NAVISITE INC
Form 10-K
October 26, 2006

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

Form 10-K

(Mark One)

þ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For Fiscal Year Ended July 31, 2006

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Transition Period From to

Commission File 000-27597

NaviSite, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**52-2137343**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
400 Minuteman Road **Andover, Massachusetts** *(Address of principal executive offices)*	**01810** *(zip code)*

Registrant s telephone number, including area code
(978) 682-8300

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Stock, $0.01 par value	**The NASDAQ Stock Market LLC**

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

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes o No þ

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

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

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

Large accelerated filer o Accelerated filer o Non-accelerated filer þ

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

The approximate aggregate market value of registrant s Common Stock held by non-affiliates of the Registrant on January 31, 2006, based upon the closing price of a share of the Registrant s Common Stock on such date as reported by the Nasdaq Capital Market: $5,641,283.

On September 30, 2006, the Registrant had outstanding 29,059,977 shares of Common Stock, $0.01 par value.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant s definitive proxy statement for its annual meeting of stockholders for the fiscal year ended July 31, 2006, which will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant s fiscal year, are incorporated by reference into Part III hereof.

NAVISITE, INC.

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PART I
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended, that involve risks and uncertainties. All statements other than statements of historical information provided herein are forward-looking statements and may contain information about financial results, economic conditions, trends and known uncertainties. Our actual results could differ materially from those discussed in the forward-looking statements as a result of a number of factors, which include those discussed in this section and elsewhere in this report and the risks discussed in our other filings with the Securities and Exchange Commission. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management s analysis, judgment, belief or expectation only as of the date hereof. Investors are warned that actual results may differ materially from management s expectations. We undertake no obligation to publicly reissue or update these forward-looking statements to reflect events or circumstances that arise after the date hereof.

Item 1. *Business*

Our Business

NaviSite, Inc. provides Application Management, Hosting and Professional services for mid- to large-sized organizations. Leveraging our set of technologies and subject matter expertise, we deliver cost-effective, flexible solutions that provide responsive and predictable levels of service for our customers businesses. We provide services throughout the information technology lifecycle. We are dedicated to delivering quality services and meeting rigorous standards, including SAS 70, Microsoft Gold, and Oracle Certified Partner certifications.

We believe that by leveraging economies of scale utilizing our global delivery approach, industry best practices and process automation, our services enable our customers to achieve significant cost savings. In addition, we are able to leverage our application services platform, NaviView[tm], to enable software to be delivered on-demand over the Internet, providing an alternative delivery model to the traditional licensed software model. As the platform provider for an increasing number of independent software vendors (ISVs), we enable solutions and services to a wider and growing customer base.

Our services include:

Application Management

Application management services Defined services provided for specific packaged applications that are incremental to managed services. Services can include monitoring, diagnostics and problem resolution. Frequently sold as a follow-on to a professional services project.

Software as a Service Enablement of Software as a Service to the ISV community.

Development Services Services include eBusiness/Web solutions, enterprise integration, business intelligence, content management and user interface design.

Custom Services Services include custom application management and remote infrastructure management.

Hosting Services

Managed services Support provided for hardware and software located in a data center. Services include business continuity and disaster recovery, connectivity, content distribution, database administration and performance tuning, desktop support, hardware management, monitoring, network management, security management, server and operating system management and storage management.

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Content Delivery Includes the delivery of software electronically using NaviSite technology to manage version control and accelerated content distribution.

Colocation Physical space offered in a data center. In addition to providing the physical space, NaviSite offers environmental support, specified power with back-up power generation and network connectivity options.

Professional Services

For leading enterprise software applications such as Oracle, PeopleSoft, JD Edwards and Siebel Systems, NaviSite Professional Services helps organizations plan, implement and maintain these applications.

Optimize scalable, business-driven software solutions. Specific services include planning, implementation, maintenance, optimization and compliance services.

We provide these services to a range of vertical industries, including financial services, healthcare and pharmaceutical, manufacturing and distribution, publishing, media and communications, business services, public sector and software, through our direct sales force and sales channel relationships.

Our managed application services are facilitated by our proprietary NaviView^{tm} collaborative application management platform. Our NaviView^{tm} platform enables us to provide highly efficient, effective and customized management of enterprise applications and information technology. Comprised of a suite of third-party and proprietary products, NaviView^{tm} provides tools designed specifically to meet the needs of customers who outsource their IT needs. We also use this platform for electronic software distribution for software vendors and to enable software to be delivered on-demand over the Internet, providing an alternative delivery model to the traditional licensed software model.

We believe that the combination of NaviView^{tm} with our physical infrastructure and technical staff gives us a unique ability to provision on-demand application services for software providers for use by their customers. NaviView^{tm} is application and operating platform neutral as its on-demand provisioning capability is not dependent on the individual software application. Designed to enable enterprise software applications to be provisioned and used as an on-demand solution, the NaviView^{tm} technology allows us to offer new solutions to our software vendors and new products to our current customers.

We currently operate in 13 data centers in the United States and one data center in the United Kingdom. We believe that our data centers and infrastructure have the capacity necessary to expand our business for the foreseeable future. Our services combine our developed infrastructure with established processes and procedures for delivering hosting and application management services. Our high availability infrastructure, high performance monitoring systems, and proactive and collaborative problem resolution and change management processes are designed to identify and address potentially crippling problems before they are able to disrupt our customers operations.

We currently service approximately 940 hosted customers. Our hosted customers typically enter into service agreements for a term of one to three years, which provide for monthly payment installments, providing us with a base of recurring revenue. Our revenue increases by adding new customers or providing additional services to existing customers. Our overall base of recurring revenue is affected by new customers, renewals and terminations of agreements with existing customers.

We were formed in 1996 within CMGI, Inc., our former majority stockholder, to support the networks and host Web sites of CMGI, its subsidiaries and several of its affiliated companies. In 1997, we began offering and supplying Web site hosting and management services to companies not affiliated with CMGI. We were incorporated in Delaware in

December 1998. In October 1999, we completed our initial public offering of common stock and remained a majority-owned subsidiary of CMGI until September 2002, at which time ClearBlue Technologies, Inc., or CBT, became our majority stockholder.

In December 2002, we acquired all of the issued and outstanding stock of ClearBlue Technologies Management, Inc., or CBTM, a subsidiary of CBT, which previously had acquired assets from the bankrupt estate of AppliedTheory Corporation related to application management and application hosting services.

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This acquisition added application management and development capabilities to our managed application services.

In February 2003, we acquired Avasta, Inc., a provider of application management services, adding automated application and device monitoring software capabilities to our managed application services.

In April 2003, we acquired Conxion Corporation, a provider of application hosting, content and electronic software distribution and security services. This acquisition added proprietary content delivery software and related network agreements to our managed application services and managed infrastructure services.

In May 2003, we acquired assets of Interliant, Inc. related to managed messaging, application hosting and application development services. This acquisition added messaging-specific services and capabilities and IBM Lotus Domino expertise, and formed the core of our managed messaging services.

In August 2003, we acquired assets of CBT related to colocation, bandwidth, security and disaster recovery services, enhancing our managed infrastructure services and adding physical plant assets. Specifically, we acquired all of the outstanding shares of six wholly-owned subsidiaries of CBT with data centers located in Chicago, Illinois; Las Vegas, Nevada; Los Angeles, California; Milwaukee, Wisconsin; Oakbrook, Illinois; and Vienna, Virginia and assumed the revenue and expenses of four additional wholly-owned subsidiaries of CBT with data centers located in Dallas, Texas; New York, New York; San Francisco, California; and Santa Clara, California, which four entities we later acquired.

In June 2004, we completed the acquisition of substantially all of the assets and liabilities of Surebridge, Inc., a privately held provider of managed application services for mid-market companies. This acquisition broadened our managed application services, particularly in the areas of financial management, supply chain management, human resources management and customer relationship management.

We have made significant steps to improve the results of our operations. Due to improvements we have made in our overall business, the repayment of our maturing debt and our successful financing with Silver Point Finance and the availability to us of committed lines of credit, our audit report no longer contains the opinion of our independent registered public accounting firm, KPMG LLP, that our recurring losses as well as other factors raise substantial doubt about our ability to continue as a going concern.

Our Industry

The dramatic growth in Internet usage and the enhanced functionality, accessibility and security of Internet-enabled applications have made conducting business on the Internet increasingly attractive. Many businesses are using Internet-enabled information technology infrastructure and applications to enhance their core business operations, increase efficiencies and remain competitive. Internet-enabled information technology infrastructure and applications extend beyond Web sites to software such as financial, email, enterprise resource planning, supply chain management and customer relationship management applications. Organizations have become increasingly dependent on these applications and they have evolved into important components of their businesses. In addition, we believe that the pervasiveness of the Internet and quality of network infrastructure, along with the dramatic decline in the pricing of computing technology and network bandwidth, have made the software as a service model a viable one. We believe that the recent adoption of alternative software licensing models by software industry market leaders is driving other software vendors in this direction and, consequently, generating strong industry growth.

As enterprises seek to remain competitive and improve profitability, we believe they will continue to implement increasingly sophisticated Internet-enabled applications and delivery models. Some of the potential benefits of these

applications and delivery models include the ability to:

increase operating efficiencies and reduce costs;

build and enhance customer relationships by providing Internet-enabled customer service and technical support;

manage vendor and supplier relationships through Internet-enabled technologies, such as online training and online sales and marketing;

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communicate and conduct business more rapidly and cost-effectively with customers, suppliers and employees worldwide; and

improve service and lower the cost of software ownership by the adoption of new Internet-enabled software delivery models.

These benefits have driven increased use of Internet-enabled information technology infrastructure and applications, which in turn has created a strong demand for specialized information technology support and applications expertise. An increasing number of businesses are choosing to outsource the hosting and management of these applications.

The trend towards outsourced hosting and management of information technology infrastructure and applications by mid-market companies and organizations is driven by a number of factors, including:

developments by major hardware and software vendors that facilitate outsourcing;

the need to improve the reliability, availability and overall performance of Internet-enabled applications as they increase in importance and complexity;

the need to focus on core business operations;

challenges and costs of hiring, training and retaining application engineers and information technology employees with the requisite range of information technology expertise; and

the increasing complexity of managing the operations of Internet-enabled applications.

Notwithstanding increasing demand for these services, we believe the number of providers has decreased over the past three years, primarily as a result of industry consolidation. We believe this consolidation trend will continue and will benefit a small number of service providers that have the resources and infrastructure to cost effectively provide the scalability, performance, reliability and business continuity that customers expect.

Our Strategy

Our goal is to become the leading provider of outsourced IT services for mid-market companies and organizations. Key elements of our strategy are to:

Provide Excellent Customer Service. We are committed to providing all of our customers with a high level of customer support. We believe that through the acquisition of several businesses we have had the benefit of consolidating best of breed account management and customer support practices to ensure that we are achieving this goal.

Expand Our Global Delivery Capabilities. We believe that global delivery is an integral piece of our long-term strategy in that it directly maps to our overall goal of service and operational excellence for our customers. By leveraging a global delivery solution, we believe that we will be able to continue to deliver superior services and technical expertise at a competitive cost and enhance the value proposition for our customers.

Improve Operating Margins Through Efficiencies. We have made significant improvements to our overall cost structure during the last twelve months. We intend to continue to improve operating margins as we grow revenue and improve the efficiency of our operations. As we grow, we will take advantage of our infrastructure capacity, our

NaviView[tm] platform and our automated processes. Due to the fixed cost nature of our infrastructure, increased customer revenue results in incremental improvements in our operating margins.

Grow Through Disciplined Acquisitions. We intend to derive a portion of our future growth through acquisitions of technologies, products and companies that improve our services and strengthen our position in our target markets. By utilizing our experience in acquiring and effectively integrating complementary companies, we can eliminate duplicative operations, reduce costs and improve our operating margins. We intend to acquire companies that provide valuable technical capabilities and entry into target markets, and allow us to take advantage of our existing technical and physical infrastructure.

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Continue to Broaden Our Service Offerings. We intend to broaden our service offering to compete more effectively with the larger IT outsourcers. We believe that by growing our professional services, we will more effectively deliver to our customers a full range of services for Oracle, PeopleSoft, J.D. Edwards and Siebel Systems solutions. We believe that these services will help our customers achieve peak effectiveness with their systems. We believe that our ability to host applications in addition to providing professional services will distinguish us from our competitors, as companies look to use one vendor for both of these services.

Our Services

We offer our customers a broad range of managed IT services that can be deployed quickly and cost effectively. Our management expertise allows us to meet an expanding set of needs as our customers applications become more complex. Our experience and capabilities save our customers the time and cost of developing expertise in-house, and we increasingly serve as the sole manager of our customers outsourced applications.

Application Management Services

Application Management

We provide implementation and operational services for packaged applications, including PeopleSoft Enterprise, JDE Enterprise One, Oracle E-Business Suite and Siebel CRM. Application management services are available in one of our data centers or via remote management on a customer s premises. Our messaging services include the monitoring and management of messaging applications, such as Microsoft Exchange and Lotus Domino, allowing customers to outsource their critical messaging applications. Customers can host their applications in one of our data centers or keep their servers in their own facility, which we monitor and manage remotely. In addition, our customers can choose to use dedicated servers or shared servers. We provide expert services to assist our customers with the migration from legacy or proprietary messaging systems to Microsoft Exchange or Lotus Domino. We also have expertise to customize messaging and collaborative applications. We offer user provisioning, spam filtering, virus protection and enhanced monitoring and reporting.

Software-as-a-Service

Using our NaviView[tm] collaborative application management platform, we enable software vendors to provide their applications in an on-demand or subscription model.

Custom Services helps organizations plan, develop, and manage their complete portfolio of custom and web-based applications.

Development Services

eBusiness/Web Solutions

Enterprise Integration

Business Intelligence

Content Management

User Interface Design

Management Services

Application Management

Remote Infrastructure Management

Hosting Services

NaviSite Hosting Services, from application and managed services to colocation and software-as-a-service, provide highly-available and secure ongoing technology solutions for our customers critical IT resources.

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Managed Services

We provide fully managed application hosting services. We manage data centers, Internet connectivity, servers and networking, security (including firewalls, virtual private networks and intrusion detection), storage, load balancers, database clusters, operating systems, and Web and application servers. We also provide bundled offerings packaged as content delivery services. Specific services include:

Business Continuity and Disaster Recovery

Connectivity

Content Distribution

Database Administration and Performance Tuning

Desktop Support

Hardware Management

Monitoring

Network Management

Security

Server and Operating Management

Storage Management

Content Delivery Acceleration

Colocation

Our data centers provide our colocation customers with a secure place to gain rapid access to the Internet, without having to build their own physical infrastructure. Our data centers include multiple levels of security with camera surveillance, redundant uninterruptible power supply, heating, ventilation and air conditioning, monitored customer access 24 hours a day, seven days a week, and advanced fire suppression. Specific services include:

Connectivity

Equipment

Power

Remote Hands

Space

Security

Professional Services

For leading enterprise software applications such as Oracle, PeopleSoft, JD Edwards and Siebel, NaviSite Professional Services helps organizations plan, implement, maintain, and optimize scalable, business-driven software solutions.

Planning Services

Technical Architecture Design

Implementation Services

Project Health Check and Readiness Assessment

Mergers, Acquisitions and Spin-Offs

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Maintenance Services

Application Upgrades

Optimization Services

Application Optimization

Compliance/Government

Compliance and Governance for Enterprise Applications

All of our service offerings can be customized to meet our customers particular needs. Our proprietary NaviView[tm] platform enables us to offer valuable flexibility without the significant costs associated with traditional customization.

NaviView[tm] Platform

Our proprietary NaviView[tm] platform is a critical element of each of our service offerings. Our NaviView[tm] platform allows us to work with our customers information technology teams, systems integrators and other third parties to provide our services to customers. Our NaviView[tm] platform and its user interface help ensure full transparency to the customer and seamless operation of outsourced applications and infrastructure, including: (i) hardware, operating system, database and application monitoring; (ii) event management; (iii) problem resolution management; and (iv) integrated change and configuration management tools. Our NaviView[tm] platform includes:

Event Detection System Our proprietary technology allows our operations personnel to efficiently process alerts across heterogeneous computing environments. This system collects and aggregates data from all of the relevant systems management software packages utilized by an information technology organization.

Synthetic Transaction Monitoring Our proprietary synthetic transaction methods emulate the end-user experience and monitor for application latency or malfunctions that affect user productivity.

Automated Remediation Our NaviView[tm] platform allows us to proactively monitor, identify and fix common problems associated with the applications we manage on behalf of our customers. These automated fixes help ensure availability and reliability by remediating known issues in real time, and keeping applications up and running while underlying problems or potential problems are diagnosed.

Component Information Manager This central repository provides a unified view of disparate network, database, application and hardware information.

Escalation Manager This workflow automation technology allows us to streamline routine tasks and escalate critical issues in a fraction of the time that manual procedures require. Escalation manager initiates specific orders and tasks based on pre-defined conditions, ensuring clear, consistent communications with our customers.

Our Infrastructure

Our infrastructure has been designed specifically to meet the demanding technical requirements of providing our services to our customers. We securely provide our services across Windows, Unix and Linux platforms. We believe our infrastructure, together with our trained and experienced staff, enable us to offer market-leading levels of service

backed by high service level guarantees.

Network Operations Centers We monitor the operations of our infrastructure and customer applications from our own state-of-the-art network operations centers. Network and system management and monitoring tools continuously monitor our network and server performance. Our network operations center performs first-level problem identification, validation and resolution. We have redundant network operations centers in New Delhi, India and in Andover, Massachusetts that are staffed 24 hours a day, seven days a week with network, security, Windows, Unix and Linux personnel. We have technical support personnel located in our facilities in San Jose, California; Syracuse, New York; Houston, Texas and India, who provide initial and escalated support, 24 hours a

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day, seven days a week for our customers. Our engineers and support personnel are promptly alerted to problems, and we have established procedures for rapidly resolving any technical issues that arise.

Data Centers We currently operate in 13 data centers located in the United States and one data center located in the United Kingdom. Our data centers incorporate technically sophisticated components which are designed to be fault-tolerant. The components used in our data centers include redundant core routers, redundant core switching hubs and secure virtual local area networks. We utilize the equipment and tools necessary for our data center operations, including our infrastructure hardware, networking and software products, from industry leaders such as BMC, Cisco, Dell, EMC, Hewlett-Packard, Microsoft, Oracle and Sun Microsystems.

Internet Connectivity We have redundant high-capacity Internet connections to providers such as Global Crossing, Level 3, Cogent, AT&T and XO Communications. We have deployed direct private transit and peering Internet connections to utilize the provider s peering capabilities and to enhance routes via their networks to improve global performance. Our private transit system enables us to provide fast, reliable access for our customers information technology infrastructure and applications.

Sales and Marketing

Direct Sales Our direct sales professionals are located in the United States and the United Kingdom. Our sales teams meet with customers to understand and identify their individual business requirements, then to translate those requirements into tailored services. Our sales teams are also supported by customer relationship managers who are assigned to specific accounts to identify and take advantage of cross-selling opportunities. To date, most of our sales have been realized through our direct sales force.

Channel Relationships We also sell our services through third parties, pursuant to reseller or referral contracts with such third parties. These contracts are generally one to three years in length and provide the reseller a discount of approximately 25% from our list price or require us to pay a referral fee, typically ranging from approximately 4% to 10% of the amounts we receive from the customer. Typically, these third parties resell our services to their customers under their private label brand or under the NaviSite brand. In addition, we jointly market and sell our services with the products of Progress Software. For systems integrators, our flexibility and cost-effectiveness bolsters their application development and management services. For independent software vendors, we provide the opportunity to offer their software as a managed service.

Marketing Our marketing organization is responsible for defining our overall market strategy, generating qualified leads and increasing our brand awareness. Our demand generation team focuses on identifying key market opportunities and customer segments which will best match our service portfolio and creates marketing programs which target those segments. Our marketing programs include a variety of advertising, events, direct mail and email campaigns, partner marketing, and web-based seminar campaigns targeted at key executives and decision makers within organizations. We are actively building general awareness of our company and our strategy through public relations, marketing communications and product marketing. The marketing organization also supports direct and channel sales.

Customers

Our customers include mid-sized companies, divisions of large multi-national companies and government agencies. Our customers operate in a wide variety of industries, such as technology, manufacturing and distribution, healthcare and pharmaceutical, publishing, media and communications, financial services, retail, business services and government agencies.

As of July 31, 2006, NaviSite serviced approximately 940 hosted customers.

We derived approximately 9%, 8% and 12% of our revenue from the New York State Department of Labor for the fiscal years ended July 31, 2006, 2005 and 2004, respectively.

Other than the New York State Department of Labor, no customer represented 10% or more of our revenue for the fiscal years ended July 31, 2006, 2005 and 2004. Substantially all of our revenues are derived from, and substantially all of our plants, property and equipment are located in, the United States.

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Competition

We compete in the outsourced IT and professional services markets. These markets are fragmented, highly competitive and likely to be characterized by industry consolidation.

We believe that participants in these markets must grow rapidly and achieve a significant presence to compete effectively. We believe that the primary competitive factors determining success in our markets include:

- quality of services delivered;
- ability to consistently measure, track and report operational metrics;
- application hosting, infrastructure and messaging management expertise;
- fast, redundant and reliable Internet connectivity;
- a robust infrastructure providing availability, speed, scalability and security;
- comprehensive and diverse service offerings and timely addition of value-add services;
- brand recognition;
- strategic relationships;
- competitive pricing; and
- adequate capital to permit continued investment in infrastructure, customer service and support, and sales and marketing.

We believe that we compete effectively based on our breadth of service offerings, the strength of our NaviView^{tm} platform, our existing infrastructure capacity and our pricing.

Our current and prospective competitors include:

- hosting and related services providers, including Data Return, LLC, Globix Corp., SAVVIS (which acquired the Cable & Wireless business including the Exodus and Digital Island businesses), IBM, AT&T and local and regional hosting providers;
- application services providers, such as IBM, Infocrossing, Inc., Electronic Data Systems Corp. and Computer Sciences Corporation;
- content and electronic software distribution providers, such as Akamai, Inc., Limelight Networks Inc., Digital River, Inc. and Intraware, Inc.;
- colocation providers, including SAVVIS, Equinix and Switch & Data Facilities Company, Inc.;
- messaging providers, including Mi8, Critical Path, Inc., Internoded, Inc. and USA.net, Inc., and

professional services providers, including Oracle Consulting Services, Accenture, Ciber, CSC, CedarCrestone, Deloitte Consulting, IBM and Rapidigm.

Intellectual Property

We rely on a combination of trademark, service mark, copyright, patent and trade secret laws and contractual restrictions to establish and protect our proprietary rights and promote our reputation and the growth of our business. While it is our practice to require our employees, consultants and independent contractors to enter into agreements containing non-disclosure, non-competition (for employees only) and non-solicitation restrictions and covenants, and while our agreements with some of our customers and suppliers include provisions prohibiting or restricting the disclosure of proprietary information, we cannot assure you that these contractual arrangements or the other steps taken by us to protect our proprietary rights will prove sufficient to prevent misappropriation of our proprietary rights or to deter independent, third-party development of similar proprietary assets. In addition, we offer our services in other countries where the laws may not afford adequate protection for our proprietary rights.

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We license or lease most technologies used in our hosting and application management services. Our technology suppliers may become subject to third-party infringement claims, or other claims or assertions, which could result in their inability or unwillingness to continue to license their technology to us. The loss of certain of our technologies could impair our ability to provide services to our customers or require us to obtain substitute technologies that may be of lower quality or performance standards or at greater cost. We expect that we and our customers increasingly will be subject to third-party infringement claims as the number of Web sites and third-party service providers for Internet-based businesses grows. We cannot assure you that third parties will not assert claims alleging the infringement of service marks and trademarks against us in the future or that these claims will not be successful. Any infringement claim as to our technologies or services, regardless of its merit, could be time-consuming, result in costly litigation, cause delays in service, installation or upgrades, adversely impact our relationships with suppliers or customers or require us to enter into costly royalty or licensing agreements.

Government Regulation

While there currently are few laws or regulations directly applicable to the Internet or to managed application hosting service providers, due to the increasing popularity of the Internet and Internet-based applications, such laws and regulations are being considered and may be adopted. These laws may cover a variety of issues including, for example, user privacy and the pricing, characteristics and quality of products and services. The adoption or modification of laws or regulations relating to commerce over the Internet could substantially impair the future growth of our business or expose us to unanticipated liabilities. Moreover, the applicability of existing laws to the Internet and managed application hosting service providers is uncertain. These existing laws could expose us to substantial liability if they are found to be applicable to our business. For example, we offer services over the Internet in many states in the United States and internationally and we facilitate the activities of our customers in those jurisdictions. As a result, we may be required to qualify to do business, be subject to taxation or be subject to other laws and regulations in these jurisdictions, even if we do not have a physical presence or employees or property there. The application of existing laws and regulations to the Internet or our business, or the adoption of any new legislation or regulations applicable to the Internet or our business, could materially adversely affect our financial condition and operating results.

Employees

As of July 31, 2006, we had 564 employees. Of these employees, 426 were principally engaged in operations, 50 were principally engaged in sales and marketing and 88 were principally engaged in general and administration. None of our employees is party to a collective bargaining agreement, and we believe our relationship with our employees is good. We also retain consultants and independent contractors on a regular basis to assist in the completion of projects.

Available Information

We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports available through our Web site under Investors , free of charge, as soon as reasonably practicable after we file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet address is http://www.navisite.com. The contents of our Web site are not incorporated by reference in this annual report on Form 10-K or any other report filed with or furnished to the SEC.

Item 1A. ***Risk Factors***

We operate in a rapidly changing environment that involves a number of risks, some of which are beyond our control. Forward-looking statements in this report and those made from time to time by us through our senior management are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements concerning the expected future revenues, earnings or financial results or concerning project plans,

performance, or development of products and services, as well as other estimates related to future operations are necessarily only estimates of future results and we cannot assure you that actual results will not materially differ from expectations. Forward-looking statements represent management s current expectations and are inherently uncertain. We do not undertake any obligation to update forward-looking

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statements. If any of the following risks actually occurs, our business, financial condition and operating results could be materially adversely affected.

We have a history of losses and may never achieve or sustain profitability. We have never been profitable and may never become profitable. As of July 31, 2006, we had incurred losses since our incorporation resulting in an accumulated deficit of approximately $469.9 million. During the fiscal year ended July 31, 2006, we had a net loss of approximately $13.9 million. We anticipate that we will continue to incur net losses in the future. As a result, we can give no assurance that we will achieve profitability or be capable of sustaining profitable operations.

Our financing agreement with Silver Point Finance includes various covenants and restrictions that may negatively affect our liquidity and our ability to operate and manage our business. As of July 31, 2006, we owed Silver Point Finance approximately $70.7 million under our financing agreement. The financing agreement:

- restricts our ability to create or incur additional indebtedness;
- restricts our ability to create, incur, assume or permit to exist any lien or security interest in any of our assets, excluding certain limited exemptions;
- restricts our ability to make investments including joint ventures, with certain limited exemptions;
- requires that we meet financial covenants for fixed charges, leverage, adjusted EBITDA, capital expenditures and minimum bookings;
- restricts our ability to enter into any transaction of merger, consolidation or liquidation;
- restricts our ability to enter into any transaction with any holder of more than 5% of any class of capital stock except in the ordinary course of business; and
- restricts our ability to amend our organizational documents.

If we breach our senior secured term loan facility with Silver Point Finance, a default could result. A default, if not waived, could result in, among other things, us not being able to borrow additional amounts from Silver Point Finance. In addition, all or a portion of our outstanding amounts may become due and payable on an accelerated basis, which would adversely affect our liquidity and our ability to manage our business. The principal amounts of our senior secured term loan facility with Silver Point Finance are to be repaid in consecutive quarterly installments of increasing amounts beginning on April 30, 2007, while interest-only payments made in consecutive quarterly installments began in July 2006. All remaining amounts due and outstanding under the financing agreement are due to be repaid in full by April 11, 2011. In addition, our senior secured term loan facility with Silver Point Finance exposes us to interest rate fluctuations which could significantly increase the interest we pay Silver Point Finance. We are required, under our senior secured term loan facility with Silver Point Finance, to purchase interest rate protection which shall effectively limit the unadjusted LIBOR component of the interest costs of our loan with respect to not less than 70% of the principal amount at a rate of not more than 6.5% per annum. Had our senior secured term loan facility with Silver Point Finance been outstanding for the full fiscal year, a hypothetical 100 basis point increase in our LIBOR rate would have resulted in an approximate $0.7 million increase in our interest expense for the fiscal year ended July 31, 2006.

A significant portion of our revenue comes from one customer and, if we lost this customer, it would have a significant adverse impact on our business results and cash flows. The New York State Department of Labor represented approximately 9%, 8% and 12% of our consolidated revenue for the fiscal years ended July 31, 2006,

2005 and 2004, respectively. The New York State Department of Labor has multiple contracts with us and has been a long-term customer of ours, but we cannot assure you that we will be able to retain all of the contracts with this customer. We also cannot assure you that we will be able to maintain the same level of service to this customer or that our revenue from this customer will not significantly decline in future periods. On August 16, 2005, we entered into a new agreement with the New York State Department of Labor with a two year term which is set to expire on June 14, 2007. The New York State Department of Labor is not obligated under our new agreement to buy a minimum amount of services from us or designate us as its sole supplier of any particular service. Further, The New York State Department of Labor has the right to terminate the new agreement at any time by providing us with 60 days notice. We have been notified by the New York Department of Labor that funding for the America s Job

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Bank program will cease at the expiration of our current contract. We have begun making preparations to continue the program and service without government funding and expect to receive revenues from advertising placement as well as other ancillary services, but we cannot assure you that revenue will remain at the same level or that cash flows will not be adversely impacted.

Atlantic Investors, LLC may have interests that conflict with the interests of our other stockholders and, as our majority stockholder, can prevent new and existing investors from influencing significant corporate decisions. Atlantic Investors, LLC owns approximately 59% of our outstanding capital stock as of September 30, 2006. Following the closing of our senior secured term loan facility with Silver Point Finance on April 11, 2006, Atlantic Investors ownership was approximately 43% on a fully diluted basis. In addition, Atlantic Investors holds a promissory note in the principal amount of $3.0 million, the maturity date of which was extended, pursuant to the amended loan agreement dated April 11, 2006, to 90 days after the maturity date of the Silver Point Finance loan facility. Atlantic has the right to convert any unpaid amounts into common stock at any time at a price of $2.81 per share. As of July 31, 2006, we had recorded accrued interest on this note in the amount of $0.8 million. Atlantic Investors has the power, acting alone, to elect a majority of our Board of Directors and has the ability to control our management and affairs and determine the outcome of any corporate action requiring stockholder approval. Regardless of how our other stockholders may vote, Atlantic Investors has the ability to determine whether to engage in a merger, consolidation or sale of our assets and any other significant corporate transaction. Under Delaware law, Atlantic Investors is able to exercise its voting power by written consent, without convening a meeting of the stockholders. Atlantic Investors ownership of a majority of our outstanding common stock may have the effect of delaying, deterring or preventing a change in control of us or discouraging a potential acquirer from attempting to obtain control of us, which could adversely affect the market price of our common stock.

Members of our management group also have significant interests in Atlantic Investors, LLC, which may create conflicts of interest. Some of the members of our management group also serve as members of the management group of Atlantic Investors, LLC and its affiliates. Specifically, Andrew Ruhan, our Chairman of the Board, holds a 10% equity interest in Unicorn Worldwide Holdings Limited, a managing member of Atlantic Investors. Arthur Becker, our President and Chief Executive Officer and a member of our Board of Directors, is the managing member of Madison Technology LLC, a managing member of Atlantic Investors. As a result, these NaviSite officers and directors may face potential conflicts of interest with each other and with our stockholders. They may be presented with situations in their capacity as our officers or directors that conflict with their fiduciary obligations to Atlantic Investors, which in turn may have interests that conflict with the interests of our other stockholders.

Our common stockholders may suffer dilution in the future upon exercise of outstanding convertible securities or the issuance of additional securities in potential future acquisitions or financings. In connection with our financing agreement with Silver Point Finance we issued warrants to Silver Point Finance to purchase an aggregate of 3,514,933 shares of our common stock. If the warrants are exercised, Silver Point Finance may obtain a significant equity interest in NaviSite and other stockholders may experience significant and immediate dilution. Our stockholders will also experience dilution to the extent that additional shares of our common stock are issued in potential future acquisitions or financings.

Acquisitions may result in disruptions to our business or distractions of our management due to difficulties in integrating acquired personnel and operations, and these integrations may not proceed as planned. Since December 2002, we have acquired CBTM (accounted for as an as if pooling), Avasta, Conxion, selected assets of Interliant, all of the shares of ten wholly-owned subsidiaries of CBT (accounted for as an as if pooling) and substantially all of the assets and liabilities of Surebridge. We intend to continue to expand our business through the acquisition of companies, technologies, products and services. Acquisitions involve a number of special problems and risks, including:

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

difficulty maintaining relationships with important third parties, including those relating to marketing alliances and providing preferred partner status and favorable pricing;

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diversion of management s attention in connection with both negotiating the acquisitions and integrating the businesses;

strain on managerial and operational resources as management tries to oversee larger operations;

inability to retain and motivate management and other key personnel of the acquired businesses;

exposure to unforeseen liabilities of acquired companies;

potential costly and time-consuming litigation, including stockholder lawsuits;

potential issuance of securities in connection with an acquisition with rights that are superior to the rights of holders of our common stock, or which may have a dilutive effect on our common stockholders;

the need to incur additional debt or use cash; and

the requirement to record potentially significant additional future operating costs for the amortization of intangible assets.

As a result of these problems and risks, businesses we acquire may not produce the revenues, earnings or business synergies that we anticipated, and acquired products, services or technologies might not perform as we expected. As a result, we may incur higher costs and realize lower revenues than we had anticipated. We may not be able to successfully address these problems and we cannot assure you that the acquisitions will be successfully identified and completed or that, if acquisitions are completed, the acquired businesses, products, services or technologies will generate sufficient revenue to offset the associated costs or other harmful effects on our business. In addition, our limited operating history with our current structure resulting from recent acquisitions makes it very difficult for us to evaluate or predict our ability to, among other things, retain customers, generate and sustain a revenue base sufficient to meet our operating expenses, and achieve and sustain profitability.

A failure to meet customer specifications or expectations could result in lost revenues, increased expenses, negative publicity, claims for damages and harm to our reputation and cause demand for our services to decline. Our agreements with customers require us to meet specified service levels for the services we provide. In addition, our customers may have additional expectations about our services. Any failure to meet customers specifications or expectations could result in:

delayed or lost revenue;

requirements to provide additional services to a customer at reduced charges or no charge;

negative publicity about us, which could adversely affect our ability to attract or retain customers; and

claims by customers for substantial damages against us, regardless of our responsibility for the failure, which may not be covered by insurance policies and which may not be limited by contractual terms of our engagement.

Our ability to successfully market our services could be substantially impaired if we are unable to deploy new infrastructure systems and applications or if new infrastructure systems and applications deployed by us prove to be unreliable, defective or incompatible. We may experience difficulties that could delay or prevent the successful

development, introduction or marketing of hosting and application management services in the future. If any newly introduced infrastructure systems and applications suffer from reliability, quality or compatibility problems, market acceptance of our services could be greatly hindered and our ability to attract new customers could be significantly reduced. We cannot assure you that new applications deployed by us will be free from any reliability, quality or compatibility problems. If we incur increased costs or are unable, for technical or other reasons, to host and manage new infrastructure systems and applications or enhancements of existing applications, our ability to successfully market our services could be substantially limited.

Any interruptions in, or degradation of, our private transit Internet connections could result in the loss of customers or hinder our ability to attract new customers. Our customers rely on our ability to move their digital content as efficiently as possible to the people accessing their Web sites and infrastructure systems and applications. We utilize our direct private transit Internet connections to major network providers, such as Level 3 and Global

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Crossing as a means of avoiding congestion and resulting performance degradation at public Internet exchange points. We rely on these telecommunications network suppliers to maintain the operational integrity of their networks so that our private transit Internet connections operate effectively. If our private transit Internet connections are interrupted or degraded, we may face claims by, or lose, customers, and our reputation in the industry may be harmed, which may cause demand for our services to decline.

If we are unable to maintain existing and develop additional relationships with software vendors, the sales and marketing of our service offerings may be unsuccessful. We believe that to penetrate the market for managed IT services we must maintain existing and develop additional relationships with industry-leading software vendors. We license or lease select software applications from software vendors, including IBM, Microsoft and Oracle. Our relationships with Microsoft and Oracle are critical to the operations and success of our business. The loss of our ability to continue to obtain, utilize or depend on any of these applications or relationships could substantially weaken our ability to provide services to our customers. It may also require us to obtain substitute software applications that may be of lower quality or performance standards or at greater cost. In addition, because we generally license applications on a non-exclusive basis, our competitors may license and utilize the same software applications. In fact, many of the companies with which we have strategic relationships currently have, or could enter into, similar license agreements with our competitors or prospective competitors. We cannot assure you that software applications will continue to be available to us from software vendors on commercially reasonable terms. If we are unable to identify and license software applications that meet our targeted criteria for new application introductions, we may have to discontinue or delay introduction of services relating to these applications.

Our network infrastructure could fail which would impair our ability to provide guaranteed levels of service and could result in significant operating losses. To provide our customers with guaranteed levels of service, we must operate our network infrastructure 24 hours a day, seven days a week without interruption. We must, therefore, protect our network infrastructure, equipment and customer files against damage from human error, natural disasters, unexpected equipment failure, power loss or telecommunications failures, terrorism, sabotage or other intentional acts of vandalism. Even if we take precautions, the occurrence of a natural disaster, equipment failure or other unanticipated problem at one or more of our data centers could result in interruptions in the services we provide to our customers. We cannot assure you that our disaster recovery plan will address all, or even most, of the problems we may encounter in the event of a disaster or other unanticipated problem. We have experienced service interruptions in the past, and any future service interruptions could:

- require us to spend substantial amounts of money to replace equipment or facilities;
- entitle customers to claim service credits or seek damages for losses under our service level guarantees;
- cause customers to seek alternate providers; or
- impede our ability to attract new customers, retain current customers or enter into additional strategic relationships.

Our dependence on third parties increases the risk that we will not be able to meet our customers needs for software, systems and services on a timely or cost-effective basis, which could result in the loss of customers. Our services and infrastructure rely on products and services of third-party providers. We purchase key components of our infrastructure, including networking equipment, from a limited number of suppliers, such as IBM, Cisco Systems, F5 Networks, Microsoft and Oracle. We cannot assure you that we will not experience operational problems attributable to the installation, implementation, integration, performance, features or functionality of third-party software, systems and services. We cannot assure you that we will have the necessary hardware or parts on hand or that our suppliers will be able to provide them in a timely manner in the event of equipment failure. Our ability to timely obtain and

continue to maintain the necessary hardware or parts could result in sustained equipment failure and a loss of revenue due to customer loss or claims for service credits under our service level guarantees.

We could be subject to increased operating costs, as well as claims, litigation or other potential liability, in connection with risks associated with Internet security and the security of our systems. A significant barrier to the growth of e-commerce and communications over the Internet has been the need for secure transmission of confidential information. Several of our infrastructure systems and application services use encryption and

authentication technology licensed from third parties to provide the protections necessary to ensure secure transmission of confidential information. We also rely on security systems designed by third parties and the personnel in our network operations centers to secure those data centers. Any unauthorized access, computer viruses, accidental or intentional actions and other disruptions could result in increased operating costs. For example, we may incur additional significant costs to protect against these interruptions and the threat of security breaches or to alleviate problems caused by these interruptions or breaches. If a third party were able to misappropriate a consumer s personal or proprietary information, including credit card information, during the use of an application solution provided by us, we could be subject to claims, litigation or other potential liability.

Third-party infringement claims against our technology suppliers, customers or us could result in disruptions in service, the loss of customers or costly and time-consuming litigation. We license or lease most technologies used in the infrastructure systems and application services that we offer. Our technology suppliers may become subject to third-party infringement or other claims and assertions, which could result in their inability or unwillingness to continue to license their technologies to us. We cannot assure you that third parties will not assert claims against us in the future or that these claims will not be successful. Any infringement claim as to our technologies or services, regardless of its merit, could result in delays in service, installation or upgrades, the loss of customers or costly and time-consuming litigation.

We may be subject to legal claims in connection with the information disseminated through our network, which could divert management s attention and require us to expend significant financial resources. We may face liability for claims of defamation, negligence, copyright, patent or trademark infringement and other claims based on the nature of the materials disseminated through our network. For example, lawsuits may be brought against us claiming that content distributed by some of our customers may be regulated or banned. In these and other instances, we may be required to engage in protracted and expensive litigation that could have the effect of diverting management s attention from our business and require us to expend significant financial resources. Our general liability insurance may not cover any of these claims or may not be adequate to protect us against all liability that may be imposed. In addition, on a limited number of occasions in the past, businesses, organizations and individuals have sent unsolicited commercial e-mails from servers hosted at our facilities to a number of people, typically to advertise products or services. This practice, known as spamming, can lead to statutory liability as well as complaints against service providers that enable these activities, particularly where recipients view the materials received as offensive. We have in the past received, and may in the future receive, letters from recipients of information transmitted by our customers objecting to the transmission. Although we prohibit our customers by contract from spamming, we cannot assure you that our customers will not engage in this practice, which could subject us to claims for damages.

If we fail to attract or retain key officers, management and technical personnel, our ability to successfully execute our business strategy or to continue to provide services and technical support to our customers could be adversely affected and we may not be successful in attracting new customers. We believe that attracting, training, retaining and motivating technical and managerial personnel, including individuals with significant levels of infrastructure systems and application expertise, is a critical component of the future success of our business. Qualified technical personnel are likely to remain a limited resource for the foreseeable future and competition for these personnel is intense. The departure of any of our executive officers, particularly Arthur P. Becker, our Chief Executive Officer and President, or core members of our sales and marketing teams or technical service personnel, would have negative ramifications on our customer relations and operations. The departure of our executive officers could adversely affect the stability of our infrastructure and our ability to provide the guaranteed service levels our customers expect. Any officer or employee can terminate his or her relationship with us at any time. In addition, we do not carry life insurance on any of our personnel. Over the past three years, we have had reductions-in-force and departures of several members of senior management due to redundancies and restructurings resulting from the consolidation of our acquired companies. In the event of future reductions or departures of employees, our ability to successfully execute our business strategy, or to continue to provide services to our customers or attract new customers, could be adversely

affected.

The unpredictability of our quarterly results may cause the trading price of our common stock to fluctuate or decline. Our quarterly operating results may vary significantly from quarter-to-quarter and period-to-period as

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a result of a number of factors, many of which are outside of our control and any one of which may cause our stock price to fluctuate. The primary factors that may affect our operating results include the following:

- a reduction of market demand and/or acceptance of our services;
- our ability to develop, market and introduce new services on a timely basis;
- the length of the sales cycle for our services;
- the timing and size of sales of our services, which depends on the budgets of our customers;
- downward price adjustments by our competitors;
- changes in the mix of services provided by our competitors;
- technical difficulties or system downtime affecting the Internet or our hosting operations;
- our ability to meet any increased technological demands of our customers; and
- the amount and timing of costs related to our marketing efforts and service introductions.

Due to the above factors, we believe that quarter-to-quarter or period-to-period comparisons of our operating results may not be a good indicator of our future performance. Our operating results for any particular quarter may fall short of our expectations or those of stockholders or securities analysts. In this event, the trading price of our common stock would likely fall.

If we are unsuccessful in pending and potential litigation matters, our financial condition may be adversely affected. We are currently involved in various pending and potential legal proceedings, including a class action lawsuit related to our initial public offering. If we are ultimately unsuccessful in any of these matters, we could be required to pay substantial amounts of cash to the other parties. The amount and timing of any of these payments could adversely affect our financial condition.

If the markets for outsourced information technology infrastructure and applications, Internet commerce and communication decline, there may be insufficient demand for our services and, as a result, our business strategy and objectives may fail. The increased use of the Internet for retrieving, sharing and transferring information among businesses and consumers is developing, and the market for the purchase of products and services over the Internet is still relatively new and emerging. Our industry has experienced periods of rapid growth, followed by a sharp decline in demand for products and services, which related to the failure in the last few years of many companies focused on developing Internet-related businesses. If acceptance and growth of the Internet as a medium for commerce and communication declines, our business strategy and objectives may fail because there may not be sufficient market demand for our managed IT services.

If we do not respond to rapid changes in the technology sector, we will lose customers. The markets for the technology-related services we offer are characterized by rapidly changing technology, evolving industry standards, frequent new service introductions, shifting distribution channels and changing customer demands. We may not be able to adequately adapt our services or to acquire new services that can compete successfully. In addition, we may not be able to establish and maintain effective distribution channels. We risk losing customers to our competitors if we are unable to adapt to this rapidly evolving marketplace.

The market in which we operate is highly competitive and is likely to consolidate, and we may lack the financial and other resources, expertise or capability needed to capture increased market share or maintain market share. We compete in the managed IT services market. This market is rapidly evolving, highly competitive and likely to be characterized by over-capacity and industry consolidation. Our competitors may consolidate with one another or acquire software application vendors or technology providers, enabling them to more effectively compete with us. Many participants in this market have suffered significantly in the last several years. We believe that participants in this market must grow rapidly and achieve a significant presence to compete effectively. This consolidation could affect prices and other competitive factors in ways that would impede our ability to compete successfully in the managed IT services market.

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Further, our business is not as developed as that of many of our competitors. Many of our competitors have substantially greater financial, technical and market resources, greater name recognition and more established relationships in the industry. Many of our competitors may be able to:

- develop and expand their network infrastructure and service offerings more rapidly;
- adapt to new or emerging technologies and changes in customer requirements more quickly;
- take advantage of acquisitions and other opportunities more readily; or
- devote greater resources to the marketing and sale of their services and adopt more aggressive pricing policies than we can.

We may lack the financial and other resources, expertise or capability needed to maintain or capture increased market share in this environment in the future. Because of these competitive factors and due to our comparatively small size and our lack of financial resources, we may be unable to successfully compete in the managed IT services market.

Difficulties presented by international economic, political, legal, accounting and business factors could harm our business in international markets. We operate a data center in the United Kingdom. Revenue from our foreign operations accounted for approximately 4% of our total revenue during the fiscal year ended July 31, 2006. We recently expanded our operations to India, which could eventually broaden our customer service support. Although we expect to focus most of our growth efforts in the United States, we may enter into joint ventures or outsourcing agreements with third parties, acquire complementary businesses or operations, or establish and maintain new operations outside of the United States. Some risks inherent in conducting business internationally include:

- unexpected changes in regulatory, tax and political environments;
- longer payment cycles and problems collecting accounts receivable;
- geopolitical risks such as political and economic instability and the possibility of hostilities among countries or terrorism;
- reduced protection of intellectual property rights;
- fluctuations in currency exchange rates or imposition of restrictive currency controls;
- our ability to secure and maintain the necessary physical and telecommunications infrastructure;
- challenges in staffing and managing foreign operations;
- employment laws and practices in foreign countries;
- laws and regulations on content distributed over the Internet that are more restrictive than those currently in place in the United States; and
- significant changes in immigration policies or difficulties in obtaining required immigration approvals.

Any one or more of these factors could adversely affect our international operations and consequently, our business.

We may become subject to burdensome government regulation and legal uncertainties that could substantially harm our business or expose us to unanticipated liabilities. It is likely that laws and regulations directly applicable to the Internet or to hosting and managed application service providers may be adopted. These laws may cover a variety of issues, including user privacy and the pricing, characteristics and quality of products and services. The adoption or modification of laws or regulations relating to commerce over the Internet could substantially impair the growth of our business or expose us to unanticipated liabilities. Moreover, the applicability of existing laws to the Internet and hosting and managed application service providers is uncertain. These existing laws could expose us to substantial liability if they are found to be applicable to our business. For example, we provide services over the Internet in many states in the United States and elsewhere and facilitate the activities of our customers in these jurisdictions. As a result, we may be required to qualify to do business, be subject to taxation

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or be subject to other laws and regulations in these jurisdictions, even if we do not have a physical presence, employees or property in those states.

The price of our common stock has been volatile, and may continue to experience wide fluctuations. Since January 2005, our common stock has closed as low as $1.19 per share and as high as $5.45 per share. The trading price of our common stock has been and may continue to be subject to wide fluctuations due to the risk factors discussed in this section and elsewhere in this report. Fluctuations in the market price of our common stock may cause an investor in our common stock to lose some or all of his investment.

Anti-takeover provisions in our corporate documents may discourage or prevent a takeover. Provisions in our certificate of incorporation and our by-laws may have the effect of delaying or preventing an acquisition or merger in which we are acquired or a transaction that changes our Board of Directors. These provisions:

authorize the board to issue preferred stock without stockholder approval;

prohibit cumulative voting in the election of directors;

limit the persons who may call special meetings of stockholders; and

establish advance notice requirements for nominations for the election of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

Item 1B. ***Unresolved Staff Comments***

None.

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Item 2. ***Properties***

Facilities

Our executive offices are located at 400 Minuteman Road, Andover, Massachusetts. We lease offices and data centers in various cities across the United States and have an office, a data center in the United Kingdom and an office in India. The table below sets forth a list of our leased offices and data centers:

Location	Type	Square Footage Leased (Approximate)	Lease Expiration
San Jose, CA (1)(3)	Data Center and Office	66,350	November 2016
Los Angeles, CA	Data Center	34,711	February 2009
San Francisco, CA	Data Center	20,576	January 2010
Atlanta, GA	Office	4,598	May 2007
Chicago, IL (1)	Office	4,453	June 2009
Chicago, IL	Data Center	6,800	January 2009
Oak Brook, IL	Data Center	16,780	September 2009
Andover, MA	Office	25,817	January 2018
Andover, MA	Data Center and Office	86,931	January 2018
Syracuse, NY	Data Center	21,246	November 2008
Syracuse, NY (1)	Office	44,002	December 2007
Syracuse, NY (1)	Office	5,016	May 2009
New York, NY	Office	1,500	December 2006
New York, NY	Data Center	33,286	May 2008
Las Vegas, NV (2)	Data Center	28,560	February 2010
Dallas, TX	Data Center	27,370	January 2010
Houston, TX (1)	Data Center and Office	29,545	October 2008
Vienna, VA	Data Center and Office	23,715	December 2009
Milwaukee, WI	Data Center	5,200	March 2010
Gurgaon, Haryana, India	Office	12,706	July 2008
London, England	Data Center	4,022	March 2010

(1) We have idle office space at this facility from which we derive no economic benefit.

(2) We have entered into a sublease with a third party for this facility, however we retain the use of approximately 2,000 square feet.

(3) In September 2006, after the end of our fiscal year, we extended the lease for this facility by ten years until November 2016 which is reflected above.

We believe that these offices and data centers are adequate to meet our foreseeable requirements and that suitable additional or substitute space will be available on commercially reasonable terms, if needed.

Item 3. ***Legal Proceedings***

IPO Securities Litigation

On or about June 13, 2001, Stuart Werman and Lynn McFarlane filed a lawsuit against us, BancBoston Robertson Stephens, an underwriter of our initial public offering in October 1999, Joel B. Rosen, our then chief executive officer, and Kenneth W. Hale, our then chief financial officer. The suit was filed in the United States District Court for the Southern District of New York. The suit generally alleges that the defendants violated federal securities laws by not disclosing certain actions allegedly taken by Robertson Stephens in connection with our initial public offering. The suit alleges specifically that Robertson Stephens, in exchange for the allocation to its customers of shares of our common stock sold in our initial public offering, solicited and received from its

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customers agreements to purchase additional shares of our common stock in the aftermarket at pre-determined prices. The suit seeks unspecified monetary damages and certification of a plaintiff class consisting of all persons who acquired shares of our common stock between October 22, 1999 and December 6, 2000. Three other substantially similar lawsuits were filed between June 15, 2001 and July 10, 2001 by Moses Mayer (filed June 15, 2001), Barry Feldman (filed June 19, 2001), and Binh Nguyen (filed July 10, 2001). Robert E. Eisenberg, our president at the time of the initial public offering in 1999, also was named as a defendant in the Nguyen lawsuit.

On or about June 21, 2001, David Federico filed in the United States District Court for the Southern District of New York a lawsuit against us, Mr. Rosen, Mr. Hale, Robertson Stephens and other underwriter defendants including J.P. Morgan Chase, First Albany Companies, Inc., Bank of America Securities, LLC, Bear Stearns & Co., Inc., B.T. Alex. Brown, Inc., Chase Securities, Inc., CIBC World Markets, Credit Suisse First Boston Corp., Dain Rauscher, Inc., Deutsche Bank Securities, Inc., The Goldman Sachs Group, Inc., J.P. Morgan & Co., J.P. Morgan Securities, Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Morgan Stanley Dean Witter & Co., Robert Fleming, Inc. and Salomon Smith Barney, Inc. The suit generally alleges that the defendants violated the anti-trust laws and the federal securities laws by conspiring and agreeing to raise and increase the compensation received by the underwriter defendants by requiring those who received allocation of initial public offering stock to agree to purchase shares of manipulated securities in the after-market of the initial public offering at escalating price levels designed to inflate the price of the manipulated stock, thus artificially creating an appearance of demand and high prices for that stock, and initial public offering stock in general, leading to further stock offerings. The suit also alleges that the defendants arranged for the underwriter defendants to receive undisclosed and excessive brokerage commissions and that, as a consequence, the underwriter defendants successfully increased investor interest in the manipulated initial public offering of securities and increased the underwriter defendants individual and collective underwritings, compensation, and revenue. The suit further alleges that the defendants violated the federal securities laws by issuing and selling securities pursuant to the initial public offering without disclosing to investors that the underwriter defendants in the offering, including the lead underwriters, had solicited and received excessive and undisclosed commissions from certain investors. The suit seeks unspecified monetary damages and certification of a plaintiff class consisting of all persons who acquired shares of our common stock between October 22, 1999 and June 12, 2001.

Those five cases, along with lawsuits naming more than 300 other issuers and over 50 investment banks which have been sued in substantially similar lawsuits, have been assigned to the Honorable Shira A. Scheindlin (the Court) for all pretrial purposes (the IPO Securities Litigation). On September 6, 2001, the Court entered an order consolidating the five individual cases involving us and designating Werman v. NaviSite, Inc., et al., Civil Action No. 01-CV-5374 as the lead case. A consolidated, amended complaint was filed thereafter on April 19, 2002 (the Class Action Litigation) on behalf of plaintiffs Arvid Brandstrom and Tony Tse against underwriter defendants Robertson Stephens (as successor-in-interest to BancBoston), BancBoston, J.P. Morgan (as successor-in-interest to Hambrecht & Quist), Hambrecht & Quist and First Albany and against us and Messrs. Rosen, Hale and Eisenberg (collectively, the NaviSite Defendants). Plaintiffs uniformly allege that all defendants, including the NaviSite Defendants, violated the federal securities laws (i.e., Sections 11 and 15 of the Securities Act, Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5) by issuing and selling our common stock pursuant to the October 22, 1999 initial public offering, without disclosing to investors that some of the underwriters of the offering, including the lead underwriters, had solicited and received extensive and undisclosed agreements from certain investors to purchase aftermarket shares at pre-arranged, escalating prices and also to receive additional commissions and/or other compensation from those investors. At this time, plaintiffs have not specified the amount of damages they are seeking in the Class Action Litigation.

Between July and September 2002, the parties to the IPO Securities Litigation briefed motions to dismiss filed by the underwriter defendants and the issuer defendants, including NaviSite. On November 1, 2002, the Court held oral argument on the motions to dismiss. The plaintiffs have since agreed to dismiss the claims against Messrs. Rosen, Hale and Eisenberg without prejudice, in return for their agreement to toll any statute of limitations applicable to those

claims. By stipulation entered by the Court on November 18, 2002, Messrs. Rosen, Hale and Eisenberg were dismissed without prejudice from the Class Action Litigation. On February 19, 2003, an opinion and order was issued on defendants motion to dismiss the IPO Securities Litigation, essentially denying the motions to dismiss of all 55 underwriter defendants and of 185 of the 301 issuer defendants, including NaviSite.

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On June 30, 2003, our Board of Directors considered and authorized us to negotiate a settlement of the pending Class Action Litigation substantially consistent with a memorandum of understanding negotiated among proposed class plaintiffs, the issuer defendants and the insurers for such issuer defendants. Among other contingencies, any such settlement would be subject to approval by the Court. Plaintiffs filed on June 14, 2004, a motion for preliminary approval of the Stipulation And Agreement Of Settlement With Defendant Issuers And Individuals (the Preliminary Approval Motion). On February 15, 2005, the Court approved the Preliminary Approval Motion in a written opinion which detailed the terms of the settlement stipulation, its accompanying documents and schedules, the proposed class notice and, with a modification to the bar order to be entered, the proposed settlement order and judgment. A further conference was held on April 13, 2005, at which time the Court considered additional submissions but did not make final determinations regarding the exact form, substance and program for notifying the proposed settlement class. On August 31, 2005, the Court entered a further Preliminary Order in Connection with Settlement Proceedings (the Preliminary Approval Order), which granted preliminary approval to the issuer s settlement with the plaintiffs in the IPO Securities Litigation. The Court subsequently held a Fed. R. Civ. P. 23 fairness hearing on April 24, 2006 in order to consider the written and oral submissions addressing whether the Court should enter final approval of the settlement; the matter was taken under advisement and remains pending with the Court. If the proposed issuers settlement is completed and then approved by the Court without further modifications to its material terms, we and the participating insurers acting on our behalf may be responsible for providing funding of approximately $3.4 million towards the total amount plaintiffs are guaranteed by the proposed issuer s settlement to recover in the IPO Securities Litigation. The amount of the guarantee allocable to us could be reduced or eliminated in its entirety in the event that plaintiffs are able to recover more than the total amount of such overall guarantee from settlements with or judgments obtained against the non-settling defendants. Even if no additional recovery is obtained from any of the non-settling defendants, the settlement amount allocable to us is expected to be fully covered by our existing insurance policies and is not expected to have a material effect on our business, financial condition, results of operations or cash flows.

We believe that the allegations against us are without merit and, if the settlement is not approved by the Court and finalized, we intend to vigorously defend against the plaintiffs claims. Due to the inherent uncertainty of litigation, we are not able to predict the possible outcome of the suits and their ultimate effect, if any, on our business, financial condition, results of operations or cash flows.

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

None.

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PART II

Item 5. *Market for Registrant s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

Price Range of Common Stock

Our common stock is currently traded on the Nasdaq Capital Market under the symbol NAVI. As of September 30, 2006, there were 248 holders of record of our common stock. Because brokers and other institutions on behalf of stockholders hold many of such shares, we are unable to estimate the total number of stockholders represented by these record holders. The following table sets forth for the periods indicated the high and low sales prices for our common stock as reported on the Nasdaq Capital Market.

	High	Low
Fiscal Year Ended July 31, 2006		
May 1, 2006 through July 31, 2006	$ 5.59	$ 3.24
February 1, 2006 through April 30, 2006	$ 5.00	$ 1.35
November 1, 2005 through January 31, 2006	$ 1.83	$ 1.01
August 1, 2005 through October 31, 2005	$ 1.90	$ 1.07
Fiscal Year Ended July 31, 2005		
May 1, 2005 through July 31, 2005	$ 2.40	$ 1.16
February 1, 2005 through April 30, 2005	$ 2.29	$ 1.23
November 1, 2004 through January 31, 2005	$ 3.30	$ 1.94
August 1, 2004 through October 31, 2004	$ 3.64	$ 1.32

We believe that a number of factors may cause the market price of our common stock to fluctuate significantly. See Item 1A. Risk Factors.

We have never paid cash dividends on our common stock. We currently anticipate retaining all available earnings, if any, to finance internal growth and product development. Payment of dividends in the future will depend upon our earnings, financial condition, anticipated cash needs and such other factors as the directors may consider or deem appropriate at the time. In addition, the terms of our financing agreement dated April 11, 2006, with Silver Point Finance restricts the payment of cash dividends on our common stock.

We did not repurchase any shares of common stock during fiscal year 2006.

Information regarding our equity compensation plans and the securities authorized for issuance thereunder is set forth in Item 12 below.

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

The following selected consolidated financial data should be read in conjunction with our consolidated financial statements and related notes and Management s Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this report. Historical results are not necessarily indicative of results of any future period.

	Year Ended July 31, 2005
	(In thousands, except per share data)

bership on Board committees and overseeing the annual evaluation of the Board and management.

uditor; monitoring the independence and performance of our independent auditor; and providing an avenue of communication among th

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The audit committee met five times during 2009, and otherwise accomplished its business without formal meetings. The members of the audit committee currently are Mr. Martin and Doctors Fildes and Smith. Mr. Martin currently serves as the chairman of the audit committee. Our Board has previously determined that each of Doctors Fildes and Smith and Mr. Martin is independent within the meaning of the enhanced independence standards contained in Nasdaq Marketplace Rule 5605(c)(2)(A) and Rule 10A-3 under the Exchange Act that relate specifically to members of audit committees. As of the date of the Annual Meeting, the audit committee will be comprised of Dr. Fildes and Mr. Martin.

Our Board, as of the Annual Meeting, will not have a person deemed to be an audit committee financial expert as defined in Item 407 of Regulation S-K.

Compensation Committee. It is the responsibility of the compensation committee to assist the Board in discharging the Board s responsibilities regarding the compensation of our employees and directors. The specific duties of the compensation committee include: making recommendations to the Board regarding the corporate goals and objectives relevant to executive compensation; evaluating our executive officers performance in light of such goals and objectives; recommending compensation levels to the Board based upon such evaluations; administering our incentive compensation plans, including our equity-based incentive plans; making recommendations to the Board regarding our overall compensation structure, policies and programs; and reviewing the Company s compensation disclosures. Our Chief Executive Officer makes recommendations to the compensation committee regarding the corporate and individual performance goals and objectives relevant to executive compensation and executives performance in light of such goals and objectives, and recommends other executives compensation levels to the compensation committee based on such evaluations. The compensation committee considers these recommendations and then makes an independent decision regarding officer compensation levels and awards. Additional information regarding the processes and procedures of the compensation committee is provided in the section entitled Executive Compensation and Other Information.

The compensation committee met three times during 2009, and otherwise accomplished its business without formal meetings. The members of the compensation committee are currently Dr. Fildes and Mr. Martin. Dr. Fildes currently serves as the chairman of the compensation committee. The current composition of the compensation committee will continue following the Annual Meeting.

Corporate Governance and Nominating Committee. It is the responsibility of the corporate governance and nominating committee to assist the Board: to identify qualified individuals to become Board members; to determine the composition of the Board and its committees; and to monitor and assess the effectiveness of the Board and its committees. The specific duties of the corporate governance and nominating committee include: identifying, screening and recommending to the Board candidates for election to the Board; reviewing director candidates recommended by our stockholders; assisting in attracting qualified director candidates to serve on the Board; monitoring the independence of current directors and nominees; and monitoring and assessing the relationship between the Board and our management with respect to the Board s ability to function independently of management.

The corporate governance and nominating committee did not meet during 2009, but accomplished its business without formal meetings. Dr. Young is currently the sole member of the corporate governance and nominating committee. As of the date of the Annual Meeting, the corporate governance and nominating committee will consist of Doctors Gillespie and Fildes and Mr. Martin.

Meetings of Non-Management Directors. During regularly scheduled meetings of the Board, the non-management members of the Board periodically meet without any members of management present.

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Corporate Governance Guidelines and Committee Charters

We have adopted a set of Corporate Governance Guidelines that describe a number of our corporate governance practices. Each of the audit, compensation and corporate governance and nominating committees has a charter, which are also available on our website. The Corporate Governance Guidelines and committee charters are available for viewing on our website at www.ljpc.com, then Investor Relations.

Code of Conduct

We have adopted a code of conduct that describes the ethical and legal responsibilities of all of our employees and, to the extent applicable, members of our Board. This code includes (but is not limited to) the requirements of the Sarbanes-Oxley Act of 2002 pertaining to codes of ethics for chief executives and senior financial and accounting officers. Our Board has reviewed and approved this code. Our employees agree in writing to comply with the code at commencement of employment and periodically thereafter. Our employees are encouraged to report suspected violations of the code. Our code of conduct is available for viewing on our website at www.ljpc.com, then Investor Relations. If we make substantive amendments to the code or grant any waiver, including any implicit waiver, to our principal executive, financial or accounting officer, or persons performing similar functions, we will disclose the nature of such amendment or waiver on our website and/or in a report on Form 8-K in accordance with applicable rules and regulations.

Communications With the Board of Directors

Our stockholders may communicate with our Board, a committee of our Board or a director by sending a letter addressed to the Board, a committee or a director to: c/o Corporate Secretary, La Jolla Pharmaceutical Company, 4365 Executive Drive, Suite 300, San Diego, California 92121. All communications will be compiled by our Corporate Secretary and forwarded to the Board, the committee or the director accordingly.

Director Nominations

The corporate governance and nominating committee regularly assesses the appropriate size of the Board and whether any vacancies on the Board are expected due to retirement or otherwise. In the event that vacancies are anticipated or otherwise arise, the committee utilizes a variety of methods for identifying and evaluating director candidates. Candidates may come to the attention of the committee through current directors, professional search firms, stockholders or other persons. Once the committee has identified a prospective nominee, the committee will evaluate the prospective nominee in the context of the then current constitution of the Board and will consider a variety of other factors, including the prospective nominee s business, technology, finance and financial reporting experience, and attributes that would be expected to contribute to an effective Board. The committee seeks to identify nominees who possess a wide range of experience, skills, areas of expertise, knowledge and business judgment. Our corporate governance and nominating committee and Board thus consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity, which is not only limited to race, gender or national origin, but also includes diversity of experience and skills. We have no formal policy regarding board diversity. Our nominating committee s and Board s priority in selecting board members is identification of persons who will further the interests of our stockholders through his or her established record of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, and professional and personal experiences and expertise relevant to our growth strategy. Successful nominees must have a history of superior performance or accomplishments in their professional undertakings and should have the highest personal and professional ethics and values. The committee does not evaluate stockholder nominees differently than any other nominee.

Pursuant to procedures set forth in our Bylaws, our corporate governance and nominating committee will consider stockholder nominations for directors if we receive timely written notice, in proper form, of the intent to make a nomination at a meeting of stockholders. To be timely, the notice must be received within the time frame discussed below under the heading Stockholder Proposals. To be in proper form, the notice must, among other matters, include each nominee s written consent to serve as a director if elected, a description of all arrangements or understandings between the nominating stockholder and each nominee and information about the nominating stockholder and each nominee. These requirements are further described below under the heading Stockholder Proposals and are detailed in our Bylaws, which were attached as an exhibit to our Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2000. A copy of our Bylaws will be provided upon written request to our Corporate Secretary.

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Director Attendance at Annual Meetings

Our Board has adopted a policy that encourages our directors to attend our annual stockholder meeting. We did not hold an annual stockholder meeting during our fiscal year ended December 31, 2009.

Report of the Audit Committee

The audit committee oversees our financial reporting process on behalf of the Board. Management has the primary responsibility for the financial statements and the reporting process, including our system of internal control over financial reporting. In fulfilling its oversight responsibilities, the audit committee reviewed and discussed the audited financial statements in our Annual Report on Form 10-K for the year ended December 31, 2009 with management, including a discussion of the quality, not merely the acceptability, of the accounting principles, the reasonableness of significant judgments and the clarity of disclosures in the financial statements.

The audit committee reviewed with the independent auditor, which is responsible for expressing an opinion on the conformity of those audited financial statements with accounting principles generally accepted in the United States, its judgments as to the quality, not merely the acceptability, of our accounting principles and such other matters as are required to be discussed under auditing standards generally accepted in the United States. In addition, the audit committee has discussed with the independent auditor the auditor s independence, including *Statement on Auditing Standards No. 61, as amended (Communication with Audit Committees)*, from us and our management, including the matters in the written disclosures received by us required by the *Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees)*. The audit committee has also considered the compatibility of the independent auditor s provision of non-audit services to us with the auditor s independence.

The audit committee discussed with our independent auditor the overall scope and plan for its audit. The audit committee met with the independent auditor, with and without management present, to discuss the results of its examinations, its evaluations of our internal controls and the overall quality of our financial reporting. The audit committee held five meetings during fiscal year 2009.

Based upon the reviews and discussions referred to above, the audit committee recommended to the Board that our audited financial statements be included in our Annual Report on Form 10-K for the year ended December 31, 2009 for filing with the Securities and Exchange Commission. This report is provided by the following independent directors, who comprise the audit committee:

Stephen M. Martin, Chairman
Robert A. Fildes, Ph.D.
Craig R. Smith, M.D.

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EXECUTIVE COMPENSATION AND OTHER INFORMATION

Equity Compensation. Under the 2004 Plan and, if Proposal 5 is approved, under the 2010 Plan, the compensation committee may grant stock options, restricted stock, stock appreciation rights and performance awards. In granting these awards, the committee may establish any conditions or restrictions it deems appropriate. The grant of options is unrelated to any anticipated major announcements made by the Company and is thus not influenced by any material, non-public information that may exist at the time of grant.

The exercise price of stock options is set at the fair market value on the grant date using the closing market price on the date of grant. New hire stock option awards granted in 2009 vest with respect to 25% of the underlying shares on the one-year anniversary from the date of grant and with respect to the remaining 75% of the underlying shares on a monthly pro rata basis over the next three years. Stock option awards granted in 2009 as a part of the annual performance review process vest monthly on a pro rata basis over 4 years.

The annual stock option awards for executive performance in fiscal 2008 were made on January 22, 2009. No annual stock option awards for executive performance in fiscal 2009 were made.

On December 31, 2009, we granted 2,021,024 restricted stock units (***RSUs***) to our three remaining employees where each RSU represents a contingent right to receive one share of the Company s Common Stock. The RSUs were to vest upon the closing of the Company s proposed merger with Adamis Pharmaceuticals Corporation (the ***Merger***), subject to the continued employment of the recipient through the closing date of the Merger. The RSUs were valued at the fair market value of the Company s Common Stock on the grant date. The value of the RSUs on December 31, 2009 was $344,000 and no compensation expense for these RSUs was recognized during 2009. The RSUs were cancelled in March 2010 as a result of the termination of the Merger in March 2010.

Benefits. The ESPP provides employees with an opportunity to acquire increased equity ownership in the Company over time through periodic purchases of shares. The ESPP allows employees, including the Named Executive Officers (as listed below in our Summary Compensation Table), to purchase Common Stock every three months (in an amount not exceeding 10% of each employee s base salary, or hourly compensation, and any cash bonus paid, subject to certain limitations) over the offering period at 85% of the fair market value of the Common Stock at specified dates. The offering period may not exceed 24 months. No purchases under the ESPP occurred during 2009.

Our retirement savings plan (***401(k) Plan***) was terminated in March 2009. Prior to its termination, our retirement savings plan was a tax-qualified retirement savings plan, pursuant to which all employees, including the Named Executive Officers, were able to contribute the lesser of 50% of their annual compensation or the limit prescribed by the IRS to the 401(k) Plan on a before-tax basis. We did not match employee contributions or otherwise contribute to the 401(k) Plan.

Our health and welfare programs were terminated in April 2009.

We have not historically provided special benefits or perquisites to our executives and did not do so in 2009.

Retention and Separation Agreements.

On December 4, 2009, we entered into Retention and Separation Agreements and General Release of All Claims (the ***Retention Agreements***) with our current Named Executive Officers. Our current Named Executive Officers are our Chief Executive Officer and our Vice President of Finance (who has since been promoted to Chief Financial Officer). The Retention Agreements superseded the severance provisions of the employment agreements with the current Named Executive Officers that were effective prior to the signing of the Retention Agreements (the ***Prior Employment Agreements***), but otherwise the terms of the Prior Employment Agreements remained in full force and effect. The Retention Agreements did not alter the amount of severance that was to be awarded under the Prior Employment Agreements, but rather changed the events that trigger such payments.

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Pursuant to the Retention Agreements, on December 18, 2009 we made retention payments to the current Named Executive Officers (the ***Retention Payments***) in the amounts of $202,800 to our Chief Executive Officer and $66,184 to our Vice President of Finance. If the current Named Executive Officers voluntarily resigned their employment prior to the earlier to occur of (a) the closing of the Merger or (b) March 31, 2010, they were to immediately repay the Retention Payments to us. The date under (a) and (b) shall be referred to as the ***Separation Date***.

Under the Retention Agreements, each of the current Named Executive Officers agreed to execute an amendment to the Retention Agreements (the ***Amendment***) on or about the Separation Date to extend and reaffirm the promises and covenants made by them in the Retention Agreements through the Separation Date. The Retention Agreements also provided for severance payments to the Named Executive Officers (***Severance Payments***) payable in a lump sum on the eighth day after the current Named Executive Officers signed the Amendment.

In April 2010, the compensation committee confirmed that pursuant to the terms of the Retention Agreements, the Retention Payments and Severance Payments were earned as of March 31, 2010 and agreed that the existing employment terms would remain in effect beyond March 31, 2010. As an incentive to retain the current Named Executive Officers to pursue a strategic transaction such as a merger, license agreement, third party collaboration or wind down of the Company, the compensation committee also approved a Confidential Retention Agreement with Dr. Gillespie (the ***Gillespie Retention Agreement***) to incentivize Dr. Gillespie to remain with the Company in order to complete a strategic transaction for the Company. Following Board approval of the Gillespie Retention Agreement on May 21, 2010, the Company and Dr. Gillespie entered into the Gillespie Retention Agreement on May 24, 2010. The Gillespie Retention Agreement supersedes the severance provisions of the Chief Executive Officer Employment Agreement, dated as of March 15, 2006, as amended, by and between the Company and Dr. Gillespie and the Confidential Retention and Separation Agreement and General Release of All Claims, dated as of December 4, 2009, by and between the Company and Dr. Gillespie (the ***Prior Gillespie Retention Agreement***). The Prior Gillespie Retention Agreement contemplated that the Company would enter into a strategic transaction or wind down its business on or before March 31, 2010, at which time the remaining two-thirds of the severance payment due to Dr. Gillespie under the Prior Gillespie Retention Payment would be paid to Dr. Gillespie. The Gillespie Retention Agreement confirms that the remaining two-thirds of the severance payment owed to Dr. Gillespie pursuant to the terms of the Prior Gillespie Retention Agreement was earned by Dr. Gillespie on March 31, 2010. Therefore, pursuant to the Gillespie Retention Agreement, the Company paid Dr. Gillespie a lump sum severance payment of $405,600, less applicable payroll deductions and withholdings, on June 1, 2010. The Gillespie Retention Agreement continues Dr. Gillespie s employment with the Company after March 31, 2010 and provides for a cash incentive (the ***Gillespie Retention Bonus***) upon completion of either a strategic transaction or other wind down of the Company (an ***Incentive Event***). The Purchase Agreement described in Proposal 2 above constitutes an Incentive Event under the Gillespie Retention Agreement. Accordingly, on June 1, 2010, the Company paid Dr. Gillespie the Gillespie Retention Bonus of $202,800, paid in a lump sum (less applicable payroll deductions and withholdings), per the terms of the Gillespie Retention Agreement.

In April 2010, the compensation committee also approved a Confidential Retention Agreement with Ms. Sloan (the ***Sloan Retention Agreement***) to incentivize Ms. Sloan to remain with the Company in order to complete a strategic transaction for the Company. Following Board approval of the Sloan Retention Agreement on May 21, 2010, the Company and Ms. Sloan entered into the Sloan Retention Agreement on May 24, 2010. The Sloan Retention Agreement supersedes the severance provisions of the Amended and Restated Employment Agreement, dated as of February 23, 2006, as amended, by and between the Company and Gail A. Sloan and the Confidential Retention and Separation Agreement and General Release of All Claims, dated as of December 4, 2009, by and between the Company and Ms. Sloan (the ***Prior Sloan Retention Agreement***). The Prior Sloan Retention Agreement contemplated that the Company would enter into a strategic transaction or wind down its business on or before March 31, 2010, at which time the remaining two-thirds of the severance payment due to Ms. Sloan under the Prior Sloan Retention Agreement would be paid to Ms. Sloan. The Sloan Retention Agreement confirms that the remaining two-thirds of the severance payment owed to Ms. Sloan pursuant to the terms of the Prior Sloan Retention Agreement was earned by Ms. Sloan on March 31, 2010. Therefore, pursuant to the Sloan Retention Agreement, the Company paid Ms. Sloan a lump sum severance payment of $132,367, less applicable payroll deductions and withholdings, on June 1, 2010. The

Sloan Retention Agreement continues Ms. Sloan s employment with the Company after March 31, 2010 and provides for a cash incentive (the ***Sloan Retention Bonus***) upon completion of an Incentive Event. The Purchase Agreement described in Proposal 2 above constitutes an Incentive Event under the Sloan Retention Agreement. Accordingly, on June 1, 2010, the Company paid Ms. Sloan the Sloan Retention Bonus of $69,492, paid in a lump sum (less applicable payroll deductions and withholdings), per the terms of the Sloan Retention Agreement.

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Employment Agreements.

Deirdre Y. Gillespie, M.D. On May 24, 2010, we entered into an employment agreement with Deirdre Y. Gillespie, M.D. (the ***Gillespie Employment Agreement***). Pursuant to the terms of the Gillespie Employment Agreement, Dr. Gillespie s employment is at-will and she will initially continue to receive her current annual base salary of $405,600 (the ***Gillespie Base Salary***) and her current annual bonus with a targeted payout equal to 50% of her Base Salary (the ***Gillespie Annual Bonus***). The Gillespie Base Salary will be increased to $421,824 upon the closing of a Strategic Transaction (as defined in our Certificate of Designations), with such increase to be retroactive to May 24, 2010. The compensation committee will annually establish the goals upon which the Gillespie Annual Bonus will be based, which will take into account both Dr. Gillespie s and the Company s performance. If Dr. Gillespie is terminated without Cause, as a result of a Constructive Termination or in connection with a Change in Control (each as defined in the Gillespie Employment Agreement), then the Gillespie Annual Bonus will be determined after the occurrence of such event and paid promptly thereafter, except that, in the case of a Change in Control, the Board will consider whether to pay Dr. Gillespie the Gillespie Annual Bonus.

Under the terms of the Gillespie Employment Agreement, Dr. Gillespie was granted an option to purchase up to 4,000,000 shares of Common Stock at the fair market value of the Common Stock on the third day after public announcement of entering into the Purchase Agreement described in Proposal 2 (the ***date of grant***). These options vest monthly over three years so that they are fully vested on the third anniversary of the date of grant.

After closing a Strategic Transaction, if Dr. Gillespie is terminated without Cause or voluntarily resigns due to (i) a material reduction in her responsibilities, authority or duties as an officer or a reduction in her title as an officer, (ii) a material diminution in the Gillespie Base Salary (except for across-the-board salary reductions similarly affecting all or substantially all senior management employees and does not exceed 15%), (iii) a relocation of her office to a location outside of San Diego, California, (iv) any material breach by the Company under the Gillespie Employment Agreement or (v) any failure by the Company to obtain the assumption of the Gillespie Employment Agreement by any successor of the Company, she will receive the Gillespie Base Salary, then in effect, prorated to the date of termination, plus any bonus, healthcare/vacation benefits and business expenses earned but not yet paid (the ***Gillespie Standard Entitlements***) and, provided that Dr. Gillespie timely executes and delivers a release agreement to the Company, the following severance benefits: a lump sum severance payment equal to 18 months of her then current annual base salary, but in no event less than the Gillespie Base Salary of $405,600 discussed above (the ***Gillespie Standard Severance Payment***); the immediate vesting and exercisability of all of Dr. Gillespie s outstanding options; and up to 18 months of continuing COBRA health coverage. The Gillespie Standard Severance Payment, the acceleration of the vesting of options and the continuation of COBRA health coverage are collectively referred to as the ***Gillespie Severance Benefits***.

Dr. Gillespie will also receive the Gillespie Standard Entitlements and the Gillespie Severance Benefits if her employment is terminated, other than for Cause, by the Company within 12 months after a Change in Control, provided that she timely executes and delivers a release agreement to the Company.

Gail A. Sloan. On May 24, 2010, the Company entered into an Executive Employment Agreement with Gail A. Sloan (the ***Sloan Employment Agreement***), pursuant to which Ms. Sloan was promoted to Chief Financial Officer. Pursuant to the terms of the Sloan Employment Agreement, Ms. Sloan s employment is at-will and she will initially continue to receive her current annual base salary of $198,551 (the ***Sloan Base Salary***) and an annual bonus with a targeted payout equal to 35% of her Base Salary (the ***Sloan Annual Bonus***). The Sloan Base Salary will be increased to $206,493 upon the closing of a Strategic Transaction (as defined in our Certificate of Designations); such increase will be retroactive to May 24, 2010. The compensation committee will annually establish the goals upon which the Sloan Annual Bonus will be based, which will take into account both Ms. Sloan s and the Company s performance. If Ms. Sloan is terminated without Cause, as a result of a Constructive Termination or in connection with a Change in Control (each as defined in the Sloan Employment Agreement), then the Sloan Annual Bonus, if any, will be determined after the occurrence of such event and paid promptly thereafter.

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Under the terms of the Sloan Employment Agreement, Ms. Sloan was granted an option to purchase up to 1,800,000 shares of Common Stock at the fair market value of the Common Stock on the date of grant. These options vest monthly over three years so that they are fully vested on the third anniversary of the date of grant.

After closing a Strategic Transaction, if Ms. Sloan is terminated without Cause or voluntarily resigns due to (i) a material reduction in her responsibilities, authority or duties as an officer or a reduction in her title as an officer, (ii) a material diminution in the Sloan Base Salary (except for across-the-board salary reductions similarly affecting all or substantially all senior management employees and does not exceed 15%), (iii) a relocation of her office to a location outside of San Diego, California, (iv) any material breach by the Company under the Sloan Employment Agreement or (v) any failure by the Company to obtain the assumption of the Sloan Employment Agreement by any successor of the Company, she will receive the Sloan Base Salary, then in effect, prorated to the date of termination, plus any bonus, healthcare/vacation benefits and business expenses earned but not yet paid (the ***Sloan Standard Entitlements***) and, provided that Ms. Sloan timely executes and delivers a release agreement to the Company, the following severance benefits: a lump sum severance payment equal to 12 months of her then current annual base salary, but in no event less than the Sloan Base Salary of $198,551 discussed above (the ***Sloan Standard Severance Payment***); the immediate vesting and exercisability of all of Ms. Sloan s outstanding options; and up to 12 months of continuing COBRA health coverage. The Sloan Standard Severance Payment, the acceleration of the vesting of options and the continuation of COBRA health coverage are collectively referred to as the ***Sloan Severance Benefits***.

Ms. Sloan will also receive the Sloan Standard Entitlements and the Sloan Severance Benefits if her employment is terminated, other than for Cause, by the Company within 12 months after a Change in Control, provided that she timely executes and delivers a release agreement to the Company.

Summary Compensation Table

ame and rincipal Position	Year	Salary ($)	Bonus ($) (1)	Stock Awards ($)	Option Awards ($) (2)	Non-Equity Incentive Plan Compensation ($) (3)	All Other Compensation ($)	Total ($)
urrent Officers								
eirdre Y. Gillespie, M.D.	2009	$ 421,200	$ 202,800	$	$ 1,167,161	$	$	$ 1,791,16
esident, Chief Executive Officer and ssistant Secretary	2008	402,600			1,093,763	200,772		1,697,13
ail A. Sloan	2009	206,187	66,184		71,785			344,15
ce President of Finance and Secretary	2008	196,906			307,483	53,609		557,99
*ormer Officers**								
v E. Caviar	2009	124,734	211,612		635,453			971,79
xecutive Vice President, Chief Business d Financial Officer	2008	280,775			226,995	111,097	25,000(4)	643,86
ichael Tansey, M.D., Ph.D.	2009	113,402	251,063		572,250			936,71
xecutive Vice President and Chief edical Officer	2008	332,875			387,029	90,383		810,28

* These former officers were

terminated on April 20, 2009 as part of the Company s restructuring activities.

(1) The amounts for Dr. Gillespie and Ms. Sloan are retention payments made on December 18, 2009 in accordance with the Retention Agreements dated December 4, 2009. See Note 6 to our audited consolidated financial statements for the fiscal year ended December 31, 2009, included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 15, 2010. The amount for Mr. Caviar is severance equal to nine months of Mr. Caviar s annual base salary at December 31, 2008 pursuant to his employment agreement dated May 10, 2007. The amount for Dr. Tansey is

severance equal to nine months of Dr. Tansey s annual base salary at December 31, 2008 pursuant to his employment agreement dated December 4, 2006. These severance payments were made to Mr. Caviar and Dr. Tansey following their respective terminations on April 20, 2009.

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(2) The amounts in this column reflect the dollar amount recognized for financial statement reporting purposes for the fiscal years ended December 31, 2009 and December 31, 2008, for awards and thus may include amounts from awards granted in and prior to 2008. Assumptions used in the calculation of these amounts are included in Note 1 to our audited consolidated financial statements for the fiscal year ended December 31, 2009.

(3) These amounts represent the 2008 performance-based bonus awards which were paid in fiscal year 2009.

(4) This amount represents a signing bonus paid to Mr. Caviar in January 2008 in accordance with his employment agreement.

Outstanding Equity Awards at 2009 Fiscal Year End

	Number of	Number of		Market or Payout Value of

Name	Securities Underlying Unexercised Options (#) Exercisable	Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date(1)	Number of Unearned Shares, Units or Other Rights that have not Vested (#)	Unearned Shares, Units or Other Rights that have not Vested ($)
Current Officers						
Deirdre Y. Gillespie	766,666	33,333(2)	5.26	03/15/2016		
	106,250	43,750(2)	3.08	02/05/2017		
	68,750	81,250(2)	2.42	02/21/2018		
	34,375	115,625(2)	1.42	01/22/2019		
					1,411,898(3)	240,023(4)
Gail A. Sloan	972		18.44	01/28/2010		
	3,800		35.00	11/20/2010		
	3,000		38.25	07/19/2011		
	2,999		35.50	12/14/2011		
	5,999		25.45	07/18/2012		
	5,999		29.50	11/21/2012		
	5,999		14.85	05/12/2013		
	6,000		23.55	09/18/2013		
	14,000		14.80	05/21/2014		
	10,583		2.40	04/25/2015		
	5,415		2.15	05/19/2015		
	21,199		4.20	10/10/2015		
	184,548		4.46	04/17/2016		
	17,708	7,291(2)	3.08	02/05/2017		
	11,458	13,541(2)	2.42	02/21/2018		
	5,729	19,270(2)	1.42	01/22/2019		
					483,810(3)	82,248(4)
*Former Officers**						
Michael J.B. Tansey	113,000(5)		3.61	07/17/2016		
	87,000(5)		3.23	12/04/2016		
	50,000(5)		5.47	05/23/2017		
	40,000(5)		2.42	02/21/2018		
	200,000(5)		1.82	05/22/2018		
	45,000(5)		1.42	01/22/2019		
Niv E. Caviar						

* These former officers were terminated on April 20, 2009.

(1) All stock options expire ten years from the date of grant.

(2) The stock options vest and become exercisable ratably on a monthly basis over four years from the date of grant.

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(3) These are restricted stock units (***RSUs***) granted on December 31, 2009 where each RSU represents a contingent right to receive one share of our Common Stock. The RSUs were to vest upon the closing of the Merger, subject to the continued employment of the recipient through the closing date of the Merger; however, the Merger was terminated in March 2010 and accordingly, the RSUs were cancelled.

(4) The value of each RSU is the closing price of our Common Stock on the date of grant, which was $0.17.

(5) Pursuant to Dr. Tansey s employment agreement dated December 4, 2006, all of Dr. Tansey s unvested options

automatically vested upon his termination date of April 20, 2009 and remained exercisable for one year following the termination date. Because these options were not exercised by April 20, 2010, all of Dr. Tansey s stock options were cancelled on April 20, 2010.

Option Exercises and Stock Vested in Fiscal Year 2009

No named executive officers exercised any options or had any restricted stock vest in fiscal year 2009.

Director Compensation Table 2009

Name	Feed Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards ($) (1)	Total ($)
Thomas H. Adams (2)	$ 24,500	$	$ 19,139	$ 43,639
Robert A. Fildes	37,500		19,139	56,639
Stephen M. Martin	51,000		19,139	70,139
Craig R. Smith	62,750		18,619	81,369
Martin P. Sutter (2)			6,206	6,206
James N. Topper (2)			6,206	6,206
Frank E. Young	29,500		6,206	35,706

(1) The amounts in this column reflect the dollar amount recognized for financial

statement reporting purposes for the fiscal year ended December 31, 2009, and thus may include amounts from awards granted in and prior to 2009. Assumptions used in the calculation of these amounts are included in Note 1 to our audited consolidated financial statements for the fiscal year ended December 31, 2009.

(2) Doctors Adams and Topper and Mr. Sutter resigned as directors effective September 3, 2009.

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Director Compensation

Retainers and Fees. Directors who are also our employees receive no extra compensation for their service on the Board. In 2009, non-employee directors received $1,500 per Board meeting attended in person and $750 per Board meeting attended telephonically. Non-employee directors also received $750 per committee meeting attended in person and $500 per committee meeting attended telephonically. Directors were reimbursed for reasonable costs associated with attendance at meetings of the Board and its committees. Non-employee directors received an annual retainer of $20,000, which was paid quarterly. The Chairman of the Board, Dr. Smith, received an additional annual retainer of $25,000, which was paid quarterly. In 2009, the chairman of the audit committee received an annual fee of $10,000. In 2009, the chairman of the compensation committee received an annual fee of $5,000. All chairman fees were paid quarterly. All other members of the audit, compensation and corporate governance and nominating committees received an annual retainer of $2,000, which was paid quarterly.

Option Grants Under the 2010 Plan. Under the 2010 Plan, each of our non-employee directors automatically receives, upon becoming a non-employee director, a one-time grant of a non-qualified stock option in an amount to be determined by the compensation committee at an exercise price equal to the fair market value of a share of the Common Stock on the date of grant. These non-employee director options have a term of 10 years and vest with respect to 25% of the underlying shares on the grant date and with respect to an additional 25% of the underlying shares on the date of each of the first three anniversaries of such grant, but only if the director remains a non-employee director for the entire period from the date of grant to such date. Upon re-election to our Board or upon continuing as a director after an annual meeting without being re-elected due to the classification of the Board, each non-employee director automatically receives a grant of an additional non-qualified stock option in an amount to be determined by the compensation committee. Due to the futility of the Riquent trial, the annual grants for 2009 were not made. These additional non-employee director options have a term of 10 years and vest and become exercisable upon the earlier to occur of the first anniversary of the grant date or immediately prior to the annual meeting of stockholders next following the grant date; provided that the director remains a director for the entire period from the grant date to such earlier date. The exercise price for these additional non-employee director options is the fair market value of our Common Stock on the date of their grant. All outstanding non-employee director options vest in full immediately prior to any change in control. Each non-employee director is also eligible to receive additional options under the 2010 Plan in the discretion of the compensation committee. These options vest and become exercisable pursuant to the 2010 Plan and the terms of the option grant.

Related Party Transactions

No director, executive officer, nominee for election as a director nor any beneficial holder of more than five percent of our outstanding capital stock, nor any immediate family member of the foregoing, had any material interest, direct or indirect, in any reportable transaction with us during the 2009 fiscal year, or any reportable business relationship with us during such time. Since the commencement of the current fiscal year, our President and Chief Executive Officer (Deirdre Y. Gillespie) and our Chief Financial Officer (Gail A. Sloan) were parties to the Purchase Agreement, as purchasers, entered into by the Company and certain purchasers on May 24, 2010. Pursuant to the terms of the Purchase Agreement, these related parties purchased shares of our Common Stock, Preferred Stock and warrants to purchase Preferred Stock for an aggregate amount of approximately $150,000; Dr. Gillespie s interest was approximately $117,000 and Ms. Sloan s interest was approximately $25,000. These purchases were pre-approved by the independent members of the Board. Holders of at least 5% of our Common Stock, RTW Investments, LLC (***RTW***), Tang Capital Partners, LP (***Tang***) and Boxer Capital, LLC (***Boxer***) also purchased, pursuant to the Purchase Agreement dated May 24, 2010, shares of our Common Stock, Preferred Stock and warrants to purchase Preferred Stock, in an aggregate amount of approximately $5.4 million. RTW s interest was approximately $784,000, Tang s interest was approximately $2.4 million and Boxer s interest was approximately $2.2 million.

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EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 31, 2009 with respect to shares of our Common Stock that may be issued under our equity compensation plans.

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column(a))
Equity Compensation plans approved by security holders	5,529,591(1)	6.99	1,082,671(2)
Equity Compensation plans not approved by security holders			

(1) Outstanding options to purchase shares of our Common Stock under the La Jolla Pharmaceutical Company 1994 Stock Incentive Plan and the 2004 Plan.

(2) Includes 1,065,694 shares subject to the 2004 Plan and 16,977 shares subject to the ESPP (each stated as of December 31, 2009).

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding beneficial ownership of our Common Stock as of June 1, 2010 based on information available to us and filings with the SEC by:

each of our directors;

each of our named executive officers as defined by SEC rules;

all of our current directors and executive officers as a group; and

each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our Common Stock.

Beneficial ownership and percentage ownership are determined in accordance with the rules of the SEC and include voting or investment power with respect to shares of stock. This information does not necessarily indicate beneficial ownership for any other purpose. Under these rules, shares of Common Stock issuable under stock options that are exercisable within 60 days of June 1, 2010 are deemed outstanding for the purpose of computing the percentage ownership of the person holding the options, but are not deemed outstanding for the purpose of computing the percentage ownership of any other person.

Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over their shares of Common Stock, except for those jointly owned with that person s spouse. Percentage of beneficial ownership of Common Stock is based on 94,693,083 shares of Common Stock outstanding as of June 1, 2010. Unless otherwise noted below, the address of each person listed on the table is c/o La Jolla Pharmaceutical Company, 4365 Executive Drive, Suite 300, San Diego, California 92121.

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Name and Address	Shares of Common Stock Owned	Shares with Right to Acquire within 60 days	Total Beneficial Ownership	Percentage of Common Stock
RTW Investments, LLC (1)	9,468,361			9.9%
Tang Capital Partners, LP (2)	8,837,137			9.3%
Boxer Capital, LLC (3)	8,277,434			8.7%
Craig R. Smith, M.D. (4)		123,400	123,400	*%
Robert A. Fildes, Ph.D. (4)		113,425	113,425	*%
Stephen M. Martin (4)	40	114,066	114,106	*%
Frank E. Young, M.D., Ph.D. (4)	5,600	38,000	43,600	*%
Deirdre Y. Gillespie, M.D. (4)(5)	437,649	1,297,222	1,734,871	1.8%
Gail A. Sloan (5)	94,038	415,374	509,412	*%
Michael J.B. Tansey (6)				%
Niv E. Caviar (6)				%
All current executive officers and directors as a group (6 persons) (7)	537,327	2,101,487	2,638,814	2.7%

* Less than one percent.

(1) Based solely upon a Schedule 13G filed with the SEC on June 3, 2010. The address of RTW Investments, LLC is 1350 Avenue of the Americas, 28th Floor, New York, New

York 10019. Roderick Wong is the Managing Member of RTW Investments, LLC.

(2) Based solely upon a Schedule 13G filed with the SEC on June 3, 2010. Tang Capital Partners is the beneficial owner of 8,837,137 shares of Common Stock. Tang Capital Partners shares voting and dispositive power over such shares with Tang Capital Management and Kevin C. Tang. Tang Capital Management, as the general partner of Tang Capital Partners, may be deemed to beneficially own the 8,837,137 shares held by Tang Capital Partners. Tang Capital Management shares voting and dispositive power over such shares with Tang Capital Partners and Kevin C. Tang.

Kevin C. Tang may be deemed to beneficially own 9,468,361 shares of our Common Stock, consisting of: (i) 8,837,137 shares beneficially owned by Tang Capital Partners, for which Tang Capital Management, of which Mr. Tang is manager, serves as general partner; and (ii) 631,224 shares beneficially owned by The Haeyoung and Kevin Tang Foundation, Inc., a not-for-profit corporation incorporated in the state of Delaware (***The Tang Foundation***), of which Mr. Tang is President and Treasurer. Mr. Tang shares voting and dispositive power over the shares beneficially owned by Tang Capital Partners with Tang Capital Management and Tang Capital Partners. Mr. Tang shares

voting and dispositive power over the shares beneficially owned by The Tang Foundation with The Tang Foundation and Haeyoung K. Tang. Mr. Tang disclaims beneficial ownership of all shares reported herein except to the extent of his pecuniary interest therein. The address of Tang Capital Partners is 4401 Eastgate Mall, San Diego, California 92121.

(3) Based solely upon a Schedule 13G filed with the SEC on June 3, 2010. The Schedule 13G was jointly filed by Boxer Capital, LLC (***Boxer Capital***), Boxer Asset Management Inc. (***Boxer Management***), Joseph Lewis, and MVA Investors, LLC (***MVA***). Boxer Management is the managing member and majority owner

of Boxer Capital. Joseph Lewis is the sole indirect owner and controls Boxer Management. MVA is the independent, personal investment vehicle of certain employees of Boxer Capital and Tavistock Life Sciences Company, which is a Delaware corporation and an affiliate of Boxer Capital. As such, MVA is not controlled by Boxer Capital, Boxer Management and Joseph Lewis. The principal business address of both Boxer Capital and MVA is: 445 Marine View Avenue, Suite 100, Del Mar, CA 92014. The principal business address of both Boxer Management and Joseph Lewis is: c/o Cay House P.O. Box N-7776 E.P. Taylor Drive Lyford Cay, New Providence,

Bahamas.

(4) Current director as of June 1, 2010.

(5) Current executive officer as of June 1, 2010.

(6) Former executive officer terminated April 20, 2009.

(7) The six current executive officers and directors are comprised of Dr. Smith, Dr. Fildes, Mr. Martin, Dr. Young, Dr. Gillespie and Ms. Sloan (each of whom is included within the table above).

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SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Under the securities laws of the United States, our directors and officers and persons who own more than 10% of our equity securities are required to report their initial ownership of our equity securities and any subsequent changes in that ownership to the Securities and Exchange Commission. Specific due dates for these reports have been established, and we are required to disclose any late filings during the fiscal year ended December 31, 2009. To our knowledge, based solely upon our review of the copies of such reports required to be furnished to us during the fiscal year ended December 31, 2009, all of these reports were timely filed, except one report filed in March 2009 by former named executive officer Josefina Elchico reporting the sale of Common Stock that occurred during February 2009.

OTHER INFORMATION

Other Business

We know of no other business to be presented at the Annual Meeting. If any other business were to properly come before the Annual Meeting, it is intended that the shares represented by proxies would be voted with respect thereto in accordance with the best judgment of the persons named in the accompanying form of proxy.

Stockholder Proposals

2010 Annual Meeting Proposals

Our Bylaws require that a stockholder give our Secretary timely written notice of any proposal or nomination of a director. To be timely, such written notice must be received by our Secretary not less than 90 days nor more than 120 days prior to a scheduled annual meeting of stockholders, or if less than 95 days notice or prior public disclosure of the date of the scheduled annual meeting of stockholders is given or made, such written notice must be received by our Secretary not later than the close of business on the seventh day following the earlier of the date of the first public announcement of the date of such meeting or the date on which such notice of the scheduled meeting was mailed.

Any notice to our Secretary regarding a stockholder proposal must include, as to each matter the stockholder proposes to bring before the meeting: a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting; the name and address, as they appear on our books, of the stockholder proposing such business and any stockholders known by such stockholder to be supporting such proposal; the class and number of shares of our stock that are beneficially owned by the stockholder and by any other stockholder known by such stockholder to be supporting such matter on the date of such stockholder notice; and any material interest of the stockholder in such business.

Any notice to our Secretary regarding a nomination for the election of a director must include: the name and address of the stockholder who intends to make the nomination; the name and address of the person or persons to be nominated; the class and number of shares of our stock that are beneficially owned by the stockholder; a representation that such stockholder intends to appear in person or by proxy at the annual meeting and nominate the person or persons specified in the notice; a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such persons) pursuant to which the nomination or nominations are to be made by the stockholder; such other information regarding each nominee as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board; and the consent of each nominee to serve as a director if so elected.

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2011 Annual Meeting Proposals

Stockholders who wish to have proposals considered for inclusion in the proxy statement and form of proxy for our 2011 annual meeting of stockholders, including nominees for directors, must cause their proposals to be received in writing by our Secretary at the address set forth on the first page of this proxy statement no later than **[insert the date that is 120 days prior to the one-year anniversary of mailing of this proxy]**. Any proposal should be addressed to our Secretary and may be included in next year s proxy materials only if such proposal complies with our Bylaws, as discussed above, and the rules and regulations promulgated by the Securities and Exchange Commission (***SEC***). Nothing in this section shall be deemed to require us to include in our proxy statement or our proxy relating to any annual meeting any stockholder proposal or nomination that does not meet all of the requirements for inclusion established by the SEC.

Incorporation by Reference

The report of the audit committee shall not be deemed to be soliciting material or to be filed with the SEC under the Securities Act of 1933 or the Securities Exchange Act of 1934 or incorporated by reference in any document so filed. Our Annual Report on Form 10-K for the year ended December 31, 2009, delivered to you together with this proxy statement, is hereby incorporated by reference.

Householding

The Company may satisfy SEC rules regarding delivery of proxy materials, including the proxy statement, annual report and Notice, by delivering a single Notice and, if applicable, a single set of proxy materials to an address shared by two or more Company stockholders. Some banks, brokers and other intermediaries may be participating in this practice of householding proxy statements and annual reports. This rule benefits both the Company and its stockholders as it reduces the volume of duplicate information received at a stockholder s house and helps reduce the Company s expenses. Each stockholder, however, will continue to receive individual proxy cards or voting instruction forms.

Stockholders who have previously received a single set of disclosure documents may request their own copy this year or in future years by contacting their bank, broker or other nominee record holder. The Company will also deliver a separate copy of this proxy statement to any stockholder upon written request to La Jolla Pharmaceutical Company, 4365 Executive Drive, Suite 300, San Diego, California 92121, Attn: Gail A. Sloan, or upon oral request by calling (858) 452-6600.

Similarly, stockholders who have previously received multiple copies of disclosure documents may write to the address or call the phone number listed above to request delivery of a single copy of these materials in the future.

Availability of Additional Information

Along with this proxy statement, we have provided each stockholder entitled to vote a copy of our Annual Report on Form 10-K for our year ended December 31, 2009. **We will provide, without charge, a copy of our Annual Report on Form 10-K for the year ended December 31, 2009 upon the written or oral request of any stockholder or beneficial owner of our Common Stock.** Written requests should be directed to the following address: Investor Relations, La Jolla Pharmaceutical Company, 4365 Executive Drive, Suite 300, San Diego, California 92121. Telephonic requests should be directed to (858) 452-6600.

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We file annual, quarterly and current reports, proxy statements, and other information with the SEC. You may read and copy any materials we file with the SEC at the SEC s Public Reference Room at 100 F Street N.E., Washington, D.C. 20549-2521. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-732-0330. The SEC maintains a website at *http://www.sec.gov* that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. You may also find the materials we file with the SEC on the Investor Relations section of our website at *http://www.ljpc.com*. Information on our website is not incorporated by reference into, or made a part of, this proxy statement.

BY ORDER OF THE BOARD OF DIRECTORS
Gail A. Sloan
Secretary
[date]
San Diego, California

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APPENDIX A
Form of Certificate of Amendment to Restated Certificate of Incorporation

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CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
LA JOLLA PHARMACEUTICAL COMPANY
a Delaware corporation

La Jolla Pharmaceutical Company, a corporation organized and existing under the laws of the State of Delaware (the ***Company***), hereby certifies as follows:

FIRST: That the Board of Directors of the Company has duly adopted resolutions (i) authorizing the Company to execute and file with the Secretary of State of the State of Delaware this Certificate of Amendment of Certificate of Incorporation (this ***Certificate of Amendment***) to (a) effect up to two reverse stock splits at a ratio ranging from 2-for-1 to 100-for-1; (b) increase the number of authorized shares of Common Stock from 225,000,000 to 6,000,000,000; (c) decrease the par value of the Company s capital stock from $0.01 per share to $0.0001 per share; and (d) change the authorized size of the Board of Directors, and (ii) declaring this Certificate of Amendment to be advisable and recommended for approval by the stockholders of the Company.

SECOND: That this Certificate of Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by the Board of Directors and stockholders of the Company.

THIRD: That upon the effectiveness of this Certificate of Amendment, Article IV of the Restated Certificate of Incorporation of the Company is hereby deleted in its entirety and replaced with the following:

Article IV

Authorized Capital Stock

Immediately upon the filing of this Certificate of Amendment, each _____[1] shares of Common Stock (as defined below) issued and outstanding at such time shall be combined into one (1) share of such Common Stock (the Reverse Stock Split). Upon surrender by a holder of a certificate or certificates for Common Stock (including, for this purpose, a holder of shares of Common Stock issuable upon conversion of Preferred Stock), duly endorsed, at the office of the Company (or, if lost, an acceptable affidavit of loss is delivered to the Company), the Company shall, as soon as practicable thereafter, issue and deliver to such holder, or to the nominee or assignee of such holder, a new certificate or certificates for the number of shares of Common Stock that such holder shall be entitled to following the Reverse Stock Split. No fractional shares shall be issued, and, in lieu thereof, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock (pre-reverse stock split). The Common Stock issued in this exchange (post-reverse stock split) shall have the same rights, preferences and privileges as the Common Stock (pre-reverse stock split).

The Corporation is authorized to issue two classes of stock designated Common Stock and Preferred Stock. The total number of shares of all classes of stock that this Corporation is authorized to issue is Six Billion Eight Million (6,008,000,000), consisting of Six Billion (6,000,000,000) shares of Common Stock, par value $0.0001 per share, and Eight Million (8,000,000) shares of Preferred Stock, par value $0.0001 per share.

[1] Insert reverse stock split ratio, ranging from 2-for-1 to 100-for-1.

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FOURTH: That upon the effectiveness of this Certificate of Amendment, the first two sentences of Article VIII of the Restated Certificate of Incorporation of the Company are hereby deleted in their entirety and replaced with the following:

The total number of directors of the Corporation shall be not less than three (3) nor more than nine (9), with the actual total number of directors set from time to time exclusively by resolution of the Board of Directors. The Board of Directors shall initially consist of three members until changed by such a resolution.

[Remainder of page intentionally left blank.]

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IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment of Restated Certificate of Incorporation to be executed by Deirdre Y. Gillespie, its Chief Executive Officer, this _____ day of _____.

LA JOLLA PHARMACEUTICAL COMPANY

By:
Name: Deirdre Y. Gillespie
Title: Chief Executive Officer

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APPENDIX B
Form of Amendment to Amended and Restated Bylaws

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AMENDMENT NO. 1 TO THE
AMENDED AND RESTATED BYLAWS OF
LA JOLLA PHARMACEUTICAL COMPANY

The first two sentences of Article III, Section 3.01 of the Amended and Restated Bylaws of La Jolla Pharmaceutical Company are hereby deleted in their entirety and replaced with the following:

Unless otherwise provided in the Corporation s certificate of incorporation, the total number of directors of the Corporation shall be not less than three (3) nor more than nine (9), with the actual total number of directors set from time to time exclusively by resolution of the Board of Directors. The Board of Directors shall initially consist of three members until changed by such a resolution.

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APPENDIX C
2010 Equity Incentive Plan

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LA JOLLA PHARMACEUTICAL COMPANY
2010 EQUITY INCENTIVE PLAN

ARTICLE I

GENERAL PROVISIONS

1.01 Definitions.

Terms used herein and not otherwise defined shall have the meanings set forth below:

(a) **Administrator** means the Board or a Committee that has been delegated the authority to administer the Plan.

(b) **Award** means an Incentive Award or a Nonemployee Director s Option.

(c) **Award Document** means an award agreement duly executed on behalf of the Company and by the Recipient or, in the Administrator s discretion, a confirming memorandum issued by the Company to the Recipient.

(d) **Board** means the Board of Directors of the Company.

(e) **Change in Control** means the following and shall be deemed to occur if any of the following events occur:

(i) Except as provided by subsection (iii) hereof, the acquisition (other than from the Company) by any person, entity or group, within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (excluding, for this purpose, the Company or its subsidiaries, or any employee benefit plan of the Company or its subsidiaries which acquires beneficial ownership of voting securities of the Company), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of forty percent (40%) or more of either the then outstanding shares of Common Stock or the combined voting power of the Company s then outstanding voting securities entitled to vote generally in the election of directors; or

(ii) Individuals who, as of the effective date of the Plan, constitute the Board (the Incumbent Board) cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company s stockholders, is or was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) shall be, for purposes of the Plan, considered as though such person were a member of the Incumbent Board; or

(iii) Approval by the stockholders of the Company of a reorganization, merger or consolidation with any other person, entity or corporation, other than:

(A) a merger or consolidation which would result in the persons holding the voting securities of the Company outstanding immediately prior thereto continuing to hold more than fifty percent (50%) of the combined voting power of the voting securities of the Company or its successor which are outstanding immediately after such merger or consolidation, or

(B) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no person acquires forty percent (40%) or more of the combined voting power of the Company s then outstanding voting securities; or

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(iv) Approval by the stockholders of the Company of a plan of complete liquidation of the Company or an agreement for the sale or other disposition by the Company of all or substantially all of the Company s assets.
Notwithstanding the foregoing, a Change in Control shall not be deemed to have occurred (1) if the person is an underwriter or underwriting syndicate that has acquired the ownership of 50% or more of the combined voting power of the Company s then outstanding voting securities solely in connection with a public offering of the Company s securities, or (2) if the person is an employee stock ownership plan or other employee benefit plan maintained by the Company that is qualified under the provisions of the Employee Retirement Income Security Act of 1974, as amended.

(f) **Code** means the Internal Revenue Code of 1986, as amended. Where the context so requires, a reference to a particular Code section shall also refer to any successor provision of the Code to such section.

(g) **Committee** means the committee appointed by the Board to administer the Plan.

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

(i) **Company** means La Jolla Pharmaceutical Company.

(j) **Dividend Equivalent** means a right granted by the Company under Section 2.07 to a holder of an Option, Stock Appreciation Right, or other Incentive Award denominated in shares of Common Stock to receive from the Company during the Applicable Dividend Period (as defined in Section 2.07) payments equivalent to the amount of dividends payable to holders of the number of shares of Common Stock underlying such Option, Stock Appreciation Right, or other Incentive Award.

(k) **Eligible Person** means any director, Employee or consultant of the Company or any Related Corporation.

(l) **Employee** means an individual who is in the employ of the Company (or any Parent or Subsidiary) subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

(m) **Exchange Act** means the Securities Exchange Act of 1934, as amended. Where the context so requires, a reference to a particular section of the Exchange Act or rule thereunder shall also refer to any successor provision to such section or rule.

(n) **Exercise Price** means the price at which the Holder may purchase shares of Common Stock underlying an Option.

(o) **Fair Market Value** of capital stock of the Company shall be determined with reference to the closing price of such stock on the day in question (or, if such day is not a trading day in the U.S. securities markets, on the nearest preceding trading day), as reported with respect to the principal market or trading system on which such stock is then traded; or, if no such closing prices are reported, the mean between the high bid and low ask prices that day on the principal market or national quotation system on which such shares are then quoted; provided, however, that when appropriate, the Administrator in determining Fair Market Value of capital stock of the Company may take into account such other factors as may be deemed appropriate under the circumstances. Notwithstanding the foregoing, the Fair Market Value of capital stock for purposes of grants of Incentive Stock Options shall be determined in compliance with applicable provisions of the Code. The Fair Market Value of rights or property other than capital stock of the Company means the fair market value thereof as determined by the Administrator on the basis of such factors as it may deem appropriate.

(p) **Holder** means the Recipient of an Award or any permitted assignee holding the Award.

(q) **Incentive Award** means any Option (other than a Nonemployee Director s Option), Restricted Stock, Stock Appreciation Right, Stock Payment, Performance Award or Dividend Equivalent granted or sold to an Eligible Person under this Plan.

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(r) **Incentive Stock Option** means an Option that qualifies as an incentive stock option under Section 422 (or any successor section) of the Code and the regulations thereunder.
(s) **Just Cause Dismissal** shall mean a termination of a Recipient s Service for any of the following reasons: (i) the Recipient violates any reasonable rule or regulation of the Company or the Recipient s superiors or the Chief Executive Officer or President of the Company that (A) results in damage to the Company or (B) after written notice to do so, the Recipient fails to correct within a reasonable time; (ii) any willful misconduct or gross negligence by the Recipient in the responsibilities assigned to him or her; (iii) any willful failure to perform his or her job; (iv) any wrongful conduct of a Recipient which has an adverse impact on the Company or which constitutes fraud, embezzlement or dishonesty; (v) the Recipient s performing services for any other person or entity which competes with the Company while he or she is providing Service, without the written approval of the Chief Executive Officer or President of the Company; or (vi) any other conduct that the Administrator determines constitutes Just Cause for Dismissal; provided, however, that if the term of concept has been defined in an employment agreement between the Company and the Recipient, then Just Cause Dismissal shall have the definition set forth in such employment agreement. The foregoing definition shall not in any way preclude or restrict the right of the Company or any Related Corporation to discharge or dismiss any Recipient or other person in the Service of the Company or any Related Corporation for any other acts or omissions but such other acts or omission shall not be deemed, for purposes of the Plan, to constitute grounds for Just Cause Dismissal.
(t) **Nonemployee Director** means a director of the Company who is not an Employee of the Company or any of its Related Corporations.
(u) **Nonemployee Director s Option** means a Nonqualified Stock Option granted to a Nonemployee Director pursuant to Article III of the Plan.
(v) **Nonqualified Stock Option** means an Option that does not qualify as an Incentive Stock Option.
(w) **Option** means a right to purchase stock of the Company granted under this Plan, and can be an Incentive Stock Option or a Nonqualified Stock Option.
(x) **Parent** means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, provided each corporation in the unbroken chain (other than the Company) owns, at the time of the determination, stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.
(y) **Performance Award** means an award, payable in cash, Common Stock or a combination thereof, which vests and becomes payable over a period of time upon attainment of performance criteria established in connection with the grant of the award.
(z) **Performance-Based Compensation** means performance-based compensation as described in Section 162(m) of the Code and the regulations thereunder. If the amount of compensation an Eligible Person will receive under any Incentive Award is not based solely on an increase in the value of Common Stock after the date of grant or award, the Administrator, in order to qualify an Incentive Award as performance-based compensation under Section 162(m) of the Code and the regulations thereunder, can condition the grant, award, vesting, or exercisability of such an award on the attainment of a preestablished, objective performance goal. For this purpose, a preestablished, objective performance goal may include one or more of the following performance criteria: (i) cash flow, (ii) earnings per share (including earnings before interest, taxes, and amortization), (iii) return on equity, (iv) total stockholder return, (v) return on capital, (vi) return on assets or net assets, (vii) income or net income, (viii) operating margin, (ix) return on operating revenue, (x) attainment of stated goals related to the Company s research and development or clinical trials programs, (xi) attainment of stated goals related to the Company s capitalization, costs, financial condition, or results of operations, and (xii) any other similar performance criteria.
(aa) **Permanent Disability** shall mean the inability of the Recipient to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of twelve months or more.
(bb) **Plan** means the La Jolla Pharmaceutical Company 2010 Equity Incentive Plan as set forth in this document.

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(cc) **Purchase Price** means the purchase price (if any) to be paid by a Recipient for Restricted Stock as determined by the Administrator (which price shall be at least equal to the minimum price required under applicable laws and regulations for the issuance of Common Stock).
(dd) **Recipient** means an Eligible Person who has received an Award hereunder.
(ee) **Related Corporation** means either a Parent or Subsidiary.
(ff) **Restricted Stock** means Common Stock that is the subject of an award made under Section 2.04 and which is nontransferable and subject to a substantial risk of forfeiture until specific conditions are met as set forth in this Plan and in any Award Document.
(gg) **Securities Act** means the Securities Act of 1933, as amended.
(hh) **Service** means the performance of services for the Company or its Related Corporations by a person in the capacity of an Employee, a director or a consultant, except to the extent otherwise specifically provided in the Award Document.
(ii) **Stock Appreciation Right** means a right granted under Section 2.05 to receive a payment that is measured with reference to the amount by which the Fair Market Value of a specified number of shares of Common Stock appreciates from a specified date, such as the date of grant of the Stock Appreciation Right, to the date of exercise.
(jj) **Stock Payment** means a payment in shares of Common Stock to replace all or any portion of the compensation (other than base salary) that would otherwise become payable to a Recipient.
(kk) **Subsidiary** means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, provided each corporation in the unbroken chain (other than the last corporation) owns, at the time of the determination, stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.
(ll) **Ten Percent Owner** means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

1.02 Purpose of the Plan.

The Board has adopted this Plan to advance the interests of the Company and its stockholders by (a) providing Eligible Persons with financial incentives to promote the success of the Company s business objectives, and to increase their proprietary interest in the success of the Company, and (b) giving the Company a means to attract and retain Eligible Persons.

1.03 Common Stock Subject to the Plan.

(a) **Number of Shares**. Subject to Section 1.05(b), the total number of shares of Common Stock initially authorized for issuance pursuant to Awards granted hereunder shall be 9,600,000, provided that the total number of shares authorized for issuance hereunder shall be automatically increased to equal 10% of the number of shares of Common Stock issued and outstanding as of the following measurement dates: January 1, 2011, May 1, 2011, September 1, 2011, January 1, 2012, May 1, 2012, September 1, 2012 and January 1, 2013, *provided, further* that in no event shall the total number of shares issued hereunder exceed 170,000,000.
(b) **Source of Shares**. The Common Stock to be issued under this Plan will be made available, at the discretion of the Administrator, either from authorized but unissued shares of Common Stock or from previously issued shares of Common Stock reacquired by the Company, including shares purchased on the open market.
(c) **Availability of Unused Shares**. Shares of Common Stock subject to unexercised portions of any Award granted under this Plan that expire, terminate or are cancelled, and shares of Common Stock issued pursuant to an Award under this Plan that are reacquired by the Company pursuant to the terms of the Award under which such shares were issued, will again become available for the grant of further Awards under this Plan.

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(d) **Grant Limits**. Notwithstanding any other provision of this Plan, no Eligible Person shall be granted Awards with respect to more than 20 million shares of Common Stock in the aggregate in any one calendar year; provided, however, that this limitation shall not apply if it is not required in order for the compensation attributable to Awards hereunder to qualify as Performance-Based Compensation.

1.04 Administration of the Plan.

(a) **The Administrator**. The Plan will be administered by a Committee, which will consist of two or more members of the Board each of whom must be an independent director as defined by applicable listing standards. Notwithstanding the foregoing or any provision of the Plan to the contrary, the Board may, in lieu of the Committee, exercise any authority granted to the Committee pursuant to the provisions of the Plan. To obtain the benefits of Rule 16b-3, Incentive Awards must be granted by the entire Board or a Committee comprised entirely of non-employee directors as such term is defined in Rule 16b-3. In addition, if Incentive Awards are to be made to persons subject to Section 162(m) of the Code and such Awards are intended to constitute Performance-Based Compensation, then such Incentive Awards must be granted by a Committee comprised entirely of outside directors as such term is defined in the regulations under Section 162(m) of the Code.

(b) **Authority of the Administrator**. The Administrator has authority in its discretion to select the Eligible Persons to whom, and the time or times at which, Incentive Awards shall be granted or sold, the nature of each Incentive Award, the number of shares of Common Stock or the number of rights that make up or underlie each Incentive Award, the period for the exercise of each Incentive Award, the performance criteria (which need not be identical) utilized to measure the value of Performance Awards, and such other terms and conditions applicable to each individual Incentive Award as the Administrator shall determine. In addition, the Administrator shall have all other powers granted to it in the Plan.

(c) **Interpretation**. Subject to the express provisions of the Plan, the Administrator has the authority to interpret the Plan and any Award Documents, to determine the terms and conditions of Incentive Awards and to make all other determinations necessary or advisable for the administration of the Plan. All interpretations, determinations and actions by the Administrator shall be final, conclusive and binding upon all parties. The Administrator has authority to prescribe, amend and rescind rules and regulations relating to the Plan.

(d) **No Liability**. The Administrator and its delegates shall be indemnified by the Company to the fullest extent provided for in the Company s certificate of incorporation and bylaws.

1.05 Other Provisions.

(a) **Documentation**. Each Award granted under the Plan shall be evidenced by an Award Document which shall set forth the terms and conditions applicable to the Award as the Administrator may in its discretion determine consistent with the Plan, provided that the Administrator shall exercise no discretion with respect to Nonemployee Directors Options, which shall reflect only the terms of the Award as set forth in Article III and certain administrative matters dictated by the Plan. Award Documents shall comply with and be subject to the terms and conditions of the Plan. In case of any conflict between the Plan and any Award Document, the Plan shall control. Various Award Documents covering the same types of Awards may but need not be identical.

(b) **Adjustment Provisions**. Should any change be made to the outstanding shares of Common Stock by reason of a merger, consolidation, reorganization, recapitalization, reclassification, combination of shares, stock dividend, stock split, reverse stock split, exchange of shares or other change affecting the outstanding Common Stock without the Company s receipt of consideration, an appropriate and proportionate adjustment may be made in (i) the maximum number and kind of shares subject to the Plan as provided in Section 1.03, (ii) the number and kind of shares or other securities subject to then outstanding Awards, (iii) the price for each share or other unit of any other securities subject to then outstanding Awards and (iv) the number and kind of shares or other securities subject to the Nonemployee Director Options described in Section 3.01 and 3.02. In addition, the per person limitation set forth in Section 1.03(d) shall also be subject to adjustment as provided in this Section 1.05(b), but only to the extent such adjustment would not affect the status of compensation attributable to Awards hereunder as Performance-Based Compensation. Such adjustments are to be effected in a manner that shall preclude the enlargement or dilution of rights and benefits under the Awards. In no event shall any adjustments be made in connection with the conversion of preferred stock or warrants into shares of Common Stock. No fractional interests will be issued under the Plan resulting from any such

adjustments.

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(c) **Continuation of Service**. Nothing contained in this Plan (or in Award Documents or in any other documents related to this Plan or to Awards granted hereunder) shall confer upon any Eligible Person or Recipient any right to continue in the Service of the Company or its Related Corporations or constitute any contract or agreement of employment or engagement, or interfere in any way with the right of the Company or its Related Corporations to reduce such person s compensation or other benefits or to terminate the Service of such Eligible Person or Recipient, with or without cause. Except as expressly provided in the Plan or in any Award Document, the Company shall have the right to deal with each Recipient in the same manner as if the Plan and any Award Document did not exist, including, without limitation, with respect to all matters related to the hiring, discharge, compensation and conditions of the employment or engagement of the Recipient.

(d) **Restrictions**. All Awards granted under the Plan shall be subject to the requirement that, if at any time the Company shall determine, in its discretion, that the listing, registration or qualification of the shares subject to Awards granted under the Plan upon any securities exchange or under any state or federal law, or the consent or approval of any government regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such an Award or the issuance, if any, or purchase of shares in connection therewith, such Award may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company.

(e) **Additional Conditions**. Any Incentive Award may also be subject to such other provisions (whether or not applicable to any other Award or Recipient) as the Administrator determines appropriate.

(f) **Tax Withholding**. The Company s obligation to deliver shares of Common Stock under the Plan shall be subject to the satisfaction of all applicable income and employment tax withholding requirements.

(g) **Privileges of Stock Ownership**. Except as otherwise set forth herein, a Holder shall have no rights as a stockholder of the Company with respect to any shares issuable or issued in connection with the Award until the date of the receipt by the Company of all amounts payable in connection with exercise of the Award, performance by the Holder of all obligations thereunder, and the Company issues a stock certificate representing the appropriate number of shares. Status as an Eligible Person shall not be construed as a commitment that any Incentive Award will be granted under this Plan to an Eligible Person or to Eligible Persons generally. No person shall have any right, title or interest in any fund or in any specific asset (including shares of capital stock) of the Company by reason of any Award granted hereunder. Neither this Plan (or any documents related hereto) nor any action taken pursuant hereto shall be construed to create a trust of any kind or a fiduciary relationship between the Company and any person. To the extent that any person acquires a right to receive an Award hereunder, such right shall be no greater than the right of any unsecured general creditor of the Company.

(h) **Effective Date and Duration of Plan; Amendment and Termination of Plan**. The Plan shall become effective upon its approval by the Company s stockholders. Unless terminated by the Board prior to such time, the Plan shall continue in effect until the 10th anniversary of the date the Plan was adopted, whereupon the Plan shall terminate automatically. The Board may, insofar as permitted by law, from time to time suspend or terminate the Plan. No Awards may be granted during any suspension of this Plan or after its termination. Any Award outstanding after the termination of the Plan shall remain in effect until such Award has been exercised or expires in accordance with its terms and the terms of the Plan. The Board may, insofar as permitted by law, from time to time revise or amend the Plan in any respect except that no such amendment shall adversely affect any rights or obligations of the Holder under any outstanding Award previously granted under the Plan without the consent of the Holder. Amendments shall be subject to stockholder approval to the extent such approval is required to comply with the listing requirements imposed by any exchange or trading system upon which the Company s securities trade or applicable law.

(i) **Amendment of Awards**. The Administrator may make any modifications in the terms and conditions of an outstanding Incentive Award, provided that (i) the resultant provisions are permissible under the Plan and (ii) the consent of the Holder shall be obtained if the amendment will adversely affect his or her rights under the Award. However, the outstanding Options may not be repriced without stockholder approval.

(j) **Nonassignability**. No Incentive Stock Option granted under the Plan shall be assignable or transferable except by will or by the laws of descent and distribution. No other Awards granted under the Plan shall be assignable or transferable except (i) by will or by the laws of descent and distribution, (ii) to one or more of the Recipient s family

members (as such term is defined in the instructions to Form S-8) or (iii) upon dissolution of marriage pursuant to a qualified domestic relations order. During the lifetime of a Recipient, an Award granted to him or her shall be exercisable only by the Holder or his or her guardian or legal representative.

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(k) **Other Compensation Plans**. The adoption of the Plan shall not affect any other stock option, incentive or other compensation plans in effect for the Company, and the existence of the Plan shall not preclude the Company from establishing any other forms of incentive or other compensation for Eligible Persons.
(l) **Plan Binding on Successors**. The Plan shall be binding upon the successors and assigns of the Company.
(m) **Participation by Foreign Employees**. Notwithstanding anything to the contrary herein, the Administrator may, in order to fulfill the purposes of the Plan, structure grants of Incentive Awards to Recipients who are foreign nationals or employed outside of the United States to recognize differences in applicable law, tax policy or local custom.

ARTICLE II
INCENTIVE AWARDS

2.01 Grants of Incentive Awards.
Subject to the express provisions of this Plan, the Administrator may from time to time in its discretion select from the class of Eligible Persons those individuals to whom Incentive Awards may be granted pursuant to its authority as set forth in Section 1.04(b). Each Incentive Award shall be subject to the terms and conditions of the Plan and such other terms and conditions established by the Administrator as are not inconsistent with the provisions of the Plan.
2.02 Options.
(a) **Nature of Options**. The Administrator may grant Incentive Stock Options and Nonqualified Stock Options under the Plan. However, Incentive Stock Options may only be granted to Employees of the Company or its Related Corporations.
(b) **Option Price**. The Exercise Price per share for each Option (other than a Nonemployee Director s Option) shall be determined by the Administrator at the date such Option is granted and shall not be less than the Fair Market Value of a share of Common Stock (or other securities, as applicable) on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the option price of such Incentive Stock Option shall not be less than 110% of the Fair Market Value of a share of Common Stock (or other securities, as applicable). Notwithstanding the foregoing, however, in no event shall the Exercise Price be less than the par value of the shares of Common Stock.
(c) **Option Period and Vesting**. Options (other than Nonemployee Directors Options) hereunder shall vest and may be exercised as determined by the Administrator, except that exercise of such Options after termination of the Recipient s Service shall be subject to Section 2.02(g). Each Option granted hereunder (other than a Nonemployee Directors Option) and all rights or obligations thereunder shall expire on such date as shall be determined by the Administrator, but not later than ten years after the date the Option is granted and shall be subject to earlier termination as herein provided.
(d) **Exercise of Options**. Except as otherwise provided herein, an Option may become exercisable, in whole or in part, on the date or dates specified by the Administrator (or, in the case of Nonemployee Directors Options, the Plan) at the time the Option is granted and thereafter shall remain exercisable until the expiration or earlier termination of the Option. No Option shall be exercisable except in respect of whole shares, and fractional share interests shall be disregarded. An Option shall be deemed to be exercised when the Secretary of the Company receives written notice of such exercise from the Holder, together with payment of the Exercise Price made in accordance with Section 2.02(e). Upon proper exercise, the Company shall deliver to the person entitled to exercise the Option or his or her designee a certificate or certificates for the shares of stock for which the Option is exercised.

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(e) **Form of Exercise Price**. The aggregate Exercise Price shall be immediately due and payable upon the exercise of an Option and shall, subject to the provisions of the Award Document, be payable in one or more of the following: (i) by delivery of legal tender of the United States, (ii) by delivery of shares of Common Stock held for the requisite period, if any, necessary to avoid a charge to the Company s earnings for financial reporting purposes, and/or (iii) through a sale and remittance procedure pursuant to which the Holder shall concurrently provide irrevocable instructions to (A) a brokerage firm to effect the immediate sale of the purchased shares and remit to the Company, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate Exercise Price payable for the purchased shares plus all applicable income and employment taxes required to be withheld by the Company by reason of such exercise and (B) the Company to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale. Any shares of Company stock or other non-cash consideration assigned and delivered to the Company in payment or partial payment of the Exercise Price will be valued at Fair Market Value on the exercise date.

(f) **Limitation on Exercise of Incentive Stock Options**. The aggregate Fair Market Value (determined as of the respective date or dates of grant) of the Common Stock for which one or more Options granted to any Recipient under the Plan (or any other option plan of the Company or any of its subsidiaries or affiliates) may for the first time become exercisable as Incentive Stock Options under the Code during any one calendar year shall not exceed $100,000. Any Options granted as Incentive Stock Options pursuant to the Plan in excess of such limitation shall be treated as Nonqualified Stock Options. Options are to be taken into account in the order in which they were awarded.

(g) **Termination of Service**.

(i) **Termination for Cause**. Except as otherwise provided by the Administrator, in the event of a Just Cause Dismissal of a Recipient, all of the outstanding Options granted to such Recipient shall expire and become unexercisable as of the date of such Just Cause Dismissal.

(ii) **Termination Other Than for Cause**. Subject to subsection (i) above and except as otherwise provided by the Administrator, in the event of a Recipient s termination of Service from the Company or its Related Corporations due to:

(A) any reason other than Just Cause Dismissal, death, or Permanent Disability, or normal retirement, the outstanding Options granted to such Recipient, whether or not vested, shall expire and become unexercisable as of the earlier of (1) the date such Options would expire in accordance with their terms if the Recipient had remained in Service or (2) three calendar months after the date the Recipient s Service terminated in the case of Incentive Stock Options, or six months after the Recipient s Service terminated, in the case of Nonqualified Stock Options.

(B) death or Permanent Disability, the outstanding Options granted to such Recipient, whether or not vested, shall expire and become unexercisable as of the earlier of (1) the date such Options would expire in accordance with their terms if the Recipient had remained in Service or twelve months after the date of termination.

(C) normal retirement, the outstanding Options granted to such Recipient, whether or not vested, shall expire and become unexercisable as of the earlier of (A) the date such Options expire in accordance with their terms or (B) twenty-four months after the date of retirement.

(iii) **Termination of Director Service**. In the event that a Director shall cease to be a Nonemployee Director, all outstanding Options granted to such Recipient shall be exercisable, to the extent already vested and exercisable on the date such Recipient ceases to be a Nonemployee Director and regardless of the reason the Recipient ceases to be a Nonemployee Director until the fifth anniversary of the date such Director ceases to be a Nonemployee Director; provided that the Administrator may extend such post-termination period to up to the expiration date of the Option.

2.03 Performance Awards.

(a) **Grant of Performance Award**. The Administrator may grant Performance Awards under the Plan and shall determine the performance criteria (which need not be identical and may be established on an individual or group basis) governing Performance Awards, the terms thereof, and the form and timing of payment of Performance Awards.

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(b) **Payment of Award; Limitation**. Upon satisfaction of the conditions applicable to a Performance Award, payment will be made to the Holder in cash or in shares of Common Stock valued at Fair Market Value or a combination of Common Stock and cash, as the Administrator in its discretion may determine. Notwithstanding any other provision of this Plan, no Eligible Person shall be paid Performance Awards with a value in excess of $1,000,000 in any one calendar year; provided, however, that this limitation shall not apply if it is not required in order for the compensation attributable to the Performance Award hereunder to qualify as Performance-Based Compensation.
(c) **Expiration of Performance Award**. If any Recipient s Service is terminated for any reason other than normal retirement, death or Permanent Disability prior to the time a Performance Award or any portion thereof becomes payable, all of the Holder s rights under the unpaid portion of the Performance Award shall expire unless otherwise determined by the Administrator. In the event of termination of Service by reason of death, Permanent Disability or normal retirement, the Administrator, in its discretion, may determine what portions, if any, of the Performance Award should be paid to the Holder.
2.04 Restricted Stock.
(a) **Award of Restricted Stock**. The Administrator may issue Restricted Stock under the Plan. The Administrator shall determine the Purchase Price (if any), the forms of payment of the Purchase Price (which shall be either cash or past services), the restrictions upon the Restricted Stock, and when such restrictions shall lapse (provided that the restriction period shall be at least one year for performance-based grants and three years for non-performance-based grants).
(b) **Requirements of Restricted Stock**. All shares of Restricted Stock granted or sold pursuant to the Plan will be subject to the following conditions:
(i) **No Transfer**. The shares of Restricted Stock may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, alienated or encumbered until the restrictions are removed or expire;
(ii) **Certificates**. The Administrator may require that the certificates representing shares of Restricted Stock granted or sold to a Holder pursuant to the Plan remain in the physical custody of an escrow holder or the Company until all restrictions are removed or expire;
(iii) **Restrictive Legends**. Each certificate representing shares of Restricted Stock granted or sold to a Holder pursuant to the Plan will bear such legend or legends making reference to the restrictions imposed upon such Restricted Stock as the Administrator in its discretion deems necessary or appropriate to enforce such restrictions; and
(iv) **Other Restrictions**. The Administrator may impose such other conditions on Restricted Stock as the Administrator may deem advisable including, without limitation, restrictions under the Securities Act, under the Exchange Act, under the requirements of any stock exchange or upon which such Restricted Stock or shares of the same class are then listed and under any blue sky or other securities laws applicable to such shares.
(c) **Rights of Holder**. Subject to the provisions of Section 2.04(b) and any additional restrictions imposed by the Administrator, the Holder will have all rights of a stockholder with respect to the Restricted Stock, including the right to vote the shares and receive all dividends and other distributions paid or made with respect thereto.
(d) **Termination of Service**. Unless the Administrator in its discretion determines otherwise, upon a Recipient s termination of Service for any reason, all of the Restricted Stock issued to the Recipient that remains subject to restrictions imposed pursuant to the Plan on the date of such termination of Service may be repurchased by the Company at the Purchase Price (if any).
(e) **Adjustments**. Any new, substituted or additional securities or other property which Holder may have the right to receive with respect to the Holder s shares of Restricted Stock by reason of a merger, consolidation, reorganization, recapitalization, reclassification, combination of shares, stock dividend, stock split, reverse stock split, exchange of shares or other change affecting the outstanding Common Stock without the Company s receipt of consideration shall be issued subject to the same vesting requirements applicable to the Holder s shares of Restricted Stock and shall be treated as if they had been acquired on the same date as such shares.

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2.05 Stock Appreciation Rights.

(a) **Granting of Stock Appreciation Rights**. The Administrator may grant Stock Appreciation Rights, either related or unrelated to Options, under the Plan.

(b) **Stock Appreciation Rights Related to Options**.

(i) A Stock Appreciation Right granted in connection with an Option granted under this Plan will entitle the holder of the related Option, upon exercise of the Stock Appreciation Right, to surrender such Option, or any portion thereof to the extent unexercised, with respect to the number of shares as to which such Stock Appreciation Right is exercised, and to receive payment of an amount computed pursuant to Section 2.05(b)(iii). Such Option will, to the extent surrendered, then cease to be exercisable.

(ii) A Stock Appreciation Right granted in connection with an Option hereunder will be exercisable at such time or times, and only to the extent that, the related Option is exercisable, and will not be transferable except to the extent that such related Option may be transferable.

(iii) Upon the exercise of a Stock Appreciation Right related to an Option, the Holder will be entitled to receive payment of an amount determined by multiplying: (i) the difference obtained by subtracting the Exercise Price of a share of Common Stock specified in the related Option from the Fair Market Value of a share of Common Stock on the date of exercise of such Stock Appreciation Right (or as of such other date or as of the occurrence of such event as may have been specified in the instrument evidencing the grant of the Stock Appreciation Right), by (ii) the number of shares as to which such Stock Appreciation Right is exercised.

(c) **Stock Appreciation Rights Unrelated to Options**. The Administrator may grant Stock Appreciation Rights unrelated to Options to Eligible Persons. Section 2.05(b)(iii) shall be used to determine the amount payable at exercise under such Stock Appreciation Right, except that in lieu of the Exercise Price specified in the related Option the initial base amount specified in the Incentive Award shall be used.

(d) **Limits**. Notwithstanding the foregoing, the Administrator, in its discretion, may place a dollar limitation on the maximum amount that will be payable upon the exercise of a Stock Appreciation Right under the Plan.

(e) **Payments**. Payment of the amount determined under the foregoing provisions may be made solely in whole shares of Common Stock valued at their Fair Market Value on the date of exercise of the Stock Appreciation Right, in cash or in a combination of cash and shares of Common Stock as the Administrator deems advisable. If permitted by the Administrator, the Holder may elect to receive cash in full or partial settlement of a Stock Appreciation Right. If the Administrator decides to make full payment in shares of Common Stock, and the amount payable results in a fractional share, payment for the fractional share will be made in cash.

(f) **Termination of Service**. Section 2.02(g) will govern the treatment of Stock Appreciation Rights upon the termination of a Recipient s Service.

2.06 Stock Payments.

The Administrator may issue Stock Payments under the Plan for all or any portion of the compensation (other than base salary) or other payment that would otherwise become payable by the Company to the Eligible Person in cash.

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2.07 Dividend Equivalents.

The Administrator may grant Dividend Equivalents to any Recipient who has received an Option, Stock Appreciation Right, or other Incentive Award denominated in shares of Common Stock. Such Dividend Equivalents shall be effective and shall entitle the Recipients thereof to payments during the Applicable Dividend Period, which shall be (a) the period between the date the Dividend Equivalent is granted and the date the related Option, Stock Appreciation Right, or other Incentive Award is exercised, terminates, or is converted to Common Stock, or (b) such other time as the Administrator may specify in the Award Document. Dividend Equivalents may be paid in cash, Common Stock, or other Incentive Awards; the amount of Dividend Equivalents paid other than in cash shall be determined by the Administrator by application of such formula as the Administrator may deem appropriate to translate the cash value of dividends paid to the alternative form of payment of the Dividend Equivalent. Dividend Equivalents shall be computed as of each dividend record date and shall be payable to Recipients thereof at such time as the Administrator may determine. Notwithstanding the foregoing, if it is intended that an Incentive Award qualify as Performance-Based Compensation and the amount of the compensation the Eligible Person could receive under the award is based solely on an increase in value of the underlying stock after the date of grant or award (i.e., the grant, vesting, or exercisability of the award is not conditioned upon the attainment of a preestablished, objective performance goal described in Section 1.01(x)), then the payment of any Dividend Equivalents related to the Award shall not be made contingent on the exercise of the Award.

ARTICLE III
NONEMPLOYEE DIRECTOR S OPTIONS

3.01 Grants of Initial Awards.

Each Nonemployee Director shall, upon first becoming a Nonemployee Director, receive a one-time grant of an Award on such terms as may be determined from time to time by the Administrator. Awards granted under this Section 3.01 vest in accordance with Section 3.04(a) hereof and are Initial Awards for purposes hereof.

3.02 Grants of Additional Awards.

On the date of the annual meeting of stockholders of the Company next following a Nonemployee Director becoming such, and on the date of each subsequent annual meeting of stockholders of the Company, in each case if the Nonemployee Director has served as a director since his or her election or appointment and has been re-elected as a director at such annual meeting or is continuing as a director without being re-elected due to the classification of the Board, such Nonemployee Director shall automatically receive an Award on such terms as may be determined from time to time by the Administrator Awards granted under this Section 3.02 vest in accordance with Section 3.04(b) hereof and are Additional Awards for purposes hereof. Notwithstanding the foregoing to the contrary, the first grant of Additional Awards shall be made to eligible Nonemployee Directors on the date of the 2010 annual meeting of stockholders.

3.03 Exercise Price.

The Exercise Price for Nonemployee Directors Options shall be payable as set forth in Section 2.02(e).

3.04 Vesting and Exercise.

(a) Initial Awards shall vest and become exercisable with respect to 25% of the underlying shares on the grant date and with respect to an additional 25% of the underlying shares on the dates of each of the first three anniversaries of the date of grant provided the Recipient has remained a Nonemployee Director for the entire period from the date of grant to such date.

(b) Additional Awards shall vest and become exercisable upon the earlier of (i) the first anniversary of the grant date or (ii) immediately prior to the annual meeting of stockholders of the Company next following the grant date, provided the Recipient has remained a Nonemployee Director for the entire period from the date of grant to such earlier date.

(c) Notwithstanding the foregoing, however, Initial Awards and Additional Awards that have not vested and become exercisable at the time the Recipient ceases to be a Nonemployee Director shall expire.

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3.05 Term of Options and Effect of Termination.

No Nonemployee Directors Option shall be exercisable after the expiration of ten years from the date of its grant. In the event that the Recipient of a Nonemployee Director s Option shall cease to be a Nonemployee Director, all outstanding Nonemployee Directors Options granted to such Recipient shall be exercisable, to the extent already vested and exercisable on the date such Recipient ceases to be a Nonemployee Director and regardless of the reason the Recipient ceases to be a Nonemployee Director until the fifth anniversary of the date such Director ceases to be a Nonemployee Director; provided that the Administrator may extend such post-termination period to the expiration date of the Option.

ARTICLE IV
RECAPITALIZATIONS AND REORGANIZATIONS

4.01 Corporate Transactions.

(a) **Options**. Unless the Administrator provides otherwise in the Award Document or another written agreement, in the event of a Change in Control, the Administrator shall provide that all Options (other than Non-employee Director Options) either (i) vest in full immediately preceding the Change in Control and terminate upon the Change in Control, (ii) are assumed or continued in effect in connection with the Change in Control transaction, (iii) are cashed out for an amount equal to the deal consideration per share less the Exercise Price or (iv) are substituted for similar awards of the surviving corporation. Each Option that is assumed or otherwise continued in effect in connection with a Change in Control shall be appropriately adjusted, immediately after such Change in Control, to apply to the number and class of securities which would have been issuable to Recipient in consummation of such Change in Control had the Recipient been exercised immediately prior to such Change in Control. Appropriate adjustments to reflect such Change in Control shall also be made to (A) the Exercise Price payable per share under each outstanding Option, provided the aggregate Exercise Price payable for such securities shall remain the same, (B) the maximum number and/or class of securities available for issuance over the remaining term of the Plan, (C) the maximum number and/or class of securities for which any one person may be granted options and direct stock issuances pursuant to the Plan per calendar year and (D) the number and/or class of securities subject to Nonemployee Director s Options. To the extent the holders of Common Stock receive cash consideration in whole or part for their Common Stock in consummation of the Change in Control, the successor corporation may, in connection with the assumption of the outstanding Options, substitute one or more shares of its own common stock with a fair market value equivalent to the cash consideration paid per share of Common Stock in such Change in Control transaction.

(b) **Nonemployee Directors Options**. Immediately prior to a Change of Control, all outstanding Nonemployee Directors Options shall vest in full.

(c) **Other Incentive Awards**. The Administrator may specify the effect that a Change in Control has on an Incentive Award (other than an Option) outstanding at the time such a Change in Control occurs either in the applicable Award Document or by subsequent modification of the Award.

4.02 No Restraint.

The grant of an Option pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structure or to merge or to consolidate or to dissolve, liquidate or sell, or transfer all of any part of its business or assets.

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Form of Option Grant

Notice of Grant of Stock Options and Option Agreement

La Jolla Pharmaceutical Co.
ID: 33-0361285
4365 Executive Drive, Suite 300
San Diego, CA 92121
(858) 452-6600

Name:

Option Number: _____

Address:

Plan: 2010

ID: _____

Effective _____, you have been granted a(n) Incentive Stock Option to buy _____ shares of La Jolla Pharmaceutical Co. (the Company) stock at $_____ per share.
The total option price of the shares granted is $_____.
Shares in each period will become fully vested on the date shown.

Shares	Vest Type	Full Vest	Expiration

By your signature and the Company s signature below, you and the Company agree that these options are granted under and governed by the terms and conditions of the Company s Stock Option Plan as amended and the Option Agreement, all of which are attached and made a part of this document.

La Jolla Pharmaceutical Company Date

Name Date

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APPENDIX D
1995 Employee Stock Purchase Plan
(as proposed to be amended)

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LA JOLLA PHARMACEUTICAL COMPANY
1995 EMPLOYEE STOCK PURCHASE PLAN
(as amended and restated)

The following constitutes the provisions of the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan (the Plan).

1. Purpose.

The purpose of the Plan is to maintain competitive equity compensation programs and to provide employees of La Jolla Pharmaceutical Company (the Company) with an opportunity and incentive to acquire a proprietary interest in the Company through the purchase of the Company s Common Stock, thereby more closely aligning the interests of the Company s employees and stockholders. It is the intention of the Company to have the Plan qualify as an Employee Stock Purchase Plan under Section 423 of the Internal Revenue Code of 1986, as amended (Section 423). Accordingly, the provisions of the Plan shall be construed to extend and limit participation consistent with the requirements of Section 423.

2. Definitions.

Capitalized terms used in this Plan and not otherwise defined have the meanings set forth below.

Administrator means the Committee, or the Board if the Board asserts administrative authority over the Plan pursuant to Section 13.

Board means the Board of Directors of the Company.

Code means the Internal Revenue Code of 1986, as amended.

Committee means a committee of members of the Board meeting the qualifications described in Section 13 and appointed by the Board to administer the Plan.

Common Stock shall mean the Common Stock of the Company.

Compensation means base salary or hourly compensation and any cash bonus paid to a participant.

Eligible Employee means any employee of the Company whose customary employment is for more than five months per calendar year and for more than 20 hours per week. For purposes of the Plan, the employment relationship shall be treated as continuing while the individual is on sick leave or other leave of absence approved by the Company, except that when the period of leave exceeds 90 days and the individual s right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the 91st day of such leave.

Enrollment Date means the first day of each Offering Period.

Exchange Act means the Securities Exchange Act of 1934, as amended.

Exercise Date means the last day of each Purchase Period.

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Fair Market Value of the Common Stock as of the time of any determination thereof means the value of Common Stock determined as follows:

(a) If the Common Stock is listed on any established stock exchange or trades on the Nasdaq National Market, its Fair Market Value shall be the most recent closing sales price for such stock (or the closing bid, if no sales were reported), as quoted on such exchange or system (or the exchange or system with the greatest volume of trading in the Common Stock) as of the time of such determination as reported in the Wall Street Journal or such other source as the Administrator deems reliable; or

(b) If the Common Stock is not listed on any established stock exchange or traded on the Nasdaq National Market its Fair Market Value shall be the mean between the most recent closing high and low asked prices for the Common Stock as of the time of such determination, as reported in the Wall Street Journal or such other source as the Administrator deems reliable; or

(c) In the absence of an established market for the Common Stock, the Fair Market Value of the Common Stock shall be determined in good faith by the Administrator.

Offering Period means (i) the period of twenty-three (23) months commencing on August 1, 1996 and terminating on June 30, twenty-three (23) months later; (ii) each period of twenty-four (24) months commencing on January 1, 1997 and each January 1 thereafter for the duration of the Plan and terminating on the December 31 twenty-four (24) months later; (iii) each period of twenty-four (24) months commencing on July 1,1997 and each July 1 thereafter for the duration of the Plan and terminating on the June 30 twenty-four (24) months later; (iv) each period of twenty-four (24) months commencing on October 1, 2000 and each October 1 thereafter for the duration of the Plan and terminating on the September 30 twenty-four (24) months later; and (v) each period of twenty-four (24) months commencing on April 1, 2001 and each April 1 thereafter for the duration of the Plan and terminating on the March 31 twenty-four (24) months later. The Administrator shall have the power to change the duration of Offering Periods without stockholder approval as set forth in Section 12 or if such change is announced at least fifteen (15) days prior to the scheduled beginning of the first Offering Period to be affected.

Option means the option granted to each participant pursuant to Section 4 upon enrollment in an Offering Period.

Periodic Exercise Limit has the meaning set forth in Section 4(a).

Plan Account means an account maintained by the Company for each participant in the Plan, to which are credited the payroll deductions made for such participant pursuant to Section 5 and from which are debited amounts paid for the purchase of shares upon exercise of such participant s Option pursuant to Section 6.

Purchase Price as of any Exercise Date means an amount equal to 85% of the Fair Market Value of a share of Common Stock as of the close of business on the Exercise Date or the opening of business on the Enrollment Date for the Offering Period in which such Exercise Date occurs, whichever is lower.

Purchase Period means (i) the period of five (5) months commencing on August 1,1996 and ending on December 31, 1996; (ii) with respect to the Offering Periods beginning on January and July 1, 1997, January and July 1, 1998, and January 1,1999, each period of six (6) months within any such Offering Period, commencing January 1, 1997 and each July 1 and January 1 thereafter, and ending on the December 31 or June 30 following such commencement date; (iii) with respect to the Offering Period beginning on July 1, 1999, the period of six (6) months commencing July 1,1999 and ending on December 31, 1999, the period of six (6) months commencing on January 1, 2000 and ending on June 30, 2000, the period of six (6) months commencing on July 1, 2000 and ending on December 31, 2000, the period of three (3) months commencing on January 1, 2001 and ending on March 31, 2001, and the period of three (3) months commencing on April 1, 2001 and ending on June 30, 2001; (iv) with respect to the Offering Period beginning on January 1, 2000, the period of six (6) months

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commencing on January 1, 2000 and ending on June 30, 2000, the period of six (6) months commencing on July 1, 2000 and ending on December 31, 2000, and each period of three (3) months commencing on January 1, 2001 and each April 1, July 1, and October 1 thereafter, and ending on the March 31, June 30, September 30 and December 31 following such commencement date; (v) with respect to the Offering Period beginning on July 1, 2000, the period of six (6) months commencing on July 1, 2000 and ending on December 31, 2000, and each period of three (3) months commencing on January 1, 2001 and each April 1, July 1, and October 1 thereafter, and ending on the March 31, June 3 0, September 3 0 and December 31 following such commencement date; and (vi) for any Offering Period commencing on or after October 1, 2000, each period of three (3) months within the Offering Period commencing on October 1, 2000 and each January 1, April 1, July 1, and October 1 thereafter, and ending on the December 31, March 31, June 30, and September 30 following such commencement date.

Reserves means the number of shares of Common Stock covered by each Option that has not yet been exercised and the number of shares of Common Stock that have been authorized for issuance under the Plan, but not yet placed under any Option.

Subsidiary has the meaning as set forth under § 424(f) of the Code.

Trading Day means a day on which national stock exchanges and the National Association of Securities Dealers Automated Quotation System are open for trading.

3. Offering Periods and Participation.

The Plan shall be implemented through a series of consecutive and overlapping Offering Periods. An Eligible Employee may enroll in an Offering Period by delivering a subscription agreement in the form of Exhibit A hereto to the Company s payroll office at least five (5) business days prior to the Enrollment Date for that Offering Period. Eligible Employees shall participate in only one Offering Period at a time, and a subscription agreement in effect for a Plan participant for a particular Offering Period shall continue in effect for subsequent Offering Periods if the participant remains an Eligible Employee and has not withdrawn pursuant to Section 8.

4. Options.

(a) **Grants**. On the Enrollment Date for each Offering Period, each Eligible Employee participating in such Offering Period shall be granted an Option to purchase (i) on each Exercise Date for any six-month Purchase Period in such Offering Period (at the applicable Purchase Price) up to that number of shares of Common Stock determined by dividing $12,500 by the Fair Market Value of a share of Common Stock as of the opening of business on the Enrollment Date, and (ii) on each Exercise Date for any three-month Purchase Period in such Offering Period (at the applicable Purchase Price) up to that number of shares of Common Stock determined by dividing $6,250 by the Fair Market Value of a share of Common Stock as of the opening of business on the Enrollment Date (such number of shares being the Periodic Exercise Limit). The Option shall expire immediately after the last Exercise Date of the Offering Period.

(b) **Grant Limitations**. Any provisions of the Plan to the contrary notwithstanding, no participant shall be granted an Option under the Plan:

(i) if, immediately after the grant, such participant (or any other person whose stock would be attributed to such participant pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase 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 Subsidiary; or

(ii) which permits such participant s rights to purchase stock under all employee stock purchase plans of the Company and its Subsidiaries to accrue at a rate that exceeds Twenty-Five Thousand Dollars ($25,000) worth of stock (determined at the Fair Market Value of the shares at the time such Option is granted) in any calendar year.

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(c) Rights in Respect of Underlying Stock. The participant will have no interest or voting right in shares covered by an Option until such Option has been exercised.

5. Payroll Deductions.

(a) Participant Designations. The subscription agreement applicable to an Offering Period shall designate payroll deductions to be made on each payday during the Offering Period as a whole number percentage not exceeding ten percent (10%) of such Eligible Employee s Compensation for the pay period preceding such payday, provided that the aggregate of such payroll deductions during the Offering Period shall not exceed ten percent (10%) of the participant s Compensation during said Offering Period.

(b) Plan Account Balances. The Company shall make payroll deductions as specified in each participant s subscription agreement on each payday during the Offering Period and credit such payroll deductions to such participant s Plan Account. A participant may not make any additional payments into such Plan Account. No interest will accrue on any payroll deductions. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

(c) Participant Changes. A participant may discontinue his or her participation in the Plan as provided in Section 8, or may increase or decrease (subject to such limits as the Administrator may impose) the rate of his or her payroll deductions during any Purchase Period by filing with the Company a new subscription agreement authorizing such a change in the payroll deduction rate. The change in rate shall be effective with the first full payroll period following five (5) business days after the Company s receipt of the new subscription agreement, unless the Company elects to process a given change in participation more quickly.

(d) Decreases. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 4(b) herein, a participant s payroll deductions may be decreased to 0% at such time during any Purchase Period that is scheduled to end during a calendar year (the Current Purchase Period). Payroll deductions shall recommence at the rate provided in such participant s subscription agreement at the beginning of the first Purchase Period that is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 8.

(e) Tax Obligations. At the time of each exercise of a participant s Option, and at the time any Common Stock issued under the Plan to a participant is disposed of, the participant must adequately provide for the Company s federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the Option or the disposition of the Common Stock. At any time, the Company may, but will not be obligated to, withhold from the participant s compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefit attributable to sale or early disposition of Common Stock by the participant.

(f) Statements of Account. The Company shall maintain each participant s Plan Account and shall give each Plan participant a statement of account at least annually. Such statements will set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any, for the period covered.

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6. Exercise of Options.

(a) Automatic Exercise on Exercise Dates. Unless a participant withdraws as provided in Section 8, his or her Option for the purchase of shares will be exercised automatically on each Exercise Date within the Offering Period in which such participant is enrolled for the maximum number of shares of Common Stock, including fractional shares, as can then be purchased at the applicable Purchase Price with the payroll deductions accumulated in such participant s Plan Account and not yet applied to the purchase of shares under the Plan, subject to the Periodic Exercise Limit. During a participant s lifetime, a participant s Options to purchase shares hereunder are exercisable only by the participant.

(b) Delivery of Shares. As promptly as practicable after each Exercise Date on which a purchase of shares occurs, the Company shall arrange the delivery to each participant, as appropriate, of a certificate or book entry transfer representing the shares purchased upon exercise of his or her Option, provided that the Company may in its discretion hold fractional shares for the accounts of the participants pending aggregation to whole shares.

(c) Compliance with Law. Shares shall not be issued with respect to an Option unless the exercise of such Option and the issuance and delivery of such shares pursuant thereto comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance. As a condition to the exercise of an Option, the Company may require the participant for whom an Option is exercised to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law. Shares issued upon purchase under the Plan may be subject to such transfer restrictions and stop-transfer instructions as the Administrator deems appropriate.

(d) Excess Plan Account Balances. If, due to application of the Periodic Exercise Limit, there remains in a participant s Plan Account immediately following exercise of such participant s Option on an Exercise Date any cash accumulated during the Purchase Period immediately preceding such Exercise Date and not applied to the purchase of shares under the Plan, such cash shall promptly be returned to the participant.

7. Automatic Transfer to Low Price Offering Period.

If the Fair Market Value of the Common Stock as of the close of business on any Exercise Date is lower than the Fair Market Value of the Common Stock as of the opening of business on the Enrollment Date for the Offering Period in which such Exercise Date occurs, then all participants in such Offering Period shall be automatically withdrawn from such Offering Period immediately after the exercise of their Options on such Exercise Date and automatically re-enrolled in the immediately following Offering Period as of the first day thereof.

8. Withdrawal; Termination of Employment.

(a) Voluntary Withdrawal. A participant may withdraw from an Offering Period by giving written notice to the Company s payroll office at least five (5) business days prior to the next Exercise Date. Such withdrawal shall be effective beginning five business days after receipt by the Company s payroll office of notice thereof. On or promptly following the effective date of any withdrawal, all (but not less than all) of the withdrawing participant s payroll deductions credited to his or her Plan Account and not yet applied to the purchase of shares under the Plan will be paid to such participant, and on the effective date of such withdrawal such participant s Option for the Offering Period will be automatically terminated, and no further payroll deductions for the purchase of shares will be made during the Offering Period. If a participant withdraws from an Offering Period, payroll deductions will not resume at the beginning of any succeeding Offering Period unless the participant delivers to the Company a new subscription agreement with respect thereto.

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(b) Termination of Employment. Promptly after a participant s ceasing to be an Eligible Employee for any reason the payroll deductions credited to such participant s Plan Account and not yet applied to the purchase of shares under the Plan will be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 10, and such participant s Option will be automatically terminated, provided that, if the Company does not learn of such death more than five (5) business days prior to an Exercise Date, payroll deductions credited to such participant s Plan account may be applied to the purchase of shares under the Plan on such Exercise Date.

9. Transfer ability.

Neither payroll deductions credited to a participant s Plan Account nor any rights with regard to the exercise of an Option or to receive shares under the Plan nor any Option itself may be assigned, transferred, pledged or otherwise disposed of by the participant in any way other than by will, the laws of descent and distribution or as provided in Section 10 hereof. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Administrator may treat such act as an election to withdraw from an Offering Period in accordance with Section 8.

10. Designation of Beneficiary.

A participant may file a written designation of a beneficiary who is to receive any cash from the participant s Plan Account in the event of such participant s death and any shares purchased for the participant upon exercise of his or her Option but not yet issued. If a participant is married and the designated beneficiary is not the spouse, spousal consent may be required for such designation to be effective. A designation of beneficiary may be changed by a participant at any time by written notice. 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 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 discretion, may deliver such shares 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.

11. Stock.

The maximum number of shares of the Company s Common Stock that shall be made available for sale under the Plan shall be 4,850,000 shares, subject to adjustment upon changes in capitalization of the Company as provided in Section 12. If on a given Enrollment Date or Exercise Date the number of shares with respect to which Options are to be granted or exercised exceeds the number of shares then available under the Plan, the Administrator shall make a pro rata allocation of the shares remaining available for purchase in as uniform a manner as shall be practicable and as it shall determine to be equitable. Shares of Common Stock subject to unexercised Options that expire, terminate or are cancelled will again become available for the grant of further Options under the Plan.

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12. Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the stockholders of the Company, the Reserves as well as the Purchase Price, Periodic Exercise Limit, and other characteristics of the Options, shall be appropriately and proportionately adjusted for any increase or decrease or exchange in the issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, exchange or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been effected without receipt of consideration. Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option. The Administrator may, if it so determines in the exercise of its sole discretion, provide for adjusting the Reserves, as well as the Purchase Price, Periodic Exercise Limit, and other characteristics of the Options, in the event the Company effects one or more reorganizations, recapitalizations, rights offerings or other increases or reductions of shares of its outstanding Common Stock.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, all pending Offering Periods will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator, and all Plan Account balances will be paid to participants as appropriate consistent with applicable law.

(c) Merger or Asset Sale. In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger or other combination (the Transaction) of the Company with or into another entity, each Option under the Plan shall be assumed or an equivalent option shall be substituted by such successor entity or a parent or subsidiary of such successor entity, unless the Administrator determines, in the exercise of its sole discretion and in lieu of such assumption or substitution, to shorten the Offering Periods then in progress by setting a new Exercise Date (the New Exercise Date). If the Administrator shortens the Offering Periods then in progress in lieu of assumption or substitution, the Administrator shall notify each participant in writing, at least ten (10) days prior to the New Exercise Date, that the Exercise Date for such participant s Option has been changed to the New Exercise Date and that such participant s Option will be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 8 (provided that, in such case, the participant s withdrawal shall be effective if notice thereof is delivered to the Company s payroll office at least two (2) business days prior to the New Exercise Date). For purposes of this Section, an Option granted under the Plan shall be deemed to be assumed if, following the Transaction the Option confers the right to purchase at the Purchase Price (provided that for such purposes the Fair Market Value of the Common Stock on the New Exercise Date shall be the value per share of the consideration paid in the Transaction), for each share of stock subject to the Option immediately prior to the Transaction, the consideration (whether stock, cash or other securities or property) received in the Transaction by holders of Common Stock for each share of Common Stock held on the effective date of the transaction (and if such holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Common Stock); provided, however, that if such consideration received in the Transaction was not solely common equity of the successor entity or its parent (as defined in Section 424 (e) of the Code), the Administrator may, with the consent of the successor entity and the participant, provide for the consideration to be received upon exercise of the Option to be solely common equity of the successor entity or its parent equal in fair market value to the per share consideration received by holders of Common Stock in the Transaction.

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13. Administration.

The Plan shall be administered by the Committee, which shall have the authority to construe, interpret and apply the terms of the Plan and any agreements defining the rights and obligations of the Company and participants under the Plan, to prescribe, amend, and rescind rules and regulations relating to the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan, and to make all other determinations necessary or advisable for the administration of the Plan. The Administrator may, in its discretion, delegate ministerial responsibilities under the Plan to the Company. Every finding, decision and determination made by the Committee shall, to the full extent permitted by law, be final and binding upon all parties. Any action of the Committee shall be taken pursuant to a majority vote or by the unanimous written consent of its members. The Board may from time to time in its discretion exercise any responsibilities or authority allocated to the Committee under the Plan. No member of the Committee or any designee thereof will be liable for any action or determination made in good faith with respect to the Plan or any transaction arising under the Plan.

14. Amendment or Termination.

(a) Administrator s Discretion. The Administrator may, at any time and for any reason, terminate or amend the Plan. Except as provided in Section 12, no such termination can affect Options previously granted, provided that an Offering Period may be terminated by the Administrator on any Exercise Date if the Administrator determines that such termination is in the best interests of the Company and its stockholders. Except as provided herein, no amendment may make any change in any Option theretofore granted that adversely affects the rights of any participant. To the extent necessary to comply with and qualify under Section 423 (or any successor rule or provision or any other applicable law or regulation), the Administrator shall obtain stockholder approval of amendments to the Plan in such a manner and to such a degree as required.

(b) Administrative Modifications. Without stockholder consent (except as specifically required by applicable law or regulation) and without regard to whether any participant rights may be considered to have been adversely affected, the Administrator shall be entitled to amend the Plan to the extent necessary to comply with and qualify under Section 423, change the Purchase Periods and/or Offering Periods, limit the frequency and/or number of changes in payroll deductions during Purchase Periods and/or Offering Periods, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant to adjust for delays or mistakes in the Company s processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant s Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion to be advisable and which are consistent with the Plan.

15. Term of Plan.

The Plan shall become effective upon the first Enrollment Date after its approval by the stockholders of the Company and shall continue in effect for a term of thirty (30) years unless sooner terminated pursuant to Section 14.

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16. Miscellaneous.
(a) Notices. All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.
(b) Subsidiaries. The Administrator may from time to time in its discretion permit persons who are employees of any Subsidiary whose customary employment is for more than five months per calendar year and for more than 20 hours per week to participate in the Plan on the same terms as Eligible Employees hereunder.
(c) Stockholder Approval. The Plan shall be subject to approval by the stockholders of the Company within twelve months before or after the date the Board adopts the Plan. If such stockholder approval is not obtained, the Plan and all rights to the Common Stock purchased under the Plan shall be null and void and shall have no effect.
(d) No Employment Rights. The Plan does not, directly or indirectly, create any right for the benefit of an employee or class of employees to purchase any shares under the Plan, or create in any employee or class of employees any right with respect to continuation of employment by the Company, and it shall not be deemed to interfere in any way with the Company s right to terminate, or otherwise modify, an employee s employment at any time.
(e) Applicable Law. The laws of the State of California shall govern all matters relating to the Plan, except to the extent (if any) superseded by the laws of the United States.
(f) Headings. Headings used herein are for convenience of reference only and do not affect the meaning or interpretation of the Plan.

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EXHIBIT A

LA JOLLA PHARMACEUTICAL COMPANY
1995 EMPLOYEE STOCK PURCHASE PLAN SUBSCRIPTION AGREEMENT

_____ Original Application Enrollment Date:

_____ Change in Payroll Deduction Rate

_____ Change of Beneficiary(ies)

1. I, _____, hereby elect to participate in the La Jolla Pharmaceutical Company 1995 Employee Stock Purchase Plan (the Plan) and subscribe to purchase shares of the Company s Common Stock in accordance with this Subscription Agreement and the Plan.

2. I hereby authorize payroll deductions from each paycheck in the amount of _____ % (not to exceed 10%) of my Compensation (as defined in the Plan) on each payday during the Offering Period in accordance with the Plan. (Please note that no fractional percentages are permitted.)

3. I understand that said payroll deductions shall be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my Option on each Exercise Date within the Offering Period.

4. I have received a copy of the complete Plan. I understand that my participation in the Plan is in all respects subject to the terms of the Plan, that capitalized terms used herein have the same meanings as ascribed thereto in the Plan, and that in case of any inconsistency between this Subscription Agreement and the Plan, the Plan shall govern. I understand that the grant of the Option by the Company under this Subscription Agreement is subject to stockholder approval of the Plan.

5. Shares purchased for me under the Plan should be issued in the name(s) of (employee and/or spouse only):

6. 1 understand that if I dispose of any shares received by me pursuant to the Plan within two years after the Enrollment Date (the first day of the Offering Period during which I purchased such shares) or within one year after the Exercise Date (the date I purchased such shares), I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the fair market value of the shares at the time such shares were delivered to me over the price which I paid for the shares, regardless of whether I disposed of the shares at a price less than their fair market value at the Exercise Date. The remainder of the gain or loss, if any, recognized on such disposition will be treated as capital gain or loss. I hereby agree to notify the Company in writing within 30 days after the date of any disposition of my shares, and I will make adequate provision for Federal, State or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock. The Company may, but will not be obligated to, withhold from my Compensation or other amounts payable to me the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the one-year and two-year holding periods described above, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (a) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares, or (b) 15% of the fair market value of the shares on the first day of the Offering Period. The remainder of the gain or loss, if any, recognized on such disposition will be taxed as capital gain or loss. I understand that this tax summary is only a summary for general information purposes and is subject to change and I agree to consult with my own tax advisors for definitive advice regarding the tax consequences to me of participation in the Plan and sale of shares purchased thereunder.

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7. I agree to be bound by the terms of the Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Plan.
8. In the event of my death, I hereby designate the following as my beneficiary(ies) to receive (in proportion to the percentages listed below) all payments and shares due me under the Plan (use additional sheets to add beneficiaries):
NAME: (Please print)

(First) (Middle) (Last)
Relationship
Percentage

(Address)

NAME: (Please print)

(First) (Middle) (Last)
Relationship
Percentage

(Address)

Employee s Social Security:

Number: Employee s Address:

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME.

Dated:

Signature of Employee

Spouse s Signature (If beneficiary other than spouse)

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LA JOLLA PHARMACEUTICAL COMPANY
ATTN: GAIL SLOAN
4365 EXECUTIVE DRIVE
SUITE 300
SAN DIEGO, CA 92121

VOTE BY INTERNET - www.proxyvote.com

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

Electronic Delivery of Future PROXY MATERIALS

If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

VOTE BY PHONE - 1-800-690-6903

Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

KEEP THIS PORTION FOR YOUR RECORDS

DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED

The Board of Directors recommends a vote FOR the following:

1.	Election of Directors Nominees		**For All**	**Withhold All**	**For All Except**	To withhold authority to vote for any individual nominee(s), mark For All Except and write the number(s) of the nominee(s) on the line below.
	01-Deirdre Y. Gillespie, M.D.	02-Stephen M. Martin	o	o	o	

The Board of Directors recommends you vote FOR the following proposal(s):

		For	**Against**	**Abstain**
2.	To approve up to two amendments to the Company s Restated Certificate of Incorporation to implement up to two reverse stock splits, each within a range from 2-for-1 to 100-for-1, with the exact ratio(s) of the reverse stock split(s) to be determined by the Board of Directors of the Company;	o	o	o

3(A).	To approve an amendment to the Company s Restated Certificate of Incorporation to increase the number of shares of Common Stock authorized for issuance thereunder from 225,000,000 to 6,000,000,000;	o	o	o
3(B).	To approve an amendment to the Company s Restated Certificate of Incorporation to decrease the par value of the capital stock of the Company from $0.01 to $0.0001;	o	o	o
4(A).	To approve an amendment to the Company s Restated Certificate of Incorporation to reduce the permitted size of the Board of Directors to a range of three to nine directors;	o	o	o
4(B).	To approve an amendment to the Company s Amended and Restated Bylaws to reduce the permitted size of the Board of Directors to a range of three to nine directors;	o	o	o
5.	To approve and adopt the Company s 2010 Equity Incentive Plan;	o	o	o
6.	To approve and adopt an amendment to the Company s 1995 Employee Stock Purchase Plan to extend the term and to increase the number of shares of Common Stock authorized for issuance thereunder from 850,000 to 4,850,000;	o	o	o
7.	To ratify Ernst & Young LLP as the Company s independent registered public accounting firm for the fiscal year ending December 31, 2010.	o	o	o

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name, by authorized officer.

Signature [PLEASE SIGN WITHIN BOX]	Date	Signature (Joint Owners)	Date

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Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting: The Notice & Proxy Statement, Annual Report is/are available at www.proxyvote.com.

LA JOLLA PHARMACEUTICAL COMPANY
PROXY

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The undersigned hereby appoints Deirdre Y. Gillespie and Gail A. Sloan proxies, and hereby authorizes each of them to represent and vote as designated on the other side (each with the power to act without the other and with the power of substitution), all the shares of stock of La Jolla Pharmaceutical Company (the ***Company***) standing in the name of the undersigned with all powers which the undersigned would possess if present at the Annual Meeting of Stockholders of the Company to be held on [_____], 2010 or any adjournment or postponement thereof.

This proxy, when properly executed, will be voted in the manner you direct. If no direction is made, your proxy will be voted FOR the proposals described in the enclosed proxy statement and in the discretion of the proxy holders on all other matters that may come before the meeting.

Continued, to be signed on reverse side