Medeon therefore undertakes to reserve an area of approximately 3,000 square meters for such future expansion in a new building that is planned to be built on the site ("the New Lease Object") and to lease the New Lease Object to Acadia on terms and conditions mainly corresponding to the terms and conditions of the lease agreement regarding the Lease Object.
- 8.2 Medeon's undertaking set forth in Section 8.1 is conditional upon that (i) the right to erect buildings that Medeon may be granted pursuant to the future pending plan has room for the number of square metres being reserved for Acadia subsequent to Section 8.1 of this Agreement and (ii) the parties reach an agreement regarding the terms and conditions for the construction and the renting of the new building.
- 8.3 Acadia shall no later than June 1, 2008, in writing call the exercise of the option.
- 8.4 If Acadia exercises its option, and provided that the condition set out in Section 8.2(i) and (ii) are fulfilled, Medeon guarantees that the New Lease Object will be

completed and that the building will be subject to and approved at a final inspection in accordance with the agreed terms and conditions of the contract work.

- 8.5 If the condition under 8.2(i) is fulfilled but the parties are unable to reach an agreement on the terms and conditions regarding the construction and the renting of the new building, Medeon undertakes to sell to Acadia the part of the real property Malmö Forskaren 1 situated north of the Lease Object including an area of approximately 2,350 square metres, which have been marked out with redlines in the drawing attached hereto as Appendix 8.5. The Parties acknowledge that there may be adjustments due to the geodetic division of the real property. The purchase price shall be calculated by multiplying the Municipality's of Malmö price per square meter of building rights (*Sw: byggrätter*) by the number of square meters of building rights allocated to the land transferred. If Medeon breaches its undertaking to sell the land to Acadia, Acadia shall have the right to terminate this Agreement and the Lease Agreement set forth in Appendix 5.1 with immediate effect without any right for Medeon to claim any compensation as a result of the termination of the agreements.

## **9 Indemnification**

- 9.1 Acadia undertakes to indemnify and hold harmless Medeon for any and all damages, claims, losses, liabilities and costs incurred or suffered by Medeon arising out of or in connection to Acadia's breach of its undertaking to sign the Lease Agreement. Medeon shall make best efforts to find a new tenant, it being however understood that Medeon's obligation shall in no case go beyond what an injured party would have to do to limit its injury according to the general principle of law.
- 9.2 Acadia's indemnification obligation under Section 9.1 shall not exceed a maximum amount of SEK 40,000,000 (forty million), it being understood that any set off shall be made against Medeon's actual loss. By way of example only, this means that if Medeon's loss is SEK 50,000,000 and Medeon through new tenants acquires rental payments at an amount of SEK 20,000,000, Acadia shall pay compensation to Medeon with SEK 30,000,000.

## **10 Assignments**

- 10.1 This Agreement shall be binding upon and inure to the benefit of the successors of the Parties but shall not be assignable by either of the Parties without the prior written consent of the other Party. The benefit of this Agreement may, however, be assigned by either Party to any company directly or indirectly controlling, controlled by or under common control of that party provided that the Party shall remain liable as for its own debt (*Sw: såsom för egen skuld*) for all obligations under this Agreement.

**11 Confidentiality**

11. Subject to any contingent obligations imposed by law or regulations regarding publication, the Parties undertake not to make any public announcement or notice of the provisions in the Agreement without the prior mutual agreement regarding forms and contents of the intended information.

**12 Governing Law and Jurisdiction**

12.1 This Agreement shall be governed by and construed in accordance with Swedish law.

12.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, which cannot be settled amicably, shall be settled by Swedish courts.

\_\_\_\_\_

This Agreement has been executed in two (2) copies of which the Parties have taken one each.

Place: Malmö

Date: 22/4-2004

MEDEON FASTIGHETER AB

/s/ Anders Jari

\_\_\_\_\_  
Anders Jari, by proxy

Place: Malmö

Date: April 22, 2004

ACADIA PHARMACEUTICALS INC.

/s/ Uli Hacksell

\_\_\_\_\_  
Uli Hacksell

# LEASE AGREEMENT

between

**Medeon Fastigheter AB**

and

**ACADIA Pharmaceuticals Inc.**





**LEASE AGREEMENT  
FOR NON-RESIDENTIAL PREMISES**

No. 4881-

The undersigned have this day entered into the following Lease Agreement

An X in a box means that the text following thereafter applies.

<b>Rent</b>	SEK 7 225 000:—	Per annum comprising	<input type="checkbox"/> total rent	<input checked="" type="checkbox"/> rent excluding supplements marked below
<b>Index clause</b>	<input checked="" type="checkbox"/> Changes to the above-stated rent will be effected pursuant to the appended index clause			Appendix 3
<b>Heating and hot water costs</b>	Fuel/heating supplement payable in accordance with <input checked="" type="checkbox"/> appended clause		enl. självkostnad	Appendix 4
<b>Water and sewerage cost</b>	Water and sewerage supplement payable in accordance <input checked="" type="checkbox"/> with appended clause		enl. självkostnad	Appendix 4
<b>Cooling Ventilation</b>	Costs for the operation of special cooling and ventilation appliances <input checked="" type="checkbox"/> shall be reimbursed in accordance with appended clause		enl. självkostnad	Appendix 4
<b>Electricity</b>	<input type="checkbox"/> included in rent		<input checked="" type="checkbox"/> Tenant has own contract with the provider	
<b>Cleaning of Stairwell</b>	<input type="checkbox"/> included in rent		<input checked="" type="checkbox"/> arranged for and paid for by the Tenant	
<b>Refuse and waste removal</b>	Insofar as the Landlord is responsible for the provision of storage space for refuse/waste, and arranging for the removal of such refuse/waste, it is the Tenant's responsibility to sort and deposit refuse/waste in the appropriate containers as directed, in their designated place, as well as without recompense contribute towards further and/or additional sorting, as discussed by the Landlord.			
	Refuse and waste removal			
	<input type="checkbox"/> included in rent			
	<input checked="" type="checkbox"/>	Arranged for and paid for by the Tenant (the Landlord however shall provide the necessary refuse/waste containers and the requisite storage space for such)		
	<input type="checkbox"/>	Included in rent with respect to the types of refuse/waste indicated below. The Tenant shall be responsible for, and pay for the costs of, collection, sorting, storage and transportation of the categories of refuse/waste not indicated below which are to be found on the Tenant's premises.		
	<input type="checkbox"/> household waste	<input type="checkbox"/> fluorescent tubes	<input type="checkbox"/> hard plastic packaging	
	<input type="checkbox"/> heavy refuse	<input type="checkbox"/> metal packaging	<input type="checkbox"/> hazardous waste pursuant to the Hazardous Waste Ordinance (1996:971)	
	<input type="checkbox"/> compostable waste	<input type="checkbox"/> clear glass containers	<input checked="" type="checkbox"/> Bil 4	
	<input type="checkbox"/> newspapers	<input type="checkbox"/> coloured glass containers	<input type="checkbox"/>	
	<input type="checkbox"/> batteries	<input type="checkbox"/> cardboard packaging	<input type="checkbox"/>	
<b>Snow clearance and gritting</b>	<input type="checkbox"/> included in rent	<input type="checkbox"/> to be arranged for and paid for by the Tenant	<input checked="" type="checkbox"/> as per appendix	Appendix 4
<b>Property taxes</b>	<input type="checkbox"/> included in rent	<input checked="" type="checkbox"/> reimbursement payable as per special agreement		Appendix 5

**Unforeseen costs** Where, following the execution of this Agreement, unforeseen increases in costs arise in relation to the property as a consequence of:

- a) the introduction of, or increases in taxes, charges or duties levied specifically on the property as a result of decision taken by Parliament, Government, municipalities, or other relevant authorities;
- b) general rebuilding measures or such like in respect of the property which do not relate solely to the premises and which the Landlord is obliged to execute as a result of decisions of the Parliament, Government, municipalities, or other relevant authorities;

The Tenant shall, commencing at the time of the cost increase, reimburse the Landlord in relation to that proportion of the total annual increase in costs for the property represented by the premises.

The proportion represented by the premises is 100 per cent. Where the proportion has not been indicated, it shall be comprised of that proportion of the total rents for premises (excluding any value-added tax) represented by the Tenant's rent (excluding any value-added tax) at the time of the increase in costs in respect of unlet premises, the market rent for the premises shall be estimated.

"Taxes" in accordance with a) above does not refer to value-added tax and property tax to the extent that reimbursement in respect of this is paid as per agreement. "Unforeseen costs" means such costs as were not decided upon by the authorities as set forth in sections a) and b) at the inception of the Agreement. Reimbursement shall be paid in the same manner as set forth below for rental payments.

**Notice**

Note that in certain cases, in addition to marking a box with an X, an appendix must be appended to the Agreement in order for the agreement set forth in such appendix to be binding. This applies, for example, with respect to an index clause, a property tax clause and the Tenant's right to a reduction of rent in conjunction with customary maintenance. In addition, see instructions prepared by the organisations.

Swedish Property Federation form no. 12B, prepared in 1998 in consultation with the Swedish Federation of Trade and the Swedish Hotels and Restaurants Association (SHR). Copying prohibited.

Notice: This is a translation into English of form no. 12B

License number: 90274560-000058. Version 6.01. Registered to: Wihlborgs Fastigheter AB (publ.)

Initial

Initial

**LEASE AGREEMENT  
FOR NON-RESIDENTIAL PREMISES**

No. 4881-

The undersigned have this day entered into the following Lease Agreement

An X in a box means that the text following thereafter applies.

Value-added tax (VAT)	<p><input checked="" type="checkbox"/> The property owner/Landlord is liable to pay value-added tax for the letting of the premises. In addition to rent, the Tenant shall on each occasion pay the VAT currently applicable.</p> <p><input type="checkbox"/> Where, following a decision by the Tax Authorities, the property owner/Landlord becomes liable to pay VAT to the letting of the premises, the Tenant shall on each occasion in addition to the rent pay the VAT currently applicable.</p> <p>The VAT paid together with rent shall be calculated on the stated rental amount and where applicable on supplemental charges and other reimbursements paid in accordance with the Agreement, pursuant to the rules applicable at the time in respect of VAT payable on rent.</p> <p>Where the Landlord becomes liable to pay VAT pursuant to the provisions of the Value Added Tax Act as a consequence of the Tenant's independent actions, such as a subletting of the premises (including subletting to its own company) or assignment, the Tenant shall reimburse the Landlord in full. In addition, the Tenant shall reimburse the Landlord in respect of the increased costs arising as a consequence of the Landlord's loss of the entitlement to deduct VAT on operating expenses incurred as a consequence of the Tenant's actions.</p>		
Payment of rent	<p>The rent shall be paid in advance without prior demand, not later than the last working day prior to the commencement of</p> <p style="text-align: center;"><input type="checkbox"/> each calendar month                      <input checked="" type="checkbox"/> each quarter</p>	<p>Postal giro no.</p> <p>By direct transfer to either of following accounts</p> <p>enl avi</p>	<p>Bank giro no.</p> <p>enl avi</p>
Interest, Payment reminders	<p>Upon delay in the payment of rent, the Tenant shall pay interest in accordance with the Interest Act as well as compensation for written payment reminders in accordance with the Debt Recovery Act, etc. Compensation for payment reminders shall on each occasion be paid in an amount currently applicable pursuant to the Debt Recovery Ordinance, etc.</p>		
Maintenance, etc.	<p><input type="checkbox"/> The Landlord shall carry out and bear the cost of necessary maintenance of the premises and furnishings/fittings/fixtures supplied by him.</p> <p><input type="checkbox"/> The Tenant shall carry out and bear the cost of necessary maintenance of the surface of floors, walls and ceilings, as well as of furnishings/fittings/fixtures provided by the Landlord.</p> <p>Where the Tenant does not fulfill his maintenance obligations and does not within a reasonable time carry out rectification works following a written demand, then the Landlord shall be entitled to fulfill these obligations at the Tenant's expense.</p> <p><input checked="" type="checkbox"/> The allocation of the maintenance obligations is set forth as per separate appendix.</p>	<p>However, the Tenant shall be responsible for</p> <p>In addition, the Tenant's maintenance obligations includes</p> <p>Gransd.lista</p>	<p>Appendix</p> <p>Appendix</p> <p>Appendix 6</p>
Management and operation	<p>Unless otherwise agreed, the Landlord shall, where applicable, manage, operate, and maintain the public and common areas.</p> <p>The Tenant shall not be entitled, without the Landlord's written consent to carry out any fitting out and/or installation or alteration works within the premises or otherwise within the property, which directly effects the structural components of the building or installations important to the functioning of the property, such as water and sewerage, electricity, ventilation systems, etc., which are the property of the Landlord.</p> <p>Sprinkler heads and ventilation equipment may not be covered by any fixtures/fittings by the Tenant in such a manner as to reduce the functioning of such equipment. In conjunction with the performance of fitting out works, the Tenant shall ensure that the functioning of radiators and other heating equipment is maintained in all significant respects.</p>		
Inspections	<p>Where any defects and/or deficiencies are found subsequent to an inspection by a relevant authority, in the electrical and sprinkler equipment which is the property of the Tenant, the Tenant shall, at his own cost and within the period prescribed by the relevant authority, carry out any measures required. Where the Tenant has not rectified the defects and/or deficiencies within the assessed time, the Landlord shall be entitled, at the Tenant's expense, to carry out such measures as are required by the relevant authority.</p>		
Access to certain spaces	<p>The Tenant shall keep areas to which the maintenance personnel and personnel from the energy utilities, water and sewerage utilities, the telephone company, and any like organization must have access to, easily accessible by keeping such areas free of cupboards, crates, goods, or any other obstruction.</p>		
Building material specifications	<p>Whether, pursuant to the provisions of this Agreement or otherwise, the Tenant performs maintenance, improvement, or alteration works in respect of the premises, the Tenant shall provide the Landlord, in good time prior to the execution of such work, with specifications of the building materials – to the extent such have been prepared – for the products and materials to be used on the premises.</p>		
Planning and Building Code (PBL) Insts.	<p>Where the Tenant undertakes alterations to the premises without the requisite construction permit and, as a consequence thereof the Landlord is compelled to pay construction fines or supplemental fees pursuant to the rules set forth in the Planning and Building Code (PBL), the Tenant shall reimburse the Landlord in respect of this.</p>		
Reduction of rent	<p>The Tenant shall not be entitled to a reduction in rent for the period during which the Landlord allows work to be carried out in order to place the premises in the agreed condition, or other works specifically set forth in the Agreement. SEE GENERAL AGREEMENT.</p> <p><input checked="" type="checkbox"/> The Tenant's right to a reduction in rent during the Landlord's performance of customary maintenance of the leased</p>		<p>Appendix 2</p>

premises or the property shall be governed by a separate appendix.

Regulations imposed by relevant authorities, etc.

shall be solely responsible for, and bear the cost of, undertaking measures which may be required for the intended use of the premises by insurance companies, building authorities, environmental or health authorities, fire departments, or other relevant authorities after the date of taking possession. The Tenant shall consult with the Landlord prior to undertaking any such measures.

The Landlord

The Tenant

### Notice

Note that in certain cases, in addition to marking a box with an X, an appendix must be appended to the Agreement in order for the agreement set forth in such appendix to be binding. This applies, for example, with respect to an index clause, a property tax clause and the Tenant's right to a reduction of rent in conjunction with customary maintenance. In addition, see instructions prepared by the organisations.

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LEASE AGREEMENT  
FOR NON-RESIDENTIAL PREMISES

No. 4881-

The undersigned have this day entered into the following Lease Agreement

An X in a box means that the text following thereafter applies.

Signs, awnings, windows, doors, etc. Following consultation with the Landlord, the Tenant shall be entitled to display a customary business sign provided that the Landlord has not reasonably denied the same and that the Tenant has obtained the requisite permit from the relevant authority. Upon surrender of the premises, the Tenant shall restore the facade to of the building to an acceptable condition. In conjunction with more extensive property maintenance, such as the renovation of facades, etc. the Tenant shall, at its own cost and without compensation, dismantle and reassemble signs, awnings, and antennas. The Landlord undertakes not to fix vending machines and display cabinets on the exterior walls of the premises let to the Tenant without the Tenant's consent, and grants to the Tenant an option to fix vending machines and display cabinets on the walls in question.

The Landlord

Is liable for any damage due to negligence of malicious intent to

The Tenant

windows

display/shop windows

entrance doors

signs

The Tenant shall purchase and maintain glass insurance with respect to displaying windows and entrance doors appurtenant to the premises.

Locks

The Landlord

The Tenant

shall equip the premises with such locks and anti-theft devices as may be required to ensure the validity of the Tenant's business insurance.

Force majeure

The Landlord shall not be compelled to perform the obligations under this Agreement or pay any damages where, as a consequence of acts of war or riots, work stoppages, blockages, fires, explosions, or intervention by a public authority over which the Landlord has no control and which could not have been foreseen, and the Landlord is prevented entirely from performing his obligations or may only be able to do so at abnormally high cost.

Security

This Agreement is contingent upon the provision of security in the form of a

Appendix

Bank guarantee

Personal guarantee

To be provided no later than

Special provisions

Särskilda Bestämmelser

Appendix

7

Signature

This Agreement which may not be registered without specific consent, has been prepared in two identical counterparts of which each party has received one. All prior agreements between the parties with respect to these premises shall cease to apply commencing on the date of execution of this Agreement.

Place/date

Place/date

Landlord

This is just a translation.  
Do not sign here!  
Sign the Swedish form!

Tenant

Printed name

Printed name

Agreement with respect to the surrender of the premises

As a consequence of an agreement entered into this day, the Agreement shall cease to apply commencing , at which time the Tenant undertakes to surrender the premises.

Place/date

Place/date

Landlord

Tenant

Assignment

This Lease Agreement is hereby assigned to commencing

Assignor

Assignee

National ID/company regulation no.

The above-referenced assignment is hereby approved

Place/date

Landlord

Notice

Note that in certain cases, in addition to marking a box with an X, an appendix must be appended to the Agreement in order for the agreement set forth in such appendix to be binding. This applies, for example, with respect to an index clause, a property tax clause and the Tenant's right to a reduction of rent in conjunction with customary maintenance. In addition, see instructions prepared by the organisations.

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Här skall infogas relations ritningar

The parties have agreed as follows about reduction of the rent in conjunction with customary maintenance (an X in a box means that the text following thereafter applies).

- Reduction of the rent for obstacles to or infringement of the right of the user in consequence of the Landlord allowing work to be done in order to carry out customary maintenance of the leased premises or the property is to be granted according to the rules of The Rent Act.
- The Tenant is not entitled to reduction of the rent for obstacles to or infringement of the right of the user in consequence of the Landlord allowing work to be done in order to carry out customary maintenance of the leased premises or the property. The Landlord shall, however, in good time inform the Tenant not only about the kind and the extent of the work but also about the starting point and the period during which the work will be carried out.
- The parties are agreed that the right to reduction of the rent during the Landlord's performance of customary maintenance of the leased premises or the property shall be governed in accordance to the following.

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Place/date

Place/date

Landlord

**This is just a translation.  
Do not sign here!  
Sign the Swedish form!**

Printed name

Printed name

<b>Concerning</b>	Lease Agreement no 4881-	<b>Property designation</b> Forskaren 1
<b>Landlord</b>	Medeon Fastigheter AB	
<b>Tenant</b>	ACADIA Pharmaceuticals Inc.	
<b>Clause</b>		

Of the rent of SEK 7 145 000:- stipulated in the Lease Agreement 100 % or SEK 7 145 000:- shall constitute the base rent. During the period of the Lease Agreement, a surcharge to the rent, constituting a certain percentage of the base rent, shall be payable with regard to changes in the consumer price index (using the total index for 1980 as a base) according to the following:

- For lease agreements commencing during the period 1/1—30/6 the base rent is deemed to be adjusted to the index level for that of the previous October.
- for lease agreements commencing during the period 1/7—31/12 the base rent is deemed to be adjusted to the index level for October of that year.
- The index level for the October that the base rent is deemed to be adjusted to, as shown above, becomes the base figure unless otherwise agreed by designating a year as per the following. Alternative agreed base figure: the index level of October 2004.

Should the index level any following October have risen in relation to the base figure, the surcharge shall be calculated on the percentage by which the index has changed in relation to the base figure. Future surcharges due will be based on the changes in the index, the rental change to be calculated on the percentage change between the base figure and the index level for the October in question.

The rent payable shall nevertheless be adjusted below that stipulated in the Lease Agreement. A change in the rent is always effective from 1<sup>st</sup> January following an adjustment occasioned by a recomputation due to a change in the index the previous October.

The instructions in page 2 are applicable to the agreement.

<b>Signature</b>	<b>Place/date</b>	<b>Place/date</b>
Landlord	This is just a translation. Do <b>not</b> sign here! Sign the Swedish form!	Tenant

\_\_\_\_\_

\_\_\_\_\_

Printed name

Printed name

The Landlord's notes regarding the base figure:

## Instructions in respect of Index Clause for non-residential premises

### Base Rent

Whether all or a part of the rent stipulated in the Lease Agreement shall consist of base rent, is a matter for negotiation and can depend on the terms of the Lease Agreement (for example the quantum of the rent expressed as SEK/sq. m/per annum, and also for what other obligations the Tenant is responsible).

### Base Figure

The index level for the October that the base rent is deemed to be aligned to becomes the base figure, unless otherwise agreed by designating a year (as per conditions stated in page 1).

Comparison of index levels shall be done as soon as the annual October index is published. During recent years the October index has been published by the middle of November.

### Calculation of the Surcharge

- 1) Calculate the difference between the relevant October index and the base figure.
- 2) If the difference is positive, divide the difference by the base figure.
- 3) The surcharge is calculated by multiplying the base rent by the factor thus determined.

#### Example

Calculation of the surcharge for 2002

Presume that the base rent is SEK 100 000 pa (per annum) and is aligned to the consumer price index for October 1999, which is 259,7 (base figure). The October index for 2001 is 269,1.

1. Calculate the difference between the index figure 269,1 and 259,7. The difference is positive and amounts to 9,4.
2. Divide 9,4 by 259,7 and multiply the quotient (without rounding off) by the base rent SEK 100 000. The result is SEK 3 619:56, which according to the clause becomes the surcharge for 2002.

Alternative A: Assume that the consumer price index for October 2001 had been lower than the year before for example 262,0 (the index for October 2000 was 262,6).

The Difference between the assumed Index level 262,0 and the base figure 259,7 would still be positive and amount to 2,3. The quotient between 2,3 and the base figure 259,7, multiplied by the base rent would have amounted to a surcharge of SEK 885:63. The total rent would however have been lower than for 2001.

Alternative B: Assume that the consumer price index for October 2001 had instead been lower than the base figure 259,7 for example 259,5.

The difference between 259,5 and the base figure 259,7 would than have been negative. No surcharge would apply. The rent stated in the Lease Agreement would apply.

**Part of** Lease Agreement no.  
4881-**Property designation**  
Forskaren 1**Landlord** Medeon Fastigheter AB**Tenant** ACADIA Pharmaceuticals Inc.**Clause** The applicable alternative is indicated by putting an X in the relevant box and completing the requisite details.

To the extent that the parts of the property that are comprised of non-residential premises are or become subject to property tax, the Tenant shall with the rent reimburse the Landlord according to the conditions as indicated below.

- The Tenant shall in addition to the rent specified in the Lease Agreement annually reimburse the Landlord for his share of property tax due in respect of the non-residential premises. The Tenant's share is deemed to be 100 per cent.  
According to the conditions that apply at the inception of the Lease Agreement the reimbursement at the inception of the rental period is SEK ej kant a year.

- Reimbursement in respect of the current share of property tax for the non-residential premises is included in the rent specified in the Lease Agreement and at its inception it is SEK

The non-residential premises share of the property tax applying to non-residential premises is deemed to be \_\_\_\_\_ per cent. The Tenant shall provide reimbursement for his share of any changes in the applicable property tax in respect of non-residential premises that take effect after the inception of the Lease Agreement (irrespective of the cause) to the extent that the tax exceeds that amount that is included in the rent as reimbursement for property tax.

Should the property tax reduce/cease so that Tenant's share of the reimbursement is less than that as per above, which is included in the rent specified in the Lease Agreement, the rent shall nevertheless be payable at not less than the original amount. Thus due to other clauses (e.g. index) contained in the agreement this means that the total rent payable by the Tenant is/can be greater than that shown in the Lease Agreement.

The Tenant's above specified share, which shall be unchanged during the term of the Lease Agreement, has been calculated as follows:

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The instructions in page 2 are applicable to the agreement.

**Signature** Place/date

Place/date

Landlord

This is just a translation.  
Do not sign here!  
Sign the Swedish form!

Tenant

Printed name

Printed name

## **Instructions – Property tax clause for non-residential premises**

1. The clause was formulated in June 1995, i.e., before the time (normally the 1<sup>st</sup> of January 1995) from which property tax for premises applies. Therefore the clause has a wording which means that it can be incorporated in agreements that have been made before the tax is payable, as well as in agreements where the tax is actually payable.
2. The reimbursement shall compensate for the increased costs of administration irrespective of who is liable for the tax. A property owner/Landlord is liable for tax. According to previous regulations if the property owner/Landlord was a trading partnership the owners/shareholders were liable for tax. The supplement was nevertheless to be paid to the Landlord as a matter of course. After the 1<sup>st</sup> of January 1997 trading partnerships as such (and not the individual owners/shareholders) are liable for property tax.
3. According to section 19 of the Rent Act the rent must – with some exceptions – be determined in the Lease Agreement. If the rental period is fixed, and is for at least three years, certain additional exceptions apply in that the rent shall be payable with such sums which are determined according to “different method of calculation” e.g. indexation. This also means that the rental period has to be fixed and be at least three years to enable the Landlord to obtain reimbursement for property tax in sums that can vary as the tax changes. Furthermore the method of calculation must be shown in the Lease Agreement. The clause therefore presumes that the parties state what share of the tax the Tenant shall provide reimbursement for.

According to the regulations that apply when this clause is formulated the tax is comprised of a certain percentage of the assessed value of the premises (both grounds and buildings). This information is to be found in the tax statement. The Tenant’s share of the tax for the premises can be determined by the relationship which the extent of that area leased by the Tenant bears to the total lettable premises in the property or as a relationship between the Tenant’s rent and the total of the rents for premises in the property.

It is a matter for negotiation which method of calculation the parties choose. Other methods of calculation can be used. For the sake of simplicity, however, the Tenant’s share should be unchanged during the rental period, and thereby independent of among other things, how the tax in the future might be calculated and possible changes in the rental market.

It is therefore appropriate to show in the designated space how the premises share has been calculated. Should details in respect of this not be completed this does not mean that the agreement becomes invalid. A property can comprise of a variety of different buildings with different value years and different taxation categories (small dwelling houses, apartment blocks, industrial units and special units). The tax – that the Tenant is due to pay reimbursement for – shall only relate to the building in which the premises are located. A building is normally defined as a free standing self-contained building. Relevant information can be ascertained from information regarding decisions referring to general property taxation that the tax authorities have advised the property owner. Any property owner who has a problem in ascertaining the Tenant’s share should contact their property owners association for assistance.

### *Complete the Tenant’s share!*

4. The clause contains two alternatives. In the first the reimbursement for the tax is payable as a supplement “alongside” the rent agreed in the Lease Agreement. If the tax disappears so does the supplement. The other alternative presumes that the parties agree a specific rent which includes, among other things, reimbursement for the then applicable tax. Should the tax be increased irrespective of the cause (for example increase in tax rates, increased assessed value etc) the Tenant shall nevertheless tender reimbursement for the increased cost. Should the tax disappear the rent reverts to the original sum, i.e., the agreed rent (which includes reimbursement for the tax applicable at inception which has been discontinued). Naturally the Tenant shall continue to pay other supplements such as those caused by changes in indexes and in respect of increased fuel costs and so forth.
5. To the extent that the Tenant pays a supplement in respect of property tax the supplement should be accounted for separately on the rent invoice.
6. Indicate the chosen alternative with an X. In the chosen alternative the Tenant’s share and the sum should be filled in. Specify how the Tenant’s share has been calculated.

**Special Provisions****1 Condition of the Premises**

- 1.1 The premises are let in the condition set forth in the General Agreement entered into between the Landlord and the Tenant and shall be used as office and laboratory within the frame of the Tenant's enterprise.

**2 Extension of term of lease**

- 2.1 The Tenant shall have the right to extend the term of lease with an additional period of five (5) years from the expiration of the initial ten (10) year-term, on in all other respects unaltered terms and conditions.
- 2.2 Should the Tenant not exercise its right of extension, the Tenant shall – in addition to the ordinary remaining rental payments – pay a penalty to the Landlord with an amount corresponding to the annual rent of year ten of the initial ten year-term.

**3 Early termination**

- 3.1 The Tenant is entitled to terminate this Lease Agreement by giving notice twelve (12) months in advance.
- 3.2 Should the Tenant exercise its right of early termination set forth in 3.1 above, the Tenant shall pay to the Landlord compensation with an amount corresponding to two thirds (2/3) of the total amount of all future rental payments.
- 3.3 The compensation for the period 2005-06-01 – 2007-05-31 shall amount to maximum SEK 40,000,000 (forty million) and for the period 2007-06-01 – 2015-05-31 to maximum SEK 35,000,000 (thirty five million).
- 3.4 The obligation for the Tenant to compensate the landlord shall under no circumstances be less than an amount corresponding to the annual rent for two (2) years.

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**4 Subletting**

- 4.1 The Tenant may sublet the premises, in whole or partly, provided that the Landlord reasonably should be content with the new sub-tenant and provided that the subletting entails a liability to pay value-added tax.
- 4.2 Subletting is permitted under the prerequisite that the Tenant has the full responsibility for any and all obligations under this Lease Agreement.

**5 Use of the premises**

- 5.1 The Tenant is solely responsible for the observation of applicable law and regulation as regards use of the premises. The Tenant shall indemnify the Landlord for any losses relating to the Tenant's omission to fulfill his liability set forth in this section.

**6 English translation**

- 6.1 An English translation of the lease Agreement with appendices has been enclosed to the agreement, Appendix 8. Should any dispute arise regarding the interpretation of this Lease Agreement, the parties have agreed that the Swedish version of this Lease Agreement with appendices shall precede.

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Place:

Place:

Date:

Date:

MEDEON FASTIGHETER AB

ACADIA PHARMACEUTICALS INC.

*[This is just a translation. Do not sign here!]*