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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the year ended December 31, 2003

OR

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

Commission file number 1-10615

EMISPHERE TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

DELAWARE	13-3306985
(State or jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)
765 Old Saw Mill River Road Tarrytown, New York	10591
(Address of principal executive offices)	(Zip Code)

(914) 347-2220
(Registrant's telephone number, including area code)

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

Securities registered pursuant to Section 12(g) of the Act:
Common Stock--$.01 par value
Preferred Stock Purchase Rights

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 Registrant was required to file such reports) and (2) has been subject to such filing requirements for at least the past 90 days. Yes [X] No [ ]

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

As of June 30, 2003 (the last business day of the registrant's most recently completed second quarter), the aggregate market value of the common stock held by non-affiliates of the registrant (i.e. excluding shares held by executive officers, directors, and control persons) was $55,622,611 computed at the closing price on that date.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes [ ] No [X]

The number of shares of the Registrant's common stock, $.01 par value, outstanding as of March 15, 2004 was 18,312,150.

DOCUMENTS INCORPORATED BY REFERENCE

Parts II and III of this 10-K incorporate information by reference from the registrant's definitive proxy statement which will be filed no later than 120 days after December 31, 2003.

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PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements made under the captions "Business" (Item 1) and "Management's Discussion and Analysis of Financial Condition and Results of Operations" (Item 7), the notes to the Company's audited financial statements (Item 8) and elsewhere in this Annual Report on Form 10-K, as well as statements made from time to time by Emisphere's representatives may constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include (without limitation) statements regarding planned or expected studies and trials of oral formulations that utilize the Company's eligen(TM) technology; the timing of the development and commercialization of the Company's product candidates or potential products that may be developed using the Company's eligen(TM) technology; the potential market size, advantages or therapeutic uses of the Company's potential products; variation in actual savings and operating improvements resulting from restructurings; and the sufficiency of the Company's available capital resources to meet the Company's funding needs. Management does not undertake any obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise, except as required by law. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause the Company's actual results or achievements to be materially different from any future results or achievements expressed or implied by such forward-looking statements. Such factors include the factors described under "Management's Discussion and Analysis of Financial Condition and Results of Operations--Risk Factors" and the other factors discussed in connection with any forward-looking statements.

ITEM 1. BUSINESS

OVERVIEW OF EMISPHERE

Introduction

Emisphere Technologies, Inc. ("Emisphere", "Our", "Us" or "We") is seeking to overcome one of the most challenging technical hurdles in the pharmaceutical industry--the oral delivery of medicines not currently available in oral form. We have product candidates in development across a broad range of therapeutic areas, including cardiovascular disease, diabetes, osteoporosis, growth disorders, asthma and allergies, obesity and infectious diseases. Further information can be found on our website: www.emisphere.com. The contents of that website are not incorporated herein by reference thereto. Investor related questions should be directed to ir@emisphere.com.

History

Emisphere was originally founded as Clinical Technologies Associates, Inc. in 1986. We went public in 1989, and were listed on NASDAQ under the ticker symbol "CTAI". In 1990, under new management, we decided to focus on our oral drug delivery technology, now known as the eligen(TM) technology. In 1991, we changed our name to Emisphere Technologies, Inc., and we continued to be listed on NASDAQ, under the new ticker symbol, "EMIS".

The eligen(TM) Technology

The eligen(TM) technology is a broadly applicable proprietary oral drug delivery technology based on the use of proprietary, synthetic chemical compounds known as EMISPHERE(R) delivery agents, or "carriers". These delivery

agents facilitate and/or enable the transport of therapeutic macromolecules (such as proteins, peptides, and polysaccharides) or charged organics across biological membranes such as the small intestine. We believe that our eligen(TM) technology makes it possible to orally deliver a therapeutic molecule without altering its chemical form or compromising the biological integrity of membranes.

Business Strategy

Our core business strategy is to develop oral forms of injectable drugs, either alone or with corporate partners, by applying the eligen(TM) technology to those drugs. Typically, the injectable drugs that we target (i) have received regulatory approval, (ii) have demonstrated safety and efficacy, and (iii) are currently available on the market. We believe that focusing on the oral delivery of these types of product candidates increases our probability of successfully executing our business strategy. Our direct cost of developing an unformulated product candidate through proof-of-concept human studies using an EMISPHERE carrier and a therapeutic molecule is less than $1 million.

Product Candidates in Development

The following table sets forth (i) the therapeutic areas for which we are developing product candidates, either alone or with corporate partners, (ii) the candidates currently in development, (iii) the present stage of clinical development, and (iv) the identity of our corporate partner for partnered programs, as previously reported by Emisphere or the partner.

THERAPEUTIC AREA	DRUG CANDIDATES	STAGE OF DEVELOPMENT	PARTNER
Cardiovascular	Oral Unfractionated ("UF") Heparin (Solid)	Clinical subjects (2)	Self-developed
	Oral Low Molecular Weight Heparin ("LMWH") (1)	Clinical subjects	Self-developed
Osteoporosis	Oral Salmon Calcitonin ("sCT")	Phase IIa	Novartis Pharma AG
	Oral Recombinant Parathyroid Hormone (teraparatide; "PTH 1-34")	Phase I	Eli Lilly and Company
Growth Disorders	Oral Recombinant Human Growth Hormone (somatropin; "rhGH")	Clinical subjects	Self-developed (5)
Diabetes	Oral Insulin	Clinical patients (3)	Self-developed
	Oral Glucagon-Like Peptides ("GLPs")	Pre-clinical (4)	Self-developed
Asthma/Allergies	Oral Cromolyn Sodium	Clinical patients	Self-developed
Obesity	Oral Ciliary Neutrophic Growth Factor ("CNTF")	Pre-clinical	Regeneron Pharmaceuticals, Inc.
	Oral PYY//3-36//	Pre-clinical	Self-developed
Anti-infectives	Oral Anthrax Antigen	Pre-clinical	US Army Medical Research Institute of Infectious Diseases
Undisclosed	Feasibility Product Candidates	Clinical subjects, pre-clinical and feasibility	Self-developed or undisclosed partners

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(1) Emisphere has an agreement with a producer of LMWH to supply a particular LMWH to Emisphere. Development of this candidate is dependent on this agreement.

(2) "Clinical subjects" = Investigating safety of carrier and drug/carrier combination in a limited number of healthy human subjects. Determining proper oral dose ranges to meet specified blood levels.

(3) "Clinical patients" = Investigating safety and confirming efficacy of a product candidate in a limited number of patients using a single or multiple dose regimen.

(4) "Pre-clinical" = Investigating safety of a product candidate in a controlled laboratory environment and establishing activity in standard animal models.

(5) Originally partnered with Eli Lilly and Company. Emisphere reacquired all rights in 2003.

Recent Developments

In January 2004, we announced preliminary results from our first multiple-dose European clinical study evaluating an oral insulin tablet using the eligen(TM) technology in early-stage Type 2 diabetics. The 13-patient study, consisting of seven treated patients and six control patients, evaluated the safety, effect and tolerability of the oral insulin tablets when administered four times daily (10 minutes before meals and at bedtime) over a two-week period. The preliminary data suggest that EMISPHERE(R) oral insulin tablets can positively impact glycemic control in early-stage Type 2 diabetics. Preliminary data indicated that repeated administration of our oral insulin was not associated with hypoglycemic events, an adverse complication that is often associated with injected insulin and other anti-diabetic treatments.

OVERVIEW OF DRUG DELIVERY INDUSTRY

The drug delivery industry develops technologies for the improved administration of therapeutic compounds, with the goal of expanding markets for existing products and extending drug franchises. Also, drug delivery companies seek to develop products on their own that would be patent protected by applying proprietary technologies to off-patent pharmaceutical products. Primarily, drug delivery technologies are focused on improving safety, efficacy, ease of patient use and patient compliance. Pharmaceutical and biotechnology companies consider improved drug delivery as a means of gaining competitive advantage over their peers.

Therapeutic macromolecules, of which proteins are the largest sub-class, and charged organics are prime targets for the drug delivery industry for two reasons.

First, therapeutic macromolecules and charged organics address large markets for which there is an established medical need. These drugs are widely used, as physicians are familiar with them and are accustomed to prescribing them. According to published sources, worldwide annual sales of protein therapeutics are valued at approximately $22 billion and are growing at approximately 15% per year.

Second, therapeutic molecules and charged organics are significantly enhanced through alternative delivery. These medicines are comprised of proteins and other large or highly charged molecules that, if orally administered under traditional oral delivery methods, would degrade in the stomach or intestine before they are absorbed into the bloodstream. Therefore, they are administered by injection. Injections are undesirable for many reasons, including patient discomfort, inconvenience and risk of infection. Poor patient acceptance of, and compliance with, injectable therapies can lead to increased incidences of medical complications. In addition, injectable therapies result in high healthcare costs because many drug injections require administration in hospitals or doctors' offices.

Oral delivery is the preferred method when compared to other delivery systems. Patient acceptance of and adherence to a dosing regimen is relatively high among orally delivered medications as compared to non-oral delivery approaches. Our business strategy is based upon our belief that the development of an efficient, safe and reproducible oral delivery system for macromolecules represents a significant commercial opportunity. Given the advantages of oral delivery over injectable forms, we believe that oral administration of biopharmaceutical drugs would significantly expand the markets for these drugs.

CURRENT APPROACHES TO DRUG DELIVERY

Transdermal (via the skin) and "Needleless" Injection

The size of most macromolecules makes penetration of the skin inefficient or ineffective. Some peptides and proteins can be transported across the skin barrier into the bloodstream using high-pressure "needleless" injection devices. The devices, which inject proteins through the skin into the body, have been available for many years. We believe these devices have not been well accepted due to patient discomfort, relatively high cost, and the inconvenience of placing the drugs into the device.

Nasal

The nasal route (through the membrane of the nose) of drug administration has been limited by low and variable bioavailability for proteins and peptides. As a result, penetration enhancers often are used with nasal delivery to increase bioavailability. These enhancers may cause local irritation to the nasal tissue and may result in safety concerns with long-term use. A limited number of peptides using nasal delivery have been approved for marketing in the United States.

Pulmonary (via the lung)

Pulmonary delivery (through the membrane of the lungs) of drugs is emerging as a delivery route for large molecules. Although local delivery of respiratory drugs to the lungs is common, the systemic delivery (i.e., delivery of the drugs to the peripheral vasculature) of macromolecule drugs is less common because it requires new formulations and delivery technologies to achieve efficient, safe and reproducible dosing.

Intraoral (via the membranes in the mouth)

Intraoral delivery is also emerging as a delivery route for large molecules. Buccal delivery (through the membrane of the cheek) and sublingual delivery (through the membrane under the tongue) are forms of intraoral delivery.

We believe that our eligen(TM) technology, enabling oral delivery instead of injectable or other forms of administration, provides an important competitive advantage in the drug delivery industry. We believe that the oral route is the most "patient-friendly" option, in that it offers convenience, is a familiar method of administration, provides increased compliance, and, for some therapies, is considered the best physiological route of administration.

THE ELIGEN(TM) TECHNOLOGY

Our oral drug delivery technology, the eligen(TM) technology, is based upon proprietary, synthetic chemical compounds known as EMISPHERE delivery agents that facilitate the transport of therapeutic macromolecules and other compounds across biological membranes, such as the membranes of the small intestine. Using this technology, we have demonstrated oral delivery of heparin, insulin, PTH 1-34, rhGH, cromolyn sodium and salmon calcitonin in humans, and over 40 other compounds in animal models.

We believe that the EMISPHERE delivery agents use passive transcellular transport (a natural transport process in the body), enabling macromolecules to cross membranes and yet remain therapeutically active. Also, we believe that the eligen(TM) technology does not chemically change the molecule being delivered and only changes the physical nature of the molecule. Under physiological conditions, protein molecules naturally exist in many different shapes, or conformations. Some of these conformations can be transported across the cell membranes. Our hypothesis is that once the drug crosses the membrane, the delivery agent separates from the drug and the drug reestablishes its natural distribution of conformations, ensuring that the delivered drug molecules are in their therapeutically active state.

We have designed and synthesized a library of over 2,000 delivery agents and continue to evaluate our delivery agents for their ability to facilitate the delivery of therapeutic macromolecules and other compounds across biological membranes.

Key Characteristics of the eligen(TM) Technology

We believe that our oral drug delivery technology has competitive advantages, including:

Broad applicability: EMISPHERE delivery agents are applicable across a diverse group of molecules such as proteins, carbohydrates, peptides and other compounds;

Stand-alone delivery: Oral drug delivery using EMISPHERE delivery agents does not rely upon the addition of other agents that can have adverse effects on the intestinal membranes or digestion;

Versatility: We have created various types of oral formulations, including solutions, suspensions, tablets and capsules. We believe our eligen(TM) technology is applicable to controlled release dosage forms;

Ease of manufacture: We believe that the technology and manufacturing equipment required to produce EMISPHERE delivery agent material in commercial quantities is readily available.

THERAPEUTIC INDICATIONS

Diabetes

According to published reports, approximately 177 million people worldwide are afflicted by diabetes, with approximately 18 million of those afflicted residing in the United States; nearly one-third of all individuals in the United States suffering from diabetes are unaware that they have this chronic disease; and in the United States, diabetes accounts for approximately $132 billion in direct and indirect healthcare related costs. There are two principal types of diabetes:

- Type 1 - An autoimmune disease in which the body does not produce any insulin. Type 1 diabetes appears most often in children and young adults. Type 1 diabetics must receive multiple daily insulin injections to stay alive. Type 1 diabetes accounts for approximately 5-10% of total diabetes cases.

- Type 2 - A metabolic disorder resulting from the body's inability to properly utilize or produce adequate amounts of insulin. Type 2 diabetics account for approximately 90-95% of diabetes cases. Reportedly, the incidence of Type 2 diabetes is rising rapidly as a result of an aging population, greater prevalence of obesity, and a more sedentary lifestyle.

Recent estimates indicate that worldwide sales of insulin exceeded $4 billion in 2002 and are projected to grow to over $7 billion in 2006. Approximately 40% of all Type 2 diabetics use insulin to control the disease, accounting for approximately 50% of total insulin use. Although many Type 2 diabetics could benefit from insulin therapy, they may not use the drug because it is administered by injection. We believe that a successful oral insulin therapy would facilitate compliance for diabetic patients who are not diligent with their prescribed injection regimens, and enable those patients adverse to injections to adopt therapy at an earlier stage of the disease.

Based on previously published research, we believe that oral insulin delivery is consistent with the physiology of a non-diabetic's natural secretion of insulin from the pancreas, which travels to the liver prior to being distributed to the peripheral circulation. We believe that orally delivered insulin likewise travels to the liver prior to being distributed to the peripheral circulation. In comparison, also based on previously published research, we believe that injected insulin, like other non-oral insulin therapies, is administered into the general (systemic) circulatory system first and then to the liver. We believe that as a result, injectable insulin results in higher circulating insulin levels than oral insulin. Chronic excess insulin in the general circulation (known as hyperinsulinemia) is known to cause diabetic patient complications.

Furthermore, we believe that the pharmacological profile of our oral insulin to date, namely, the onset and duration of action, has been consistent with the physiological profile of naturally secreted insulin from the pancreas, under both fed and certain fasted conditions. For the foregoing reasons, we believe that, aside from the convenience benefits, orally delivered insulin, with the appropriate clinical attributes, may provide an alternative therapy with fewer complications when compared to existing medical diabetes treatments.

Oral Insulin Program.

In June 2001, we entered an oral unformulated dosage of insulin using an EMISPHERE carrier into proof-of-concept clinical testing. In October 2001, we completed a Phase I study using the most promising EMISPHERE carrier selected for insulin. The resulting data were used to support the testing of this unformulated dosage in early-stage Type 2 diabetic patients. In November 2001, we completed preliminary testing in Type 2 diabetic patients upon completing a

"euglycemic clamp study" (a study in which insulin and glucose is infused intravenously at different doses to see what levels of insulin control different levels of glucose).

In June 2002, in an oral presentation and media briefing at the Annual Meeting of the American Diabetes Association ("ADA") in San Francisco, we presented proof-of-concept preliminary clinical results from a study conducted in Europe, which showed that an early capsule prototype of oral insulin using the eligen(TM) technology resulted in absorption from the gastrointestinal tract. The data also demonstrated significant reductions in blood glucose levels. Although not directly compared in this trial, the reductions in blood glucose levels were consistent with reductions in glucose seen with injectable insulin. The study demonstrated that there were no serious adverse events.

The double-blind, placebo-controlled study consisted of the administration of insulin with an EMISPHERE delivery agent in capsule form to a total of 20 healthy human volunteers in the fasted state who received five different dose regimens, ranging from 100 to 150 units of insulin and 100 mg to 600 mg of delivery agent, and a subcutaneous control, with another two subjects who received placebo. Nine subjects received only the delivery agent. The study demonstrated that the orally delivered insulin had favorable pharmacokinetic and pharmacodynamic profiles, in that systemic blood insulin levels peaked within 25 minutes. Such favorable profiles are considered to be significant by physicians, in general, because the primary potential use of oral insulin would be before meals, and the more rapid the delivery, the better patients can time their medication to their meal. We believe that this data and the data from the 2001 studies provide proof-of-concept for our oral drug delivery technology with insulin as evaluated in healthy, fasted volunteers.

In March 2003, we announced completion of a study in early-stage Type 2 diabetic patients designed to demonstrate the pharmacokinetics and absorption of insulin, and subsequent effects on blood glucose of this product candidate following a standardized meal. The placebo controlled, crossover study evaluated two oral doses of insulin. Patients received one capsule containing 5.6 mg (150 units) of insulin and 200 mg of EMISPHERE delivery agent or two capsules containing a total of 11mg (300 units) of insulin and 400 mg of EMISPHERE delivery agent. The study compared the two oral unformulated dosages to a fast-acting injectable insulin in fourteen patients with Type 2 diabetes who had received a standardized solid meal (722 kcal). The study also included a placebo group. For the 11 mg dose, the data demonstrated that unformulated oral insulin dosages, when administered 30 minutes prior to the standardized meal, reduced post-prandial glucose excursion (the rise in blood sugar following a meal) and produced a marked increase in systemic insulin levels and a concomitant reduction in C-peptide (a marker of endogenous insulin production) as compared to the placebo. In addition, plasma insulin concentrations peaked faster using our oral unformulated dosage as compared to fast acting injectable insulin (30 minutes with oral versus approximately 45 minutes typically seen with injectable formulations). Similar results were observed in certain patients given the 5.6 mg dose, who received the same standardized meal. The study produced evidence that one or two capsules could impact post-prandial blood glucose in certain early-stage Type 2 diabetic patients and demonstrated favorable pharmacokinetics. No serious adverse events were reported.

In June of 2003, we presented preliminary data at the Annual Meeting of the ADA in New Orleans, LA from two EMISPHERE oral insulin capsule studies. The first study ("the overnight study"), presented in a poster session, was conducted to determine if the administration of the EMISPHERE oral insulin prototype capsules at bedtime could exert effects on overnight-fasting glucose homeostasis and insulin secretion in early-stage Type 2 diabetics. The overnight study summary conclusion was that the amount of oral insulin delivered reduced fasting glucose levels the following morning. The prototype of oral insulin was well-tolerated and no serious adverse events were reported. The second study ("the glucose clamp study"), presented in a plenary session, was a proof-of-concept study conducted in early-stage Type 2 diabetics to assess insulin secretion and resistance following the administration of two oral insulin prototype capsules containing a total of 11 mg insulin (300 units) when a simultaneous infusion of glucose was administered. The data demonstrated that relative biopotency of oral insulin was 32% (mean) in the first hour after administration, which is the most critical time period when the first-phase insulin response should be replicated in a Type 2 diabetic. No serious adverse events were reported.

In November 2003, we announced preliminary data from a study evaluating a tablet prototype of EMISPHERE oral insulin. These data were presented at the 5th Annual Diabetes Technology Meeting in San Francisco. Data from the study demonstrated that a practical tablet dosage form totaling 10 mg (300 units) of insulin and 160 mg of EMISPHERE delivery agent could reduce post-prandial glucose excursion when administered in the pre-prandial state ten minutes prior to a standard, American Diabetes Association breakfast.

In the fourth quarter of 2003, we completed the clinical dosing portion of our first multiple dosing with the EMISPHERE oral insulin tablet prototype when dosed in Type 2 diabetics. The 13-patient study, consisting of seven treated patients and six control patients, evaluated the safety, effect and tolerability of the oral insulin tablets when administered four times daily (10 minutes before meals and at bedtime) over a two-week period. In January 2004, we announced preliminary results from the study. The preliminary data indicated that repeated administration of our oral insulin was not associated with hypoglycemic events, an adverse complication that is often associated with injected insulin and other anti-diabetic treatments.

We will continue to develop the oral insulin candidate while seeking a partner for this program. We have engaged the services of an investment bank to assist in the preliminary negotiation process with potential partners for our oral insulin product candidate.

Cardiovascular (Anticoagulation)

Unfractionated heparin ("UFH") and low molecular weight heparin ("LMWH") are widely used anticoagulants. These anticoagulants are primarily indicated for treating and preventing post-surgical deep vein thrombosis (blood clots following major surgery) ("DVT") and more severe sequelae e.g. pulmonary embolism. Also, these drugs are frequently prescribed for acute myocardial infarction, coronary angioplasty, coronary artery bypass graft surgery, stroke and unstable angina. The most common indications for heparin therapy are the prevention of venous thrombosis (blood clots) following surgical procedures lasting longer than 30 minutes (especially orthopedic, pelvic, abdominal, trauma, angioplasty or heart surgery). According to published sources, in the United States, it is estimated that more than 3 million such surgical procedures are performed each year and more than 250,000 cases of DVT are reported. DVT treatment generally includes about one to two weeks of injectable LMWH, followed by 90 to 180 days of warfarin. Currently, all forms of heparin are administered as either a continuous intravenous infusion or a subcutaneous injection.

Recent studies indicate that a longer prophylaxis (extending the duration of heparin preventative therapy from the current standard of practice) would benefit patients following major surgery. We believe that compliance would be improved if a commercially viable oral form of UFH or LMWH was available because patients would be more inclined to comply with this type of dosage compared to injectable forms. Preventative therapy is typically recommended for at least 10 to 14 days post-surgery. However, several studies indicate that longer heparin prophylaxis (preferably for 30 days) is optimal because the risk of DVT remains high throughout this period. Without DVT prophylaxis, the incidence of DVT is often greater than 50% based on previously published research.

Heparin is often considered the anticoagulant of choice for the prevention and treatment of cardiovascular complications, such as DVT or blood clots and pulmonary embolism in high-risk, hospitalized patients. Typically, heparin is favored by clinicians over warfarin because heparin is more effective, produces a rapid onset of anticoagulation activity, has a shorter physiological half-life, and is indicated in fewer drug-drug interactions than many U.S. Food and Drug Administration ("FDA") approved drugs. In addition, warfarin requires constant patient monitoring. A major disadvantage of heparin therapy is the requirement for subcutaneous administration.

Worldwide heparin sales, including the LMWHs, are estimated to be over $2.5 billion, with a projected 15% annual growth rate. We believe that our solid oral heparin and LMWH candidates could substantially penetrate and expand existing markets. We anticipate that large new markets for the heparins will be created based on studies indicating that UFH may have utility for indications other than anticoagulation. These indications include: unstable angina, arterial fibrillation, acute myocardial infarction, coronary angioplasty, stent placement, coronary artery bypass graft, pulmonary embolism and stroke. In addition, a large and growing body of pre-clinical and clinical data indicates that heparin has potent anti-inflammatory and anti-cancer properties and recently reported studies indicate that heparin has been shown to be beneficial as a treatment for inflammatory bowel disease, rheumatoid arthritis, asthma,

psoriasis, transplant rejection and proteinurias.

We believe that oral heparin would be considered a more convenient and "patient-friendly" therapy than injectable heparin by both patients and physicians, and could open the at-home market to heparin by replacing warfarin and injectable LMWH use. Also, we believe that our oral heparin product candidates ultimately could enable an extended dosing regimen and be applicable for a wide range of anti-coagulant/antithrombotic uses.

Oral Heparin Program (Solid Form).

We are evaluating solid oral heparin prototypes, including capsule and tablet forms of UFH and LMWH, using our delivery agent, SNAC. SNAC was administered as Heparin/SNAC Oral solution in a Phase III study of over 2,000 patients, known as "The PROTECT Trial". (For more information on the PROTECT Trial, see "Discontinued Oral Heparin Program (Liquid Form) below).

Heparin, a polysaccharide, represents a significant formulation challenge for our eligen(TM) technology because the potency of heparin is significantly lower than many macromolecules, requiring a large dose which combined with SNAC results in both a large solid dosage form and a large number of tablets or capsules per dose. Since 2002, we have significantly reduced the necessary dose by using both traditional formulation techniques and eligen(TM) technology-specific techniques. We believe that reducing the size of the dosage form and the number of tablets or capsules per dose would provide the most patient preferred and commercially viable solid dosage form. We are continuing our efforts to optimize a solid oral UFH dosage form and have produced improved solid formulations with additional performance enhancements.

In December 2002, at the American Society of Hematology ("ASH") Annual Meeting, we presented positive outcomes from a Phase I clinical study evaluating two solid oral UFH formulations, in tablet and capsule forms. For each solid dosage form which made use of our eligen(TM) technology, the data demonstrated that an effect on blood coagulation was achieved consistent with therapeutic levels that are acceptable in known heparin indications,, without any tolerability issues. In addition, the total quantity of material was significantly reduced in both formulations from the oral liquid formulation and the physical blend in a capsule used in previous studies.

In the second half of 2003, we completed a multiple arm Phase I clinical study in Europe to evaluate additional solid dosage forms of UFH in tablet and capsule form in humans and data from such studies are currently being evaluated. An additional study is planned for the first half of 2004.

Discontinued Oral Heparin Program (Liquid Form).

We initially set out to develop a solution formulation of oral heparin. At the end of 1999, we initiated a Phase III study of our oral heparin solution formulation. The multi-center, double-blind, double-dummy Phase III trial was referred to as the "PROTECT" (PRophylaxis with Oral SNAC/heparin against ThromboEmbolic Complications following Total hip replacement surgery) trial.

The PROTECT Trial enrolled 2,288 patients to evaluate the safety and efficacy of a solution oral heparin formulation using our eligen(TM) oral drug delivery technology for the prevention of DVT in total hip replacement surgery patients (a surgical patient population that historically has had the highest rate of DVT). The goal of the PROTECT Trial was to demonstrate the superior efficacy and comparable safety of our oral heparin when dosed postoperatively for a 30-day regimen, as compared to injectable enoxaparin, when dosed postoperatively for a 10-day regimen. (A 10-day regimen of injectable enoxaparin, marketed by Aventis Pharma SA under the LOVENOX trademark, is the standard of care in the prevention of DVT, as determined by the American College of Chest Physicians' Sixth Consensus Conference.)

The endpoint of PROTECT was DVT occurrence in the 30 days following surgery, or pulmonary embolism or death. Investigators at more than 120 international sites evaluated a liquid form of heparin, consisting of the EMISPHERE delivery agent, SNAC (Sodium N-[8-(2 hydroxybenzoyl) Amino Caprylate), in combination with unfractionated heparin, when dosed orally in a 30-day regimen, compared to enoxaparin, when dosed subcutaneously (by injection) in a 10-day regimen. Total DVTs were determined by bilateral venogram, the FDA standard for measurement, measured at 30 days following surgery. A team of

radiologists at Boston's Massachusetts General Hospital read all the venographies produced to determine the presence of a blood clot (thrombus).

On May 14, 2002, we announced initial results from the PROTECT study. Those initial results did not demonstrate the superiority of oral heparin, when dosed in a 30-day treatment regimen, compared to enoxaparin administered by injection in a 10-day dosing regimen in preventing DVTs. However, the data from the study suggested that the lower than expected efficacy net result may have been due to patient acceptance of and compliance with the liquid dosage form, and that a more acceptable (solid) dosage form would result in higher patient compliance.

The study design of PROTECT was rigorous. The trial sought at least an absolute 10% reduction in DVT events, so that it could claim clinical superiority.

In December 2002, we presented the complete analysis at the 44th annual meeting of the American Society of Hematology. The fully analyzed data demonstrated for the first time that the macromolecule heparin could be delivered into the bloodstream of

a patient following dosing in an oral form. However, a liquid formulation of oral heparin in a 30-day treatment regimen was deemed to have poor tolerability due to its taste, which in turn led to poor patient compliance in the PROTECT study.

We hope to leverage the extensive safety database that we now have for SNAC, the EMISPHERE delivery agent that was used in the PROTECT study, and are evaluating the application of that safety database to the solid form of oral heparin for potential utility toward future development efforts with the FDA. In 2003, we conducted studies with various solid oral dosage forms of SNAC/UFH to examine different forms of the solid heparin and to optimize further the prototypes that were announced at the ASH conference in 2002.

Osteoporosis

Osteoporosis is a disease characterized by low bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures. It is a common condition among the elderly--both men and women. The most common consequence of osteoporosis is greatly increased risk of broken bones, especially in the hip region. Osteoporosis is estimated to affect over 10 million Americans and to be responsible for more than 1.5 million hip, vertebral, wrist and other fractures annually in the U.S. The disease is relatively expensive to treat. It is reported that worldwide revenue for osteoporosis therapeutics was $7.5 billion in 2002 and it is estimated that sales will reach $12 billion by 2006. Several medicines are available to either delay the onset of, or reverse, bone loss. We believe that new therapies currently under development should foster greater patient compliance, and ultimately improve the market penetration rate.

We and our collaborators, Novartis Pharma AG ("Novartis") and Eli Lilly and Company ("Lilly"), are seeking to commercialize oral forms of the existing nasal and injectable therapies. We believe that oral forms of therapy would be considered more patient-friendly, and would ensure better compliance, especially among the elderly, for the treatment and prevention of osteoporosis.

For information on our product candidates addressing the osteoporosis patient population, see "Ongoing Collaborative Agreements" below.

Growth Disorders

Growth hormone is necessary to stimulate growth in children by promoting the growth of muscle and bone. In adults, growth hormone maintains muscle and bone quality. Many children and adults suffer from growth hormone deficiency, in which growth rate is decreased, appearance is less mature, and adult height falls below the normal range.

Recombinant human growth hormone ("rhGH") has been available for many years. rhGH must be administered by injection, and therefore, compliance is particularly difficult in pediatric patients. rhGH therapy requires a long-term commitment by the patient and his or her family to achieve the best results. The prescribed dosing ranges between three and seven injections per week. Treatment continues for several years until the child has completed puberty or has stopped

responding.

rhGH is approved for pediatric growth hormone deficiency, adult growth hormone deficiency, pre-kidney transplantation, and short stature due to chronic kidney disease and Turner's syndrome. The injectable rhGH worldwide market is estimated to be over $1.7 billion.

Oral Recombinant Human Growth Hormone Program.

From 1998 through August 2003, we developed oral rhGH in collaboration with Lilly. In August 2002, Emisphere and Lilly advanced an oral form of rhGH, the largest protein ever evaluated with the eligen(TM) technology, into human testing. In 2003, an early stage clinical study was successfully completed. Results from the study indicated that the oral prototype achieved the desired physiological profile of growth hormone. With this study, we demonstrated the utility and safety profile of our sixth EMISPHERE delivery agent to be tested in humans.

As of August 2003, we reacquired all rights to the oral rhGH program from Lilly.

Asthma/Allergies

An allergy is an immune response by the body to certain stimuli in the environment. One of the most common forms of allergy is hay fever, which is estimated to affect as many as 35.9 million people in the United States. Asthma is a chronic inflammatory disorder of the body's airways caused by allergens and viral respiratory infections leading to bronchial hyper responsiveness and obstruction of airways. According to published sources, more than 20.3 million Americans report having asthma.

Oral Cromolyn Sodium Program.

Cromolyn sodium mitigates allergic reactions by the inhibition of the release of histamine and other chemical mediators from the mast cells. Cromolyn sodium is marketed as an aerosol formulation, eye solution and nasal spray for the treatment of asthma and allergies. It has been reported that annual sales of cromolyn sodium are estimated to be approximately $300 million in the United States.

Cromolyn sodium is a charged organic molecule that has not otherwise been developed in an oral form due to its low bioavailability. As such, there is no proof that an oral version would have the same effect as non-oral forms delivered via the nasal, pulmonary, or ocular routes to the systemic circulation. As a generic pharmaceutical, cromolyn sodium is considered by physicians to be safer than the most common medications used to control allergies and inflammation, principally antihistamines and corticosteroids. As an asthma treatment, cromolyn sodium can decrease airway hyper responsiveness in patients and has virtually no systemic toxicity.

In November 2001, we announced proof-of-concept Phase I data for this product candidate using an EMISPHERE delivery agent. The data demonstrated that the drug was absorbed in less than 30 minutes in healthy human subjects. We have conducted additional Phase I dose-ranging studies since 2001 and have found the data to be consistent. In 2002, oral cromolyn sodium entered into proof-of-concept patient testing. We continue to develop this program.

Obesity

Obesity is a major health problem in all developed countries. The prevalence of obesity in the United States has increased substantially during the past decade. Nearly two-thirds of adults in the United States are overweight, and nearly one-third are obese, according to data from the 1999-2000 National Health and Nutrition Examination Survey. A 1998 National Institutes of Health report confirmed that obesity significantly increases a number of health risks, including Type II diabetes. The most recent reports available estimate that total costs related to overweight and obesity conditions total $117 billion in the United States; of this, $61 billion is estimated to account for direct costs. Obesity-related conditions such as stroke and myocardial infarction are estimated to contribute to hundreds of thousands of deaths annually. Current treatment of obesity consists of diet, exercise and other life-style changes, and a limited number of drugs.

Oral PYY//3-36// Program.

PYY//3-36//, an experimental substance, is a peptide with 34 amino acids. Specifically, as a gut hormone, it is postulated that PYY//3-36// physiologically inhibits food intake [Bloom, et al., New England Journal of Medicine, v. 349:941-948 no. 10; September 4, 2003]. Clinical research experiments are currently underway by academic institutions to evaluate PYY3-36 relative to the condition of obesity. A factor that would limit the adoption of this therapy, even if proven successful, is the venous delivery of this compound, which must be continuously administered for long periods of time.

We have demonstrated that PYY3-36 can be delivered orally at pharmacologically relevant levels in non-human primate animal models and are considering developing a solid dosage prototype for testing in humans.

For information on our other product candidate addressing the obese patient population, see "Ongoing Collaborative Agreements" below.

Infectious Disease (Anthrax)

Anthrax is an acute infectious disease caused by the spore-forming bacterium Bacillus anthracis. Anthrax most commonly occurs in wild and domestic lower vertebrates (cattle, sheep, goats, camels, antelope, and other herbivores), but it can also occur in humans when they are exposed to infected animals or tissue from infected animals. When anthrax affects humans, it is usually due to an occupational exposure to infected animals or their products.

The currently available anthrax vaccine immunization consists of three subcutaneous injections given 2 weeks apart followed by three additional subcutaneous injections given at 6, 12, and 18 months. Annual booster injections of the vaccine are recommended thereafter. Mild local reactions occur in 30% of recipients and consist of slight tenderness and redness at the injection site. Severe local reactions are infrequent and consist of extensive swelling of the forearm in addition to the local reaction. Systemic reactions occur in a very small percentage of recipients.

For information on our product candidate addressing the patient population with infectious diseases, including anthrax, see "Ongoing Collaborative Agreements" below.

ONGOING COLLABORATIVE AGREEMENTS

We are a party to collaborative agreements with corporate partners to provide development and commercialization services relating to the products under collaboration. These agreements are in the form of research and development collaborations and licensing agreements. Under these agreements, we have granted licenses or the rights to obtain licenses to our oral drug delivery technology. In return, we are entitled to receive certain payments upon the achievement of milestones and royalties on the sales of the products should a product ultimately be commercialized. We also are entitled to be reimbursed for research and development costs that we incur.

All of our collaborative agreements are subject to termination by our corporate partners without significant financial penalty to them.

Eli Lilly and Company - Oral PTH 1-34 Program

In February 1997, we formed a strategic alliance with Lilly for the development of an oral recombinant parathyroid hormone ("PTH 1-34", or teraparatide) for the treatment of osteoporosis and a second product candidate, recombinant human growth hormone ("rhGH", or somatropin), for treatment of growth disorders. PTH 1-34 is a bone anabolic/formation compound currently marketed by Lilly as a once daily injectable for the treatment of osteoporosis. In contrast to sCT that reduces bone loss, PTH 1-34 stimulates new bone formation.

In March 1998, Lilly and Emisphere entered into license agreements for PTH 1-34 and rhGH and Lilly paid us a $4 million milestone payment. In June 2000, the parties executed a follow-on agreement for both proteins and Lilly paid Emisphere a $2 million milestone payment in connection with the selection of the EMISPHERE delivery agent to be used with PTH 1-34.

In August 2001, Emisphere and Lilly issued a joint publication on the oral delivery of PTH 1-34 in the American Association of Pharmaceutical Scientists' July issue of Pharmaceutical Research (Vol. 18, No. 7, 2001), setting forth the first reproducible, oral delivery of biologically active PTH 1-34 in a preclinical model of osteoporosis. In late 2001, Emisphere and Lilly entered an oral unformulated solid dosage of parathyroid hormone into the clinic.

The Emisphere/Lilly oral PTH 1-34 program is currently in Phase I testing, and Lilly is responsible for managing the trials and for all related costs. Any future clinical development efforts also will be managed and funded by Lilly.

We are currently in litigation with Lilly related to the contract agreement for the oral PTH 1-34 program (See Item 3, "Legal Proceedings", below).

In August of 2003, Emisphere and Lilly announced that Lilly would return all rights and data generated on an oral form of rhGH to Emisphere, and would continue to develop the oral PTH 1-34 program. For more information on rhGH, see "Previous Collaborations", below.

Novartis Pharma AG - Oral Salmon Calcitonin Program

In December 1997, we entered into a collaboration agreement with Novartis to develop an oral salmon calcitonin , currently used to treat osteoporosis. sCT is a hormone that inhibits the bone-tissue resorbing activity of specialized bone cells called osteoclasts, enabling the bone to retain more of its mass and functionality. sCT is involved in the regulation of calcium and the decrease of bone loss and fractures. Salmon calcitonin is estimated to be about 30 times more potent than the human version. Synthetic sCT, which is identical to the naturally occurring one, currently is available only as a nasal spray or injectable therapy. Novartis markets synthetic sCT in the United States as MIACALCIN(R) nasal spray, which is indicated for the treatment of postmenopausal osteoporosis in women greater than five years postmenopause with low bone mass.

Treatment with sCT has been shown to maintain bone mineral density in the spine and reduce the risk of new vertebral fractures in post-menopausal women with osteoporosis. It is also used to treat the bone pain associated with Paget's disease. sCT is currently available as an injection or nasal spray. In its nasal spray forms, it is believed that sCT's major advantages are its lack of serious side effects, excellent long-term safety profile and ease of administration. Some studies even suggest that sCT produces an analgesic effect. Annual worldwide sales of sCT marketed in nasal spray form were approximately $389 million in 2003, of which the U.S. accounts for an estimated $240 million.

In October 1999, Novartis completed a Phase I clinical study in the United Kingdom, testing a capsule form of sCT utilizing the eligen(TM) technology. The study results, released in January 2000, indicated that Novartis achieved its targeted endpoint of therapeutic sCT blood levels, following oral administration of capsules containing sCT and an EMISPHERE delivery agent. We

believe that these results demonstrate the successful oral delivery of a protein macromolecule from a solid oral dosage form without chemical modification of the molecule or damage to the biological membrane.

In February 2000, Novartis exercised its option to acquire an exclusive license to develop and commercialize oral sCT and in that connection, made a $2.0 million milestone payment to us. In March 2000, Novartis paid us $2.5 million to obtain the license to our technology for calcitonin, and to obtain an option to use the eligen(TM) technology for a second compound. Novartis' rights to certain financial terms concerning the second compound have since expired.

In February 2003, we announced favorable results of a Phase IIa study conducted by Novartis evaluating the performance in post-menopausal women of an oral tablet form of sCT. The purpose of the study was to assess the efficacy and safety of various doses of an oral tablet of sCT in post-menopausal women and to confirm the activity of calcitonin when given orally, as reflected by changes in markers of bone formation or resorption. Oral sCT was dosed for 90 days in the study, the longest time period that the eligen(TM) technology has been dosed in human testing. The study demonstrated activity on bone markers over a three month dosing period when the peptide was delivered in combination with the EMISPHERE delivery agent. Only two serious adverse events were reported, neither of which were related to the EMISPHERE delivery agent or to sCT. The side

effects (mainly gastrointestinal in nature) seen with the highest doses of sCT were consistent with those normally seen with high plasma levels of sCT when administered by injection. These results were presented by Novartis at the American Society of Bone and Mineral Research in September of 2003.

We are entitled to receive an additional milestone payment for oral sCT upon the initiation of Phase III studies by Novartis.

Regeneron Pharmaceuticals, Inc. - Oral CNTF Program

During 2000, we established a research and development collaboration and entered into an option agreement with Regeneron for the development of an oral version of a derivative of ciliary neutrophic factor ("CNTF"), which is under development by Regeneron as an injectable drug, to be marketed as AXOKINE(R), for use in the treatment of obesity.

Emisphere and Regeneron have conducted pre-clinical testing of an oral version of CNTF. Further development of the oral program will be guided by Regeneron.

U.S. Army Medical Research Institute of Infectious Diseases ("USAMRIID") - Oral Anthrax Antigen Program

In June 2003, we announced that we entered into a cooperative research and development agreement ("CRADA") with the USAMRIID, the U.S. Department of Defense's lead medical research laboratory for the U.S. Biological Defense Research Program. USAMRIID is evaluating the use of our eligen(TM) technology to create oral vaccines against anthrax using a new recombinant protein antigen. The Institute plays a key role in infectious disease research, and its mission is to conduct basic and applied research on biological threats resulting in medical solutions (such as vaccines, drugs and diagnostics) to protect the war fighter. USAMRIID is a subordinate laboratory of the U.S. Army Medical Research and Materiel Command. USAMRIID has agreed to grant us an exclusive license to each U.S. patent application or issued patent as a result of the work performed under the CRADA. We will be eligible to receive royalties under a license agreement with the ultimate vaccine developer should an oral anthrax vaccine ultimately be developed.

PREVIOUS COLLABORATIONS

Elan Pharmaceuticals, Inc. ("Elan")

In 1996, we formed a joint venture with Elan for the development of an oral heparin. In July 1999, we reacquired all product, marketing and technology rights for these heparin product candidates from Elan.

Eli Lilly and Company

In February 1997, we formed a strategic alliance with Lilly for the development of an oral recombinant parathyroid hormone ("PTH 1-34", or teraparatide) for the treatment of osteoporosis and a second product candidate, recombinant human growth hormone ("rhGH", or somatropin), for treatment of growth disorders.

In August of 2003, Emisphere and Lilly announced that Lilly would return all rights and data generated on an oral form of rhGH to us, and Emisphere and Lilly would continue to develop the oral PTH 1-34 program.

Cubist Pharmaceuticals, Inc. ("Cubist")

In November 2000, we established a collaboration agreement with Cubist Pharmaceuticals, Inc. for the development of an oral form of daptomycin, under development by Cubist (being developed as CUBICIN(R)), for use in the treatment of serious or life-threatening soft skin tissue infections. The agreement expired in 2003, and the parties are no longer collaborating.

CONTRACT RESEARCH REVENUE RECEIVED FROM COLLABORATORS SINCE 2001 (in thousands)

COLLABORATOR	2003	2002	2001
Eli Lilly and Company (rhGH and PTH 1-34)	$ 237	$ 2,923	$ 3,828
Novartis Pharma AG	-	-	-

Regeneron Pharmaceuticals, Inc.	-	28	206
Cubist Pharmaceuticals, Inc.	-	267	401
U.S. AMRIID	-	N/A	N/A

PATENTS AND OTHER FORMS OF INTELLECTUAL PROPERTY

Our patent strategy is designed to maximize our patent portfolio, proprietary rights and any future licensing opportunities we might pursue. We seek patent protection on various aspects of our proprietary chemical and pharmaceutical delivery technologies, including, but not limited to, the delivery agent compounds themselves, the combination of our compounds with a pharmaceutical or chemical agent and for generic structures that encompass EMISPHERE delivery agents. We also seek to patent the processes utilized in manufacturing EMISPHERE delivery agents and the methods of use of EMISPHERE delivery agents. We concentrate our efforts in the key pharmaceutical markets of the United States, Europe, and Japan, and file in additional countries on a case-by-case basis.

We have patents, or patent applications pending, for delivery agents that we currently use in conjunction with insulin, heparin, calcitonin, PTH 1-34 and cromolyn sodium. As of December 31, 2003, we had 74 issued patents in the United States and had other patents issued or applications pending in various countries around the world. Of our 74 U.S. issued patents, 9 were issued by the U.S. Patent and Trademark Office during fiscal 2003. Our patents issued in the United States will begin to expire in 2012, except for the earliest, which will expire in 2007. As of December 31, 2003, we had 56 patent applications relating to our drug delivery technology pending in the United States and over 250 patents or applications pending in about 30 countries, including Canada, Mexico, Japan and Australia, and in the European Patent Office.

In 2003, we registered the trademark, TECHNOLOGY FOR HUMANITY(R), with the U.S. Patent and Trademark Office for use with technical consulting, research and development in drug delivery systems.

For information concerning a pending litigation with Lilly relating, in part, to its infringement of our patent rights, see Item 3 "Legal Proceedings", below.

MANUFACTURING

The primary raw materials used in making the delivery agents for our product candidates are readily available in large quantities from multiple sources. We internally manufacture carriers on a small scale for research purposes and for early stage clinical supplies. We believe that our manufacturing capabilities comply with FDA good manufacturing practices ("GMPs"). In 2003, we manufactured early stage clinical supplies under GMP conditions for the oral insulin tablet prototype studies and heparin multiple arm studies.

Currently, we have arrangements with third parties to produce EMISPHERE delivery agents in accordance with GMP regulations in batch sizes greater than 30 kilograms. We have identified other commercial manufacturers meeting the FDA's GMP regulations that have the capability of producing EMISPHERE delivery agents.

COMPETITION

Our success depends in part upon maintaining a competitive position in the development of product candidates and technologies in an evolving field in which developments are expected to continue at a rapid pace. We compete with other drug delivery, biotechnology and pharmaceutical companies, research organizations, individual scientists and non-profit organizations engaged in the development of alternative drug delivery technologies or new drug research and testing, and with entities developing new drugs that may be orally active. Our product candidates compete against alternative therapies or alternative delivery systems for each of the medical conditions our product candidates address, independent of the means of delivery. Many

of our competitors have substantially greater research and development capabilities, experience, and marketing, financial and managerial resources than we have, and could represent significant competition.

Our competitors may succeed in developing competing technologies and

obtaining governmental approval for products before we can do so, alone or with partners. We cannot assure you that developments by other drug delivery innovators will not render our product candidates, or the therapeutic compounds used in combination with our product candidates, noncompetitive or obsolete.

Oral Insulin Competition

Other private and public companies, as well as academic institutions are developing oral insulin analogues. One such company is Nobex Corp. We believe these analogues differ from our product, in that insulin is chemically modified, creating a new chemical entity. In May 2002, Nobex entered into a partnership agreement with GlaxoSmithKline ("GSK") for the development and potential marketing of their product candidate. In November 2003, Nobex announced that GSK would return the product candidate rights to Nobex, and that GSK would no longer collaborate to develop the candidate. Other alternative insulin delivery systems include Aventis/Pfizer/Nektar's EXUBERA(R). We believe our oral insulin delivery technology is distinguished from other announced technologies as it demonstrates the preservation of both the biological effects of the drug and the integrity of the intestinal membrane.

Oral Heparin Competition

AstraZeneca PLC has reported European approval for EXANTA(TM), a pro-drug form of melagatran that is a direct thrombin inhibitor. This product would compete with our oral heparin product candidates. Organon Sanofi-Synthelabo LLC has reported approval of an injectable pentasaccharide product, ARIXTRA(R), a synthetic anti-clotting agent which is indicated for the prevention of DVT in patients undergoing surgery for hip fracture, hip replacement or knee replacement and was recently approved for an extended dosing regimen.

Other technologies use micro-encapsulation to orally deliver heparin. We believe our oral heparin delivery technology is distinguished from other announced technologies, in that it demonstrates the preservation of the chemical integrity of the drug and the integrity of the intestinal membrane.

Oral Osteoporosis Candidate Competition

An injectable form of PTH 1-34, a bone anabolic, is manufactured by our partner, Lilly, as FORTEO. PTH 1-34 is a bone anabolic that decreases bone loss and builds new bone. Unigene Laboratories, Inc. has reported that, in collaboration with GSK, it is developing an oral form of PTH 1-34. Unigene also reported that it is developing an oral salmon calcitonin. Both candidates are in early stage clinical testing.

Novartis currently offers a nasal dosage form of sCT, MIACALCIN. Other osteoporosis therapies include estrogen replacement therapy, bisphosphonates, selective estrogen receptor modulators and several new biologics that are under development.

Competition Summary

Although we believe that our oral formulations, if successful, will likely compete with well established injectable versions of the same drugs, we believe that (i) physicians and patients prefer orally delivered forms of products over injectable forms, (ii) oral forms of products enable improved compliance, and (iii) for many programs, the oral form of products enable improved therapeutic regimens. We expect to be the leader in oral drug delivery, because, among other reasons, we believe that our eligen(TM) technology preserves the biological effects of the drug and the integrity of the intestinal membrane.

GOVERNMENT REGULATION

Our operations and product candidates under development are subject to extensive regulation by the FDA, other governmental authorities in the United States and governmental authorities in other countries.

The duration of the governmental approval process for marketing new pharmaceutical substances, from the commencement of preclinical testing to receipt of governmental approval for marketing a new product, varies with the nature of the product and with the country in which such approval is sought. For new chemical entities, the approval process could take eight to ten years or more. For reformulations of existing drugs, typically the process is shorter. In either case, the procedures required to obtain

governmental approval to market new drug products are costly and time-consuming, requiring rigorous testing of the new drug product. Even after such time and effort, regulatory approval may not be obtained for a product.

The steps required before a new human pharmaceutical product can be marketed or shipped commercially in the United States include, in part, preclinical testing, the filing of an Investigational New Drug ("IND"), the conduct of clinical trials and the filing with the FDA of either a New Drug Application ("NDA") for drugs or a Biologic License Application ("BLA") for biologics.

In order to conduct the clinical investigations necessary to obtain regulatory approval in the US, an applicant must file an IND with the FDA to permit the shipment and use of the drug for investigational purposes. The IND sets forth, in part, the results of preclinical (laboratory and animal) toxicology testing and the applicant's initial Phase I plans for clinical (human) testing. Once an IND is approved, the clinical testing may commence within 30 days.

Under FDA regulations, the clinical testing program required for marketing approval of a new drug typically involves three clinical phases. In Phase I, safety studies are generally conducted on normal, healthy human volunteers to determine the maximum dosages and side effects associated with increasing doses of the substance being tested. In Phase II, studies are conducted on small groups of patients afflicted with a specific disease to gain preliminary evidence of efficacy and to determine the common short-term side effects and risks associated with the substance being tested. Phase III involves large-scale trials conducted on disease-afflicted patients to provide statistical evidence of efficacy and safety and to provide an adequate basis for product labeling. Frequent reports are required in each phase and, if unwarranted hazards to patients are found, the FDA may request modification or discontinuance of clinical testing until further studies have been conducted. Phase IV testing is sometimes conducted, either to meet FDA requirements for additional information as a condition of approval, or to gain post-approval market acceptance of the pharmaceutical product.

Once clinical testing has been completed pursuant to an IND, the applicant files an NDA or BLA with the FDA seeking approval for marketing the drug product. The FDA reviews the NDA or BLA to determine whether the drug is safe and effective, and adequately labeled, and whether the applicant can demonstrate proper and consistent manufacture of the drug. The time required for FDA action on an NDA or BLA varies considerably, depending on the characteristics of the drug, whether the FDA needs more information than is originally provided in the NDA or BLA and whether the FDA has concerns with the evidence submitted.

The facilities of each company involved in the commercial manufacturing, processing, testing, control and labeling of pharmaceutical products must be registered with and approved by the FDA. Continued registration requires compliance with GMP regulations and the FDA conducts periodic establishment inspections to confirm continued compliance with its regulations.

We are subject to various federal, state and local laws, regulations and recommendations relating to such matters as laboratory and manufacturing practices and the use, handling and disposal of hazardous or potentially hazardous substances used in connection with our research and development work. We believe that we are in compliance with these laws and regulations in all material respects.

EMPLOYEES

As of March 1, 2004, we had 120 employees, 81 of whom are engaged in scientific research and technical functions and 39 of whom are performing information technology, engineering, facilities maintenance and administrative functions. Of the 120 employees, 30 hold Ph.D. or M.D. degrees. We believe our relations with our employees are good.

AVAILABLE INFORMATION

Emisphere files annual, quarterly, and current reports, proxy statements, and other documents with the Securities and Exchange Commission, (the "SEC"), under the Securities Exchange Act of 1934 (the "Exchange Act"). The public may read and copy any materials that the Company files with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling

the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including Emisphere, that file electronically with the SEC. The public can obtain any documents that Emisphere files with the SEC at http://www/sec/gov.

We also make available free of charge on or through our Internet website (http://www.emisphere.com) our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Section 16 filings, and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) or Section 16 of the Exchange Act as soon as reasonably practicable

after we or the reporting person electronically files such material with, or furnishes it to, the SEC. Our Internet website and the information contained therein or connected thereto are not intended to be incorporated into the Annual Report or this Form 10-K.

ITEM 2. PROPERTIES

We currently lease approximately 86,000 square feet of office space at 765 Old Saw Mill River Road, Tarrytown, New York for use as executive offices and laboratories. The current lease expires in September 2007 and has options for two five-year extensions at then-current rates. In addition, we own a facility of 100,000 square feet located on 29 acres of land in Farmington, Connecticut. In the third quarter 2002, we announced our decision to cease operations at, and sell the facility. In December 2003, we entered into a contract of sale for the facility. The purchaser's obligations to close on the facility are contingent on receiving certain governmental approvals, including but not limited to zoning approvals in final form, wetlands approvals and state environmental approvals, by August 12, 2004. In the event that the purchaser has not terminated the contract by August 12, 2004 because of the failure to obtain governmental approvals, the purchaser is obligated to close on the premises by the earlier date of the thirtieth day after receipt of governmental approvals or November 12, 2004. The purchaser does have the right to adjourn the closing date for six months after November 12, 2004 if governmental approvals have not been received and provided the purchaser shall pay the sum of $35,000 per month to Emisphere.

ITEM 3. LEGAL PROCEEDINGS

On December 2, 2003, we were served with a complaint in an action brought by Lilly in the United States District Court for the Southern District of Indiana, Indianapolis Division, seeking (i) a declaratory judgment declaring that Lilly is not in breach of its agreements with us concerning oral formulations of recombinant parathyroid hormone, PTH 1-34, and (ii) an order preliminarily and permanently enjoining us from terminating those agreements. On January 21, 2004, we filed an answer in the action, asserting affirmative defenses and counterclaims for patent infringement, unfair competition under the Lanham Act and breach of contract. We alleged that Lilly filed certain patent applications relating to the use of our proprietary technology in combination with another drug, in violation of a License Agreement between the parties dated April 7, 1998, and a Research Collaboration and Option Agreement between the parties dated June 8, 2000, and that the activities disclosed in such applications infringe upon our patents. We are also alleging that Lilly has breached the agreements by failing to make a milestone payment, as required upon the completion of oral PTH 1-34 product Phase I studies.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

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

Emisphere common stock is traded on The Nasdaq Stock Market under the symbol "EMIS".

The following table sets forth the range of high and low intra-day sale prices as reported by The Nasdaq Stock Market for each period indicated.

	HIGH	LOW
2002		
First quarter	$ 32.50	$ 14.77
Second quarter	18.15	3.57
Third quarter	4.70	2.78
Fourth quarter	4.63	2.55
2003		
First quarter	6.32	2.35
Second quarter	5.50	2.28
Third quarter	9.20	3.32
Fourth quarter	8.15	4.88
2004		
First quarter (through March 15, 2004)	8.66	5.43

As of March 15, 2004 there were approximately 7,517 stockholders of record, including record owners holding shares on behalf of an indeterminate number of beneficial owners, and 18,312,150 shares of common stock outstanding. The closing price of our common stock on March 15, 2004 was $6.47.

We have never paid cash dividends and do not intend to pay cash dividends in the foreseeable future. We intend to retain earnings, if any, to finance the growth of our business.

Other information required by this item is incorporated by reference in the Proxy Statement to be distributed in connection with our annual meeting of stockholders.

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data for the years ended December 31, 2003, 2002, 2001, and 2000, the five months ended December 31, 2000, and the fiscal years ended July 31, 2000 and 1999 have been derived from the financial statements of Emisphere and notes thereto, which have been audited by our independent accountants. The selected financial data for the year ended December 31, 2000 are unaudited.

	YEAR ENDED DECEMBER 31,				FIVE MONTHS ENDED DECEMBER 31,	YEAR ENDED JULY 31,	
	2003	2002	2001	2000	2000	2000	1999
			(unaudited)				
			(in thousands, except per share data)				
STATEMENT OF OPERATIONS DATA:							
Revenue (3)	$ 400	$ 3,378	$ 4,728	$ 7,211	$ 2,414	$ 5,889	$ 10,180
Costs and expenses:							
Research and development	21,026	49,719	53,301	24,820	10,386	27,448	21,217
General and administrative	9,727	11,242	9,692	6,699	3,039	5,878	6,051
Restructuring	(79)/(1)/	1,417/(1)/	--	--	--	--	--
Loss on impairment of intangible and fixed assets	5,439/(2)/	4,507/(2)/	--	--	--	--	--
Depreciation and amortization	5,806	6,185	4,014	2,605	1,167	2,434	1,633
Acquisition of in-process research and development	--	--	--	--	--	--	9,686
Loss in Ebbisham Ltd	--	--	--	--	--	--	3,092
Total costs and expenses	41,919	73,070	67,007	34,124	14,592	35,760	41,679
Operating loss	(41,519)	(69,692)	(62,279)	(26,913)	(12,178)	(29,871)	(31,499)
Other (expense) and income	(3,350)	(1,650)	5,745	8,253	4,592	2,974	817
Net loss	$ (44,869)	$ (71,342)	$ (56,534)	$ (18,660)	$ (7,586)	$ (26,897)	$ (30,682)
Net loss per share--Basic and diluted	$ (2.48)	$ (3.98)	$ (3.18)	$ (1.10)	$ (0.43)	$ (1.79)	$ (2.63)

	DECEMBER 31,				JULY 31,	
	2003	2002	2001	2000	2000	1999
			(in thousands)			

BALANCE SHEET DATA:						
Cash, cash equivalents and investments.....	$ 43,008	$ 73,701	$ 139,278	$ 196,809	$ 207,793	$ 17,805
Total assets.....	66,049	107,966	182,083	224,963	229,557	38,476
Long-term liabilities.....	39,871	34,690	30,637	26,976	25,558	22,308
Accumulated deficit.....	(295,033)	(250,164)	(178,822)	(122,288)	(114,702)	(87,805)
Stockholders' equity.....	22,807	67,540	137,642	193,140	199,551	11,287

(1) In the second quarter of 2002, we announced a plan to restructure our operations, which included the discontinuation of our liquid oral heparin program and related initiatives, and a scale back of associated infrastructure. In the third quarter of 2002, we announced plans to further restructure operations by closing our Connecticut research facility and consolidating operations in Tarrytown. Total restructuring charges in 2002 were $1,417 of which $79 of accrued restructuring charges were reversed during 2003.

(2) In accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", in connection with the restructurings, we performed an evaluation of certain intangible and fixed assets to determine if their carrying amount exceeded their fair value. In 2002, we recorded an impairment charge of $4,507. In 2003, we recorded an additional impairment charge of $5,439.

(3) Emisphere adopted the Securities and Exchange Commission's Staff Accounting Bulletin 101, "Revenue Recognition" ("SAB 101") on August 1, 2000. In accordance with SAB 101, non-refundable upfront and research and development milestone payments and payments for services ("non-refundable fees") are recognized as revenue as the related services are performed over the term of the collaboration. Prior to August 1, 2000, certain non-refundable fees, including reimbursements from Ebbisham Ltd., were recognized as revenue only when there were no additional contractual services to be provided or costs to be incurred by Emisphere in connection with the non-refundable fee.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (dollars in thousands, except per share amounts)

GENERAL

Emisphere Technologies, Inc. is a biopharmaceutical company specializing in the oral delivery of therapeutic macromolecules and other compounds that are not currently deliverable by oral means. Since our inception in 1986, we have devoted substantially all of our efforts and resources to research and development conducted on our own behalf and in collaborations with corporate partners and academic research institutions. Our product pipeline includes product candidates for the treatment of cardiovascular diseases, osteoporosis, growth disorders, diabetes, asthma/allergies, obesity and infectious diseases. Development and commercialization of these product candidates entails risk and significant expense. Since inception, we have had no product sales from these product candidates.

BUSINESS OVERVIEW

We have developed and continue to enhance the human resource and physical infrastructure necessary to achieve our goal of becoming the premier oral drug delivery company. We have a significant and growing patent estate to protect our discoveries, proprietary technologies and carrier library. We continue to invest resources in research capabilities that:

- improve our understanding of the mechanisms of action of the carriers in order to select the appropriate carriers to deliver the drug candidate in the most efficient manner;
- redesign and update our computer modeling and in vitro testing capabilities to optimize carrier/drug selection;
- systematically study oral, buccal, transdermal, sublingual and topical approaches to drug delivery;
- select animal models that best mimic the human response; and
- explore the formulation of drug and carrier to optimize delivery.

We utilize resources to, among other things, conduct feasibility studies to determine if an EMISPHERE carrier can deliver a given drug. A feasibility study is a pre-clinical or clinical study with a duration of approximately six months. We conduct feasibility studies when we believe that significant opportunities exist, or when requested by:

- pharmaceutical companies who seek our assistance to deliver an injectable drug or less than optimally delivered drug via an EMISPHERE carrier. The costs of these studies typically are reimbursed. From these feasibility studies, further collaborations may develop including larger clinical studies and partnerships.

- government, universities and other biotech companies. The costs of these studies may or may not be reimbursed.

As a result of our strategy, our partners Lilly and Novartis are, at their own expense, actively developing PTH 1-34 and sCT, respectively, using EMISPHERE carriers. In 2003, our primary focus was on developing oral insulin and heparin, which are self funded projects. We also continue to conduct feasibility studies. In 2002, we completed a clinical trial for Lilly related to rhGH, for which we were fully reimbursed. In understanding the results of operations below, it is important to keep in mind that in 2002 and 2001 our primary focus was self-developing liquid oral heparin in a large Phase III trial which was completed in early 2002. After the results of the Phase III trial were reported, we reduced our work force and infrastructure related to the trial.

RESULTS OF OPERATIONS

Year Ended December 31, 2003 Compared to Year Ended December 31, 2002

Contract research revenue was $400 in 2003, representing a decrease of $2,978 or 88% compared to the year ended December 31, 2002. Revenue for 2003 primarily related to research and development expense reimbursements under collaborative agreements with Lilly. The decrease primarily was attributable to the winding down of rhGH Phase I clinical studies in collaboration with Lilly. Costs associated with contract research revenue approximate such revenue and are included in research and development expenses.

Total operating expenses were $41,919 for 2003, a decrease of $31,151, or 43%, compared to the year ended December 31, 2002. Total operating expenses included restructuring costs and loss on asset impairment of $5,360. The total operating expenses for 2003, excluding the restructuring costs and loss on asset impairment, were $36,559, a decrease of $30,587, or 46% compared to the year ended December 31, 2002. The details of this decrease are outlined below. The impact of the discontinuation of our

liquid oral heparin project and the subsequent restructuring and impairment charges are outlined in "Restructuring" and "Loss on impairment of intangible and fixed assets" below.

Research and development costs were $21,026 for 2003, a decrease of $28,693 or 58%, compared to the year ended December 31, 2002. The decrease consisted of a $13,928 decrease in clinical trial expenses and a $14,765 decrease in all other research costs. The decrease in clinical trial expenses primarily was due to (i) a $11,680 decrease in PROTECT related clinical trial expenses resulting from the completion of the trial and (ii) a $2,248 decrease in Phase I proof-of-concept clinical trial expenses resulting from the completion of the trials for rhGH, oral insulin, solid oral heparin, and cromolyn sodium. The decrease in all other research costs of $14,765 consisted of (i) $3,755 in reduced compensation and related expenses, (ii) $7,158 in reduced lab/clinical supplies costs, (iii) $2,724 in lower consulting and professional fees and (iv) $1,128 in lower operating costs. Overall, a majority of the decrease in other research costs was due to (i) the completion of the PROTECT trial and (ii) the subsequent reduction in work force and closing of our Connecticut research facility ("FarmTech"), both of which were initiated in 2002. The impact in 2003 of the closing of our FarmTech operations was a $3,552 decrease in other research costs, which is included in the $14,765 total decrease in other research costs.

During 2003, we did not incur any significant project costs related to the liquid oral heparin program and related initiatives other than certain close-out expenses. As a result, the liquid oral heparin project expense for 2003

excluding restructuring and impairment costs decreased by a total of $15,788 compared to the year ended December 31, 2002, consisting of a decrease of $11,680 in clinical trial expenses, $858 in compensation and travel costs, $462 in consulting, $996 in lab/clinical supplies, $1,091 in production facility design work and $701 in all other expenses.

General and administrative expenses for 2003 were $9,727, a decrease of $1,515, or 13%, compared to the year ended December 31, 2002. The decrease primarily was the result of a decrease of $1,209 in compensation and related expenses due to the elimination of the chief operating officer's position in 2002, a decline in severance costs, lower headcount and lower relocation expenses. The remaining decrease of $306 primarily was related to the closing of our FarmTech operations and the reduction of research and development support activity.

Restructuring. In 2002, we announced a plan for restructuring our operations, which included the discontinuation of our liquid oral heparin program and related initiatives, and a reduction of associated infrastructure. Additionally, in the third quarter of 2002, we evaluated several alternatives to consolidate our two research facilities located in Tarrytown, New York and Farmington, Connecticut in order to eliminate excess capacity, reduce spending, and raise cash. We decided to dispose of the Farmington research facility. As a result of the restructuring plan, we announced a reduction in force, which was implemented during May and June 2002 at the Tarrytown facility and November and December 2002 at the Farmington facility. Restructuring charges were adjusted by $(79) and $(77) in 2003 and 2002, respectively, to reflect actual expenditures.

The reduction in force in 2002 included the termination of 91 full-time and 26 temporary employees, including 14 administrative personnel and 103 scientists and research assistants. Four additional employees at the Farmington research facility were terminated in 2003. We paid $178 in stay bonuses to certain FarmTech employees who were asked to remain at the facility for an extended period of time during the phase out of the facility. The restructuring plan resulted in the reduction of the Company's full-time work force by approximately 50%.

The following table presents the original restructuring accruals for Tarrytown and Farmington, the adjustments to these accruals, and the amounts paid through December 31, 2003:

	ESTIMATED RESTRUCTURING EXPENSES	ACTUAL DISBURSEMENTS	ADJUSTMENTS	RESTRUCTURING RESERVE AS OF DECEMBER 31, 2003
Severance and accrued vacation.....	$ 1,003	$ (978)	$ (1)	$ 24
Outplacement services.....	69	(54)	(15)	-
Employee benefits.....	90	(58)	(31)	1
Contract exit costs.....	267	(194)	(73)	-
Other.....	65	(29)	(36)	-
Total	$ 1,494	$ (1,313)	$ (156)	$ 25

Loss on impairment of intangible and fixed assets. We recorded asset impairments in 2002 and 2003 resulting from our decision to refocus operations and reduce costs and to surrender 27% of our leased space in Tarrytown, New York to the landlord and to lease some of the equipment in that space to the subsequent tenant (see Tarrytown facility transaction below). Management assessed the recoverability of certain intangible and fixed assets related to the oral liquid heparin program and the associated infrastructure. A loss on impairment was recorded in 2003 of $5,439, an increase of $932 or 21% over the prior year,

which includes an impairment charge of $4,436 related to furniture and equipment situated at the Tarrytown facility. The remaining $1,003 represents a write-down of certain FarmTech assets to fair value, which was assessed based on the age and condition of the equipment, potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by us. Also in 2002, we concluded that a total impairment was required with respect to the portion of the purchased technology representing patents related to the discontinued liquid oral heparin program. We recorded an impairment charge of $4,507, comprised of $3,910 for purchased technology and $597 for

fixed assets which were to be used for the liquid oral heparin development program.

Tarrytown facility transaction: During 2003, in order to streamline operations and reduce expenditures, we entered into a transaction to surrender to the landlord approximately 27% of our leased space (the "surrendered space") at the Tarrytown facility. The surrendered space primarily consists of office space, which was subsequently leased to another tenant (the "subsequent tenant") at the Tarrytown facility. Annual cost savings from the transaction are expected to be approximately $1,540 for the remainder of the lease term, which extends through August 2007. In the event that the subsequent tenant vacates the space before August 31, 2005, we are contingently liable for the rent payments and will be required to re-let the space through August 31, 2007. Completion of the lease amendment and related agreements took place in October 2003. The agreement describes four distinct areas to be surrendered, three of which were vacated and surrendered to the subsequent tenant as of December 31, 2003. The fourth space was vacated in March 2004.

In connection with this transaction, we agreed to sell most of the furniture and equipment in the surrendered space to the subsequent tenant. The subsequent tenant has agreed to make certain payments ("furniture payments") which will be made directly to the landlord on a monthly basis. A rental credit equal to the furniture payment will be applied against our rent payment to the landlord on a monthly basis. Total payments under the agreement are $1,023 and extend through August 2012. The transaction between Emisphere and the subsequent tenant has been accounted for as an operating lease, with all furniture payments recorded as rental income. We retain a security interest in the furniture and equipment until all required payments have been made. We retained assets from the surrendered space with a net book value of $353 for use elsewhere in the Tarrytown facility.

We compared the net book value of the furniture and equipment to be leased to the fair value, which was determined to be the net present value of the furniture payments, or $737, and determined that the assets were impaired. Based on this evaluation, we recorded an impairment charge of $4,327 during the year ended December 31, 2003, which has been included in loss on impairment of intangible and fixed assets on the consolidated statements of operations. The lease of these assets will result in a reduction of depreciation expense of $1,195, $1,194, $1,193 and $418 in 2004, 2005, 2006, and 2007 through 2009, respectively.

Farmington facility transaction: In December 2003, we entered into a contract of sale for the Farmington facility with a real estate developer. The purchaser's obligations to close on the facility are contingent on receiving certain governmental approvals, including but not limited to zoning approvals in final form, wetlands approvals and state environmental approvals, by August 12, 2004. In the event that the purchaser has not terminated the contract by August 12, 2004 because of the failure to obtain governmental approvals, the purchaser is obligated to close on the premises by the earlier date of the thirtieth day after receipt of governmental approvals or November 12, 2004. The purchaser does have the right to adjourn the closing date for six months after November 12, 2004 if governmental approvals have not been received and provided the purchaser shall pay the sum of $35 per month to Emisphere. As of December 31, 2003, we performed an evaluation of the land, building and equipment available for sale at the Farmington facility, which has a carrying value of $3,591. We evaluated the following two components of the facility: (i) land, building and equipment that would most likely be transferred to the buyer when the sale is consummated (such as equipment which is attached to the structure and expensive to remove), and (ii) equipment that is portable and available for sale and would most likely be retained by us. We evaluated the land, building and attached equipment based on the sale price in the contract and determined that an impairment loss of the carrying value of the land, building and attached equipment had not been triggered as of December 31, 2003. In the event we are not successful in closing the sale of the Farmington facility, we may need to write down the carrying value of the land, building and equipment further. Because the sale is conditioned in part on local town zoning approval, we cannot predict with certainty when, or if, the closing will take place.

Subsequent to the decision to sell the Farmington facility, we transferred equipment with a net book value of $435 for use at the Tarrytown facility and equipment with a net book value of $314 was sold. The remaining items of equipment were then evaluated for potential impairment. The evaluations were based on the age and condition of the equipment, potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by us. Based on this evaluation, we recorded an

impairment charge of $1,003 during the year ended December 31, 2003, which has been included in loss on impairment of intangible and fixed assets on the consolidated statement of operations.

The land, building, and equipment at the Farmington facility that are available for sale are included at their carrying value in land, building and equipment held for sale, net on the condensed consolidated balance sheet as of December 31, 2003. The $435

of equipment transferred out of the Farmington facility is included in equipment and leasehold improvements, net on the consolidated balance sheets.

Purchased technology impairment: At December 31, 2003, we performed an evaluation of the recoverability of the remaining purchased technology related to the solid forms of oral heparin. We are proceeding with planned studies related to this formulation and we estimate that future undiscounted cash flows from programs related to the solid form of oral heparin are still valid. Therefore, an impairment of the remaining purchased technology has not been triggered as of December 31, 2003. The net carrying value of the remaining purchased technology is $2,512. A negative outcome in the development of solid oral heparin may trigger a write-down of related patents, currently valued at $2,512, in the future. Estimated amortization expense for the purchased technology is $239 for each of the next five years.

Depreciation and amortization costs were $5,806 for the year ended December 31, 2003, a decrease of $379, or 6%, as compared to the year ended December 31, 2002. This decrease is primarily the result of depreciation expense related to the Farmington research facility, which was classified as held for sale as of December 31, 2002 and therefore was not depreciated during 2003, offset by increases in depreciation for assets put into service at the Tarrytown facility in 2002.

Overall, our operating loss was $41,519 including the restructuring and impairment charges in the year ended December 31, 2003, a decrease of $28,173 as compared to a $69,692 operating loss for the year ended December 31, 2002. Excluding the restructuring and asset impairment charges the operating loss was $36,159 in the year ended December 31, 2003 or a decrease of $27,609 compared to 2002.

Other expense and income was $3,350 for the year ended December 31, 2003, a decrease of $1,700, or 103%, as compared to 2002. The change is primarily the result of a decrease in investment income of $1,162, plus an increase in interest expense of $693 related to the note due to Elan. See "Liquidity and Capital Resources" for further information concerning the Elan note. The decrease in investment income resulted from lower cash and investment balances and lower interest rates.

As a result of the above factors, we sustained a net loss of $44,869, including restructuring and impairment charges, for the year ended December 31, 2003, compared to a net loss of $71,342 for the year ended December 31, 2002, a decrease of $26,473 or 37%. Excluding the restructuring and impairment charges the net loss was $39,509 in the year ended December 31, 2003, a decrease of $25,687 or 39% compared to 2002.

Year Ended December 31, 2002 Compared to Year Ended December 31, 2001

Contract research revenue was $3,378 in 2002, representing a decrease of $1,350 or 29% compared to the year ended December 31, 2001. Revenue for 2002 related to research and development expense reimbursement primarily under collaboration agreements with Lilly, Cubist, and Regeneron. The decrease primarily was attributable to (i) the winding down of certain Phase I clinical studies in collaboration with Lilly ($905 decrease), and (ii) the near completion of our screening phase research, primarily related to our efforts on behalf of Cubist, Regeneron, and other parties ($445 decrease). Costs associated with contract research revenue approximate such revenue and are included in research and development expenses.

Total operating expenses were $73,070 for 2002, an increase of $6,063, or 9%, compared to the year ended December 31, 2001. Total operating expenses included restructuring costs and loss on asset impairment of $5,924. Total operating expenses for 2002, excluding the restructuring costs and loss on asset impairment, was $67,146, an increase of $139, or 0.2% over the year ended

December 31, 2001.

Research and development costs were $49,719 for the year ended December 31, 2002, a decrease of $3,582 or 7%, compared to the year ended December 31, 2001. The decrease consisted of a $6,889 decrease in clinical trial expenses, partially offset by a $3,307 increase in other research costs. The decrease in clinical trial expenses primarily was due to a $9,181 decrease in PROTECT-related clinical trial expenses resulting from the completion of the trial, partially offset by a $2,292 increase in Phase I proof-of-concept clinical expenses, primarily for solid oral heparin, oral insulin and rhGH. The $3,307 increase in other research cost consisted of (i) increased compensation expense of $1,218 due to increased headcount that was partially related to the first full year of the operations at FarmTech, (ii) one time production plant design expenses of $974 for the oral liquid heparin/delivery agent, (iii) increased lease and utility costs of $444, and (iv) an increase of $1,049 in consulting expenses. These increased expenses were offset by a $378 decrease in overall research and development expenses resulting from the restructuring announced in May of 2002.

Overall the liquid oral heparin project expense for 2002, excluding restructuring and impairment costs, was $15,357, consisting of $11,236 in clinical trial expenses, $399 in consulting, $1,273 in clinical supplies, $974 in production facility design work and $1,475 in all other expenses. These program costs did not recur in 2003 because of the discontinuation of the liquid oral heparin program and related initiatives.

General and administrative expenses for 2002 were $11,242, an increase of $1,550, or 16%, compared to the year ended December 31, 2001. The increase was primarily the result of $523 in bonus payouts, $825 in increased compensation expense, $194 in relocation expenses, $93 in recruiting expense, primarily associated with the addition of a chief operating officer, and $118 in overall occupancy and utility fees. These increased expenses were partially offset by a $203 reduction in legal and professional fees and other expenses.

Restructuring. As noted above, on May 22, 2002, we announced a plan for restructuring our operations, which included the discontinuation of our liquid oral heparin program and related initiatives, and a reduction of associated infrastructure. Additionally, in the third quarter of 2002, we evaluated several alternatives to consolidate our two research facilities located in Tarrytown, New York and Farmington, Connecticut in order to eliminate excess capacity, reduce spending, and raise cash. We decided to dispose of the Farmington research facility. As a result of the restructuring plan, we announced a reduction in force, which was implemented during May and June 2002 at the Tarrytown facility and November and December 2002 at the Farmington facility. The restructuring plan resulted in the reduction of our full-time work force by approximately 50%.

The following table presents the original restructuring accruals for Tarrytown and Farmington, the adjustments to these accruals, and the amounts paid through December 31, 2002:

	ESTIMATED RESTRUCTURING EXPENSES	ACTUAL DISBURSEMENTS	ADJUSTMENTS	RESTRUCTURING RESERVE AS OF DECEMBER 31, 2002
Severance and accrued vacation.....	$ 1,003	$ (960)	$ 5	$ 48
Outplacement Services.....	69	(54)	(15)	-
Employee Benefits.....	90	(58)	(31)	1
Contract exit Costs.....	267	(194)	-	73
Other.....	65	(29)	(36)	-
Total	$ 1,494	$ (1,295)	$ (77)	$ 122

In addition, we forgave loans to certain terminated employees and recognized compensation expense of $21. The reserve is included in accounts payable and accrued expenses in the consolidated balance sheet as of December 31, 2002.

Loss on impairment of intangible and fixed assets. In connection with the results of the liquid oral heparin clinical trials, we performed an evaluation of the recoverability of certain intangible and fixed assets related to that

program and related initiatives. We concluded that a total impairment of the portion of the purchased technology representing patents related to the liquid form of oral heparin was required because we do not anticipate realization of the carrying value of this asset. We recorded a $3,910 impairment charge.

In addition, we determined that an impairment had occurred with respect to a reactor and associated accessories, which was to be used only for manufacture of oral liquid heparin, and a gene chip array system and related accessories. During the year, we recorded a $597 impairment charge, representing the reduction of the carrying value of the reactor and gene chip array system and associated accessories to their fair value, based on the sale of the equipment to third parties.

In connection with the decision to dispose of the Farmington facility, we performed an evaluation of the recoverability of land, building and equipment at the facility. The evaluation was based on the weighted-average probability of estimated undiscounted future cash flows from five expressions of interest from third parties. Based on this evaluation, an impairment loss of the carrying value of the land, building and equipment had not been triggered as of December 31, 2002. The carrying value of land, building, and equipment as of December 31, 2002 was $4,520. In the event that we are not successful in closing on the sale of the Farmington facility, we may need to write down the carrying value of the land, building and equipment further.

Depreciation and amortization expenses were $6,185 for the year ended December 31, 2002, an increase of $2,171, or 54%, as compared to the same period in 2001. The increase was primarily the result of depreciation expense related to the Farmington research facility, which was acquired in April 2001, along with amortization expense for leasehold improvements related to additional laboratory and office space placed into service at the Tarrytown facility in 2002.

Overall, our operating loss was $69,692 including the restructuring and impairment charges, for the year ended December 31, 2002, an increase of $7,413 compared to a $62,279 operating loss for the year ended December 31, 2001. Excluding the restructuring and asset impairment charges, the operating loss was $63,768 in the year ended December 31, 2002, an increase of $1,489 compared to 2001.

Other expense and income was $1,650 of expense for the year ended December 31, 2002 as compared to $5,745 of income for the year ended December 31, 2001. The change was primarily the result of a decrease in investment income of $6,568, plus an increase in interest expense of $605 related to the note due to Elan. The decrease in investment income resulted from a reduction in cash and investment balances and prevailing interest rates. We also recorded a $222 other than temporary impairment charge to write-down to fair value our $310 investment in the preferred stock of a biotech company with products that could potentially use our oral delivery technology. We considered the following factors to be primary indicators of impairment: (i) the biotech company's need to raise sufficient capital to ensure funding of its research and development projects, (ii) the biotech company's inability to meet payment obligations as they become due and (iii) the possibility that the biotech company may not be able to continue as a going concern unless additional financing is obtained. Fair value was estimated based on the price of the biotech company's publicly-traded common stock.

As a result of the above factors, we sustained a net loss of $71,342 including restructuring and impairment charges for the year ended December 31, 2002 compared to a net loss of $56,534 for the year ended December 31, 2001, an increase of $14,808 or 26%. Excluding the restructuring and impairment charges, the net loss was $65,196 in the year ended December 31, 2002, an increase of $8,662 or 15% compared to 2001.

LIQUIDITY AND CAPITAL RESOURCES

As of December 31, 2003, we had cash, cash equivalents and investments totaling $43,008, a decrease of $30,693, compared to December 31, 2002.

Net cash used in operations was $30,663 in 2003, as compared to $64,062 in the year ended December 31, 2002, a decrease of $33,399 resulting from the restructuring efforts initiated during the second half of 2002.

Capital expenditures were $1,168 in 2003 compared to $3,439 for the year ended December 31, 2002, a decrease of $2,271. The decrease in capital expenditures was primarily due to the termination of most capital projects following the restructuring described above.

Net cash provided by financing activities was $1,232 in 2003, compared to $1,335 during the year ended December 31, 2002, a decrease of $103. The proceeds from the exercise of stock options decreased by $784 from 2002, due to lower prices of our common stock and fewer employee exercises. This decrease was partially offset by the proceeds from a financing lease of $681.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. On December 31, 2003, our accumulated deficit was approximately $295 million. Operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments.

We expect our cash, cash equivalent and investment balances to decrease by approximately $27,000 in 2004. Absent additional financing, new collaborations, milestone payments and/or closing of the sale of the Farmington facility, we would expect to end 2004 with approximately $16,000 in cash, cash equivalents and investments. Reduced cash expenditures as a result of the surrender of a portion of the leased premises at the Tarrytown facility and closing on the sale of the Farmington facility, should it occur, will be partially offset by higher costs due to inflation and increases in employee compensation. We expect capital expenditures to be in the range of $400 to $600 in 2004. Capital purchases may be financed by lease arrangements.

This projection of cash usage and year end cash, cash equivalent and investment balances assumes that during 2004, we will not (i) enter into a partnership agreement for oral insulin, solid oral heparin or any other non-partnered program, (ii) receive any milestone payments on currently partnered programs, or (iii) close on the sale of the Farmington facility. We have enough funds to continue our development programs, as presented to the Board of Directors, beyond 2004. We cannot assure you that we will be able to raise sufficient funds to continue operations and if we fail to generate sufficient revenue, raise additional funds or undergo further restructuring, the resultant reduction of our available cash resources would have a material adverse effect on our ability to continue as a going concern. If we are successful in securing a partner for either oral insulin or solid oral heparin, we may receive milestone payments, upfront fees, expense reimbursements and/or cash infusions. Such cash inflows could delay our need to raise additional funds to maintain operations beyond 2004. In the event that we are unable to achieve long-term profitability and/or obtain additional capital, future operations will need to be scaled back or discontinued.

Off-Balance Sheet Arrangements

As of December 31, 2003, the company had no material off-balance sheet arrangements, other than operating leases.

Our bylaws provide for the indemnification of officers and directors for certain events or occurrences while the officer or director is, or was, serving at our request in such capacity. The maximum potential amount of future payments that we could be

required to make under the bylaws is unlimited; however, we have Director and Officer insurance policies that, in most cases, would limit our exposure and enable us to recover a portion of any future amounts paid. As a result of the insurance policy coverage, the estimated fair value of these indemnification provisions is minimal. All of these indemnification provisions were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, we have no liabilities recorded for these provisions as of December 31, 2003.

In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions which, in our judgment, are normal and customary for companies in our industry sector. These agreements are typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or incurred by the indemnified parties

with respect to our product candidates, use of such product candidates, or other actions taken or omitted by Emisphere. The maximum potential amount of future payments we could be required to make under these indemnification provisions is unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we have no liabilities recorded for these provisions as of December 31, 2003.

In the normal course of business, we may be confronted with issues or events that may result in a contingent liability. These generally relate to lawsuits, claims, environmental actions or the actions of various regulatory agencies. We consult with counsel and other appropriate experts to assess the claim. If, in our opinion, we have incurred a probable loss as set forth by accounting principles generally accepted in the United States, an estimate is made of the loss and the appropriate accounting entries are reflected in our consolidated financial statements. We, after consultation with legal counsel, do not anticipate that liabilities arising out of currently pending or threatened lawsuits and claims, including the pending litigation described in Part I, Item 3 "Legal Proceedings", will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Significant contractual obligations as of December 31, 2003 are as follows:

		AMOUNT DUE IN			
	TOTAL OBLIGATION	LESS THAN 1 YEAR	1 TO 3 YEARS	4 TO 5 YEARS	MORE THAN 5 YEARS
TYPE OF OBLIGATION					
Long-term debt (1)	$ 55,000	$ -	$ 55,000	$ -	$ -
Capital lease obligations	768	256	512	-	-
Operating lease obligations (2)	6,451	1,746	3,510	1,195	-
Clinical research organizations (3)	514	514	-	-	-
Total	$ 62,733	$ 2,516	$ 59,022	$ 1,195	$ -

(1) In July 1999, we acquired from Elan our ownership interest in Ebbisham (a jointly owned entity created by the Company and Elan), in exchange for a seven year, $20,000 zero coupon note due July 2006 carrying a 15% interest rate, compounding semi-annually (the "Note"), plus royalties on oral heparin product sales, subject to an annual maximum and certain milestone payments. In connection with any payment on the Note made by the Emisphere, we have the right to require Elan to purchase our common stock at the market price at an aggregate price equal to such payment made, subject to the following conditions: (i) the acceptance by the FDA of a new drug application from Emisphere involving any heparin product, (ii) our closing stock price remaining at or above $25.00 per share for the 20 consecutive trading days prior to the date we exercise this right and (iii) the exercise of this right would not require the application of the equity accounting method by Elan. At December 31, 2003, the balance on the Elan Note was $38,345.

(2) The operating lease is related to the Tarrytown facility. Under the terms of the agreement with the landlord to surrender a portion of this space in 2003, we are contingently liable for the rent payments and will be required to re-let the space through August 31, 2007 if the subsequent tenant vacates the surrendered space before August 31, 2005. We have excluded such payments from the above table because we believe that the possibility of such an event occurring is remote. In the event that the subsequent tenant vacates the space, the maximum amount which we would be obligated to pay would be $3,751 ($1,023 in less than one year, $2,046 in one to three years and $682 in four to five years) for rent, real estate taxes and operating expenses.

(3) We are obligated to make payments under certain contracts with third parties who provide clinical research services to support our ongoing research and development.

RESEARCH AND DEVELOPMENT COSTS

We have devoted substantially all of our efforts and resources to research and development conducted on our own behalf (self-funded) and in collaborations with corporate partners (partnered). Generally, research and development expenditures are allocated to specific research projects. Due to various uncertainties and risks, including those described in "Risk Factors" below,

relating to the progress of our product candidates through development stages, clinical trials, regulatory approval, commercialization and market acceptance, it is not possible to accurately predict future spending or time to completion by project or project category.

The following table summarizes research and development spending to date by project category:

	YEAR ENDED DECEMBER 31,			CUMULATIVE SPENDING TO DATE(1)
	2003	2002	2001	2003
Research (2)	$ 3,314	$ 3,671	$ 2,687	$ 41,265
Feasibility projects				
Self-funded	496	3,394	2,017	6,570
Partnered	422	429	831	2,449
Development projects				
Oral heparin (self-funded)	1,722	19,851	29,277	89,188
Oral insulin (self-funded)	2,940	5,436	4,050	12,878
Partnered	315	2,286	2,535	10,854
All other (self-funded)	-	-	-	141
Other	11,817	14,849	11,904	47,501
Total all projects	$ 21,026	$ 49,916(3)	$ 53,301	$ 210,846

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(1) Cumulative spending from August 1, 1995 through December 31, 2003

(2) Research is classified as resources expended to expand the ability to create new carriers, to ascertain the mechanisms of action of carriers, and to establish computer based modeling capabilities, prototype formulations, animal models, and in vitro testing capabilities.

(3) During the year ended December 31, 2002, $197 of research and development expenses, related to certain projects, was reclassified as restructuring for severance charges in the consolidated statement of operations.

CRITICAL ACCOUNTING POLICIES

The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States involves the use of estimates and assumptions that affect the recorded amounts of assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Certain of these estimates and assumptions are considered to be Critical Accounting Policies, due to their complexity, subjectivity, and uncertainty, along with their relevance to our financial performance. Actual results may differ substantially from these estimates. These policies and their key characteristics are outlined below.

Investments. We invest excess cash in accordance with a policy objective seeking to preserve both liquidity and safety of principal. We consider all highly liquid, interest-bearing debt instruments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents may include demand deposits held in banks and interest bearing money market funds. Investments are carried at fair value and are considered to be available for sale. Accordingly, unrealized holding gains and losses are reported in stockholders' equity. We generally invest our excess funds in obligations of the U.S. government and its agencies, bank deposits, mortgage-backed securities, and investment grade debt securities issued by corporations and financial institutions at ratings of A-1 or A (Standard and Poor's). Although our investments carry high ratings when purchased, a lowering of the rating of the corporate debt securities in our portfolio could result in an impairment.

Purchased Technology. Purchased technology represents the value assigned to patents underlying research and development projects of Ebbisham Ltd, related to oral heparin, that were commenced but not yet completed as of the date of our acquisition of full ownership and which, if unsuccessful, have no alternative future use. In accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"), the fair value of purchased technology is reviewed for impairment on a quarterly basis or whenever events and circumstances indicate that the carrying value might not be recoverable. An impairment loss, measured as the amount by

which the carrying value exceeds the fair value, is triggered if the carrying amount exceeds estimated undiscounted future cash flows. At December 31, 2003, purchased technology had a carrying value of $2,512, net of amortization. We amortize purchased technology on a straight-line basis over a period of 15 years, the average life of the related patents. Estimated amortization expense for the purchased technology is $239 for each of the next five fiscal years.

Equipment and Leasehold Improvements. Equipment and leasehold improvements are stated at cost. Depreciation and amortization are provided for on a straight-line basis over the estimated useful life of the asset. Leasehold improvements are amortized over the life of the lease or of the improvements whichever is shorter. Expenditures for maintenance and repairs that do not materially extend the useful lives of the respective assets are charged to expense as incurred. The cost and accumulated depreciation or amortization of assets retired or sold are removed from the respective accounts and any gain or loss is recognized in operations.

Impairment of Long-Lived Assets. In accordance with SFAS 144, we review our long-lived assets for impairment on a quarterly basis or whenever events and circumstances indicate that the carrying value of an asset might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is triggered if the carrying amount exceeds estimated undiscounted future cash flows. We recognized impairments on long-lived assets of $5,439 and $4,507 during the years ended December 31, 2003 and 2002, respectively. These impairments were based on estimates of future cash flows, including potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by us. Actual results could differ significantly from these estimates, which would result in additional impairment losses or losses on disposal of the assets.

Clinical Trial Accrual Methodology. Clinical trial expenses represent obligations resulting from our contracts with various research organizations in connection with conducting clinical trials for our product candidates. We account for those expenses on an accrual basis according to the progress of the trial as measured by patient enrollment and the timing of the various aspects of the trial. Accruals are recorded in accordance with the following methodology: (i) the costs for period expenses, such as investigator meetings and initial start-up costs, are expensed as incurred based on management's estimates, which are impacted by any change in the number of sites, number of patients and patient start dates; (ii) direct service costs, which are primarily on-going monitoring costs, are recognized on a straight-line basis over the life of the contract; and (iii) principal investigator expenses that are directly associated with recruitment are recognized based on actual patient recruitment. All changes to the contract amounts due to change orders are analyzed and recognized in accordance with the above methodology. Change orders are triggered by changes in the scope, time to completion and the number of sites. During the course of a trial, we adjust our rate of clinical expense recognition if actual results differ from our estimates.

Revenue Recognition. We recognize revenue from contract research and development and research progress payments in accordance with Staff Accounting Bulletin No. 104, "Revenue Recognition" ("SAB104"), and Financial Accounting Standards Board ("FASB") Emerging Issues Task Force Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables" ("EITF 00-21"). SAB 104 superseded Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" ("SAB 101") in December 2003. Contract research revenue includes revenue from collaborative agreements and feasibility studies and is comprised of reimbursed research and development costs, as well as upfront and research and development milestone payments. Deferred revenue represents payments received which are related to future performance. Non-refundable upfront and research and development milestone payments and payments for services are recognized as revenue as the related services are performed over the term of the collaboration. Revenue recognized is the lower of (i) the percentage complete, measured by incurred costs, applied to expected contractual payments or (ii) the total non-refundable cash received to date. With regards to revenue from non-refundable fees, changes in assumptions of estimated costs to complete could have a material impact on the revenue recognized. Contract research revenue is expected to fluctuate from year to year and is dependent upon the timing of work plans mutually agreed to with collaborators and to the allocation of efforts between us and our collaborators.

FUTURE IMPACT OF RECENTLY ISSUED ACCOUNTING STANDARDS

In June 2002, the FASB issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 nullifies Emerging Issues Task Force ("EITF") Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)" ("EITF 94-3"). SFAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred, rather than on the date of an entity's commitment to an exit plan and establishes fair value as the objective for initial measurement of the liability. The provisions of SFAS 146 are effective for exit or disposal activities initiated after December 31, 2002. The provisions of EITF 94-3 shall continue to apply for an exit activity initiated under an exit plan that met the criteria of EITF 94-3 prior to SFAS 146's initial application. The adoption of the provisions of SFAS 146 did not have a material effect on our financial statements.

In December 2003, the Staff of the Securities and Exchange Commission issued SAB 104, which supercedes SAB 101. SAB 104's primary purpose is to rescind accounting guidance contained in SAB 101 related to multiple element revenue arrangements, superceded as a result of the issuance of EITF 00-21. Additionally, SAB 104 rescinds the SEC's "Revenue Recognition in Financial Statements Frequently Asked Questions and Answers" (the "FAQ") issued with SAB 101 that had been codified in SEC Topic 13, "Revenue Recognition". Selected portions of the FAQ have been incorporated into SAB 104. While the wording of SAB 104 has changed to reflect the issuance of EITF 00-21, the revenue recognition principles of SAB 101 remain largely unchanged by the issuance of SAB 104. Adoption of SAB 104 was required immediately and did not have a material effect on our financial statements.

In December 2003, the FASB issued a revision to Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51" ("FIN 46R"), which was issued in January 2003. FIN 46R clarifies the application of ARB No. 51, "Consolidated Financial Statements," to certain entities in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated

financial support. FIN 46R requires the consolidation of these entities, known as variable interest entities ("VIEs"), by the primary beneficiary of the entity. The primary beneficiary is the entity, if any, that will absorb a majority of the entity's expected losses, receive a majority of the entity's expected residual returns, or both. Among other changes, the revisions of FIN 46R (a) clarified some requirements of the original FIN 46, which had been issued in January 2003, (b) eased some implementation problems, and (c) added new scope exceptions. FIN 46R deferred the effective date of the Interpretation for public companies, to the end of the first reporting period ending after March 15, 2004, except that all public companies must at a minimum apply the provisions of the Interpretation to entities that were previously considered "special-purpose entities" under the FASB literature prior to the issuance of FIN 46R by the end of the first reporting period ending after December 15, 2003. Adoption of FIN 46R did not have a material impact on our financial statements.

In May 2003, the FASB issued Statement No. 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity" ("SFAS 150"). SFAS 150 specifies that instruments within its scope embody obligations of the issuer and that the issuer must classify them as liabilities. SFAS 150 requires issuers to classify as liabilities the following three types of freestanding financial instruments: (1) mandatorily redeemable financial instruments, (2) obligations to repurchase the issuer's equity shares by transferring assets, and (3) certain obligations to issue a variable number of shares. SFAS 150 defines a "freestanding financial instrument" as a financial instrument that (1) is entered into separately and apart from any of the entity's other financial instruments or equity transactions or (2) is entered into in conjunction with some other transaction and can be legally detached and exercised on a separate basis. For all financial instruments entered into or modified after May 31, 2003, SFAS 150 is effective immediately. For all other instruments of public companies, SFAS150 went into effect at the beginning of the first interim period beginning after June 15, 2003. The adoption of SFAS 150 did not have a material impact on the Company's financial statements. In November 2003, the Financial Accounting Standards Board deferred the effective date for selected provisions of SFAS 150, limited to mandatorily redeemable noncontrolling interests associated with finite-lived subsidiaries. The deferral

of those selected provisions is not expected to have a material impact on our financial statements.

On November 25, 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others". FIN 45 elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The initial recognition and measurement provisions of this Interpretation are applicable to guarantees issued or modified after December 31, 2002. The adoption of the disclosure and recognition provisions of FIN 45 did not have a material effect on our financial statements.

TRANSACTIONS WITH RELATED PARTIES

The Company was introduced to the purchaser of the Farmington facility by Rob Beyer, the son-in-law of Howard Pack, a Director of the Company. The Company is unaware as to the nature of Mr. Beyer's interest in the transaction, if this transaction is successfully completed. However, neither Mr. Beyer nor Mr. Pack will receive any fee from Emisphere. This relationship was disclosed to the Board of Directors at the time that this contract was presented to the Board for approval, and Mr. Pack abstained from the related discussion and vote. The sale price in the sale contract is higher than any other offer that was received.

During 2003, two former members of the Board of Directors resigned their Board positions and have become consultants to Emisphere.

RISK FACTORS

The following risk factors should be read carefully in connection with evaluating our business and the forward-looking statements that we make in this Report and elsewhere (including oral statements) from time to time. Any of the following risks could materially adversely affect our business, our operating results, our financial condition and the actual outcome of matters as to which forward-looking statements are made in this Report.

We are highly dependent on the clinical success of our oral insulin and oral heparin product candidates.

Oral Insulin: Insulin is currently available in injectable form for Type 1 and Type 2 diabetic patients. We believe that an oral form of insulin would gain significant market share and have therefore focused significant resources on developing oral insulin. We intend to secure a partner to fund further development of this product candidate. We are aware that other companies currently are developing spray (buccal) or aerosol (pulmonary) forms (e.g. Aventis/Pfizer/Nektar's EXUBERA) of insulin, and that insulin delivery is a highly competitive area. Our product candidate has demonstrated favorable data in early patient studies in both Type 1 and Type 2 diabetics and we believe that oral insulin has the potential to be an improved therapy for diabetics. However, we cannot assure you that these data, or future data will demonstrate that our oral form of insulin will be better than existing therapy nor can we assure you that we will secure a partner to develop this product candidate.

In 2002, we announced that we achieved a near-term milestone as a result of late stage negotiations with an unnamed partner regarding an oral insulin partnership. In March 2003, those negotiations terminated without an agreement being reached. We intend to continue to fund any clinical trials and further development of our oral insulin product candidate until we secure a partner, and we will continue to seek a partner for this product candidate to conduct later stage development and fund commercialization efforts.

Oral Heparin: Heparin currently is not available in oral form. We believe that an oral form of heparin would gain significant market share and therefore have focused significant resources on developing oral heparin. Other companies are currently developing spray (buccal) or alternate forms of heparin, and other forms of heparin have recently received European approval (e.g. AstraZeneca's EXANTA). Heparin delivery is a highly competitive area.

We are developing solid dosage forms of oral heparin and have commenced Phase I testing. We earlier attempted to develop a liquid form of oral heparin.

We commenced Phase III clinical trials ("PROTECT") for this solution form of product in 1999 and began dosing patients in January 2000. The trial was completed in early 2002 and did not meet its endpoint of superiority to LOVENOX. All further development of liquid oral heparin was terminated. We cannot assure you that future data related to solid oral heparin will demonstrate superiority, equivalence, or non-inferiority of solid oral heparin to alternative heparin forms.

In July 1999, we reacquired all product, marketing and technology rights for our heparin products from Elan, which had been our joint venture partner since 1996. In accordance with the termination agreement with Elan, we will be required to pay Elan royalties on Emisphere sales of oral heparin, subject to an annual cap. Unless we enter into a new partnership agreement related to oral heparin, we will continue to fund clinical trials and further development activities related to this product candidate.

In addition, the manufacture, marketing and distribution of pharmaceuticals is a formidable undertaking. Our competitors may have more resources and/or experience in bringing their product candidates to market.

We are dependent upon collaborative partners to develop and commercialize compounds using our delivery agents.

A key part of our strategy is to form collaborations with pharmaceutical companies that will assist us in developing, testing, obtaining government approval for and commercializing oral forms of therapeutic compounds using the eligen(TM) technology. We currently have collaboration agreements with Novartis, Lilly, and Regeneron.

We cannot assure you that:

- we will be able to enter into additional collaborative arrangements to develop products utilizing our drug delivery technology;
- any existing or future collaborative arrangements will be sustainable or successful;
- the product candidates in collaborative arrangements will be further developed by partners in a timely fashion;
- any collaborative partner will not infringe upon our intellectual property position; or
- milestones in collaborative agreements will be met and milestone payments will be received.

If we are unable to obtain development assistance and funds from other pharmaceutical companies to fund a portion of our product development costs and to commercialize our product candidates, we may have to delay, scale back or curtail one or more of our projects. Thus we may be at a substantial competitive disadvantage.

Our product candidates are in various stages of development, and we cannot be certain that any will be suitable for commercial purposes.

To be profitable, we must successfully research, develop, obtain regulatory approval for, manufacture, introduce, market and distribute our products under development, or secure a partner to provide financial and other assistance with these steps. The time necessary to achieve these goals for any individual product is long and uncertain. Before we or a potential partner can sell any of our products under development, we must demonstrate through preclinical (animal) studies and clinical (human) trials that each product is safe and effective for human use for each targeted indication. We cannot be certain that we or our current or future partners will be able to begin, or continue, planned clinical trials for our product candidates, or if we are able, that the product candidates will prove to be safe and will produce their intended effects.

A number of companies in the drug delivery, biotechnology and pharmaceutical industries have suffered significant setbacks in clinical trials, even after showing promising results in earlier studies or trials. We cannot assure you that favorable results in any preclinical study or early clinical trial will mean that favorable results will ultimately be obtained in future clinical trials. Nor

can we assure you that results of limited animal and human studies are indicative of results that would be achieved in future animal studies or human clinical studies, all or some of which will be required in order to have our product candidates obtain regulatory approval. Similarly, we cannot assure you that any of our product candidates will be approved by the FDA.

Our future business success depends heavily upon regulatory approvals, which can be difficult to obtain for a variety of reasons, including cost.

Our preclinical studies and clinical trials, as well as the manufacturing and marketing of our product candidates, are subject to extensive, costly and rigorous regulation by various governmental authorities in the United States and other countries. The process of obtaining required approvals from the FDA and other regulatory authorities often takes many years, is expensive and can vary significantly based on the type, complexity and novelty of the product candidates. We cannot assure you that we, either independently or in collaboration with others, will meet the applicable regulatory criteria in order to receive the required approvals for manufacturing and marketing. Delays in obtaining United States or foreign approvals for our self-developed projects could result in substantial additional costs to us, and, therefore, could adversely affect our ability to compete with other companies. Additionally, delays in obtaining regulatory approvals encountered by others with whom the Company collaborates also could adversely affect our business and prospects.

Even if regulatory approval of a product is obtained, the approval may place limitations on the intended uses of the product, and may restrict the way in which we or our partner may market the product.

Our current and future prospects could be affected by competitive news.

If a competitor announces (i) a successful clinical study involving a product that may be competitive with one of our product candidates or (ii) an approval by a regulatory agency of the marketing of a competitive product, such announcement may have a material adverse effect on our operations or future prospects, the price of our common stock, or our ability to obtain regulatory approvals for our products.

We have incurred substantial losses since inception and are likely to require additional capital.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. On December 31, 2003, our accumulated deficit was approximately $295 million. Operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments.

We expect to continue to incur clinical development expenses for self-funded programs and for programs for which we are attempting to secure a partner. We expect no further significant liquid oral heparin solution clinical development expenses as the program was discontinued in May 2002.

We anticipate that our existing capital resources will enable us to continue operations through the end of 2004 and for a period of time beyond without raising additional capital. However, this expectation is based on the current operating plan that could change as a result of many factors, and we may require additional funding sooner than anticipated. To the extent operating and capital resources are insufficient to meet future requirements, we will have to raise additional funds to continue the development and commercialization of our products or reduce spending. The ability to raise funds in the future may not be available on favorable terms, or at all. If additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities could result in dilution to our existing stockholders. In addition, our outstanding debt to Elan, in the form of a zero-coupon note with a 15% interest rate, compounded semi-annually, matures on July 6, 2006. We may not have sufficient capital or the ability to raise capital to repay the note at its time of maturity.

Actual savings and improvements in operations from current restructurings may be lower than expected.

The obligation of the proposed buyer of the Farmington facility to consummate the purchase is contingent on receiving certain governmental approvals. We can not assure when or if the sale to this particular buyer will

be consummated. The closing of the sale of the Farmington facility may not occur in the near future and the costs associated with the facility (e.g., utilities, insurance, maintenance, lawn care and real estate taxes) may require cash outlays. If the sale of the facility to the proposed buyer is not consummated, we may sell the facility for less than the current contract price and may be required to record an impairment charge.

If we cannot adequately protect our patent and proprietary rights, our business will suffer.

Although we have patents for some of our product candidates and have applied for additional patents, there can be no assurance that patents applied for will be granted, that patents granted to or acquired by us now or in the future will be valid and enforceable and provide us with meaningful protection from competition or that we will possess the financial resources necessary to enforce any of our patents. Also, we cannot assure that any products that we (or a licensee) develop will not infringe upon any patent or other intellectual property right of a third party.

We also rely upon trade secrets, know-how and continuing technological advances to develop and maintain our competitive position. We maintain a policy of requiring employees, scientific advisors, consultants and collaborators to execute confidentiality and invention assignment agreements upon commencement of a relationship with us. We cannot assure you that these agreements will provide meaningful protection for our trade secrets in the event of unauthorized use or disclosure of such information.

Part of our strategy involves collaborative arrangements with other pharmaceutical companies for the development of new formulations of drugs developed by others and, ultimately, the receipt of royalties on sales of the new formulations of those drugs. These drugs are generally the property of the pharmaceutical companies and may be the subject of patents or patent applications and other rights of protection owned by the pharmaceutical companies. To the extent those patents or other forms of rights expire, become invalid or otherwise ineffective, or to the extent those drugs are covered by patents or other forms of protection owned by third parties, sales of those drugs by the collaborating pharmaceutical company may be restricted, limited, enjoined, or may cease. Accordingly, the potential for royalty revenues to us may be adversely affected.

We may be at risk of having to obtain a license from third parties making proprietary improvements to our technology.

There is a risk that third parties may make improvements or innovations to our technology in a more expeditious manner than Emisphere. Should such circumstances arise, we may need to obtain a license from such third party to obtain the benefit of the improvement or innovation. Royalties payable under such a license would reduce our share of total revenue.

We are dependent on third parties to manufacture and in some cases, test our products.

As of 2003, we have a GMP compliant facility to manufacture a limited number of clinical supplies related to EMISPHERE delivery agents. Currently, we have no manufacturing facilities for large-scale clinical or commercial production of any compounds under consideration as products. We have no research facilities for later stage product candidate testing prior to first human testing. The success of our partnerships is dependent on the proposed or current partner's capacity and ability to adequately manufacture drug products to meet the proposed demand of each respective market.

We may face product liability claims related to participation in clinical trials or the use or misuse of any future products.

We have product liability insurance with a policy limit of $5 million per occurrence and in the aggregate. The testing, manufacture and marketing of products for humans utilizing our drug delivery technology may expose us to potential product liability and other claims. These may be claims directly by consumers or by pharmaceutical companies or others selling our products that may be developed in the future. We seek to structure development programs with pharmaceutical companies that would complete the development, manufacturing and marketing of the finished product in a manner that would protect us from such

liability, but the indemnity undertakings for product liability claims that we secure from the pharmaceutical companies may prove to be insufficient.

Our operations may involve hazardous materials and are subject to environmental, health and safety taxes and regulations. We may incur substantial liability arising from our activities involving the use of hazardous materials.

As a biopharmaceutical research and development company, we are subject to various local, state and federal environmental, health and safety regulations and laws involving the use of hazardous material. Our operations involve the controlled use of chemicals, biologicals and radioactive materials. The cost of compliance with these various regulations has the potential to be quite substantial. Should we be held liable or face regulatory actions regarding an accident involving personal injury or an environmental release, we potentially could exceed our resources or insurance coverage.

We face rapid technological change and intense competition.

Our success depends, in part, upon maintaining a competitive position in the development of products and technologies in an evolving field in which developments are expected to continue at a rapid pace. We compete with other drug delivery, biotechnology and pharmaceutical companies, research organizations, individual scientists and non-profit organizations engaged in the development of alternative drug delivery technologies or new drug research and testing, as well as with entities developing new drugs that may be orally active. Many of these competitors have greater research and development capabilities, experience, and marketing, financial and managerial resources than we have, and, therefore, represent significant competition.

Our products, when developed and marketed, may compete with existing injectable versions of the same drug, some of which are well established in the marketplace and manufactured by formidable competitors, as well as other existing drugs. For example, our oral heparin product candidate, if successful, would compete with injectable heparin, injectable low molecular weight heparin and warfarin, an oral anti-coagulant, as well as the recently approved oral pentasaccharide and oral melagatran products. These products are marketed throughout the world by world renowned leading pharmaceutical companies such as Aventis Pharma SA, Pfizer, Inc. and Bristol Myers Squibb Company. Similarly, our salmon calcitonin product candidate, if developed and marketed, would compete with a wide array of existing osteoporosis therapies, including a nasal dosage form of salmon calcitonin, estrogen replacement therapy, bisphosphonates and selective receptor modulators, or, potentially oral forms of these drugs.

Our competitors may succeed in developing competing technologies or obtaining government approval for products before we do. Developments by others may render our product candidates, or the therapeutic compounds used in combination with our product candidates, noncompetitive or obsolete. For example, AstraZeneca PLC has received U.S. and European approval of a pro-drug form of melagantran, a direct thrombin inhibitor, which would compete with our oral heparin products. Similarly, Nobex Corporation has an oral insulin formulation being developed and that at least one competitor has notified the FDA that it is developing a competing formulation of salmon calcitonin. We cannot assure you that, if our products are marketed, they will be preferred to existing drugs or that they will be preferred to or available before other products in development. For a more detailed discussion of known competitors and competing products candidates and technologies, see the discussion under the heading: "Item 1. Business Competition."

We are dependent on our key personnel and if we cannot recruit and retain leaders in our research, development, manufacturing, and commercial organizations, our business will be harmed.

We are highly dependent on our executive officers. If we are not able to retain any of these persons our business may suffer. There is intense competition in the biotechnology industry for qualified scientists and managerial personnel in the development, manufacture, and commercialization of drugs. We may not be able to continue to attract and retain the qualified personnel necessary for developing our business.

Anti-takeover provisions of our corporate charter documents, Delaware law and our agreements with collaborators may affect the price of our common stock.

Our Board of Directors has the authority to issue up to 1,000,000 shares of preferred stock and to determine the rights, preferences and privileges of those shares without any further vote or action by our stockholders. Of these 1,000,000 shares, 200,000 are currently designated Series A Junior Participating Cumulative Preferred Stock in connection with our stockholders' rights plan, and the remaining 800,000 shares remain available for future issuance. Rights of holders of common stock may be adversely affected by the rights of the holders of any preferred stock that may be issued in the future. Additional provisions of our certificate of incorporation and by-laws could have the effect of making it more difficult for a third party to acquire a majority of our outstanding voting common stock. These include provisions that classify our Board of Directors, limit the ability of stockholders to take action by written consent, call special meetings, remove a director for cause, amend the by-laws or approve a merger with another company. We also have a stockholder's right's plan, commonly referred to as a "poison pill," that makes it difficult, if not impossible, for a person to acquire control of us without the consent of our Board of Directors.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law which prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, either alone or together with affiliates and associates, owns (or within the past three years, did own) 15% or more of the corporation's voting stock.

Our stock price has been and may continue to be volatile.

The trading price for our common stock has been and is likely to continue to be highly volatile. The market prices for securities of drug delivery, biotechnology and pharmaceutical companies have historically been highly volatile. Factors that could adversely affect our stock price include:

- fluctuations in our operating results;
- announcements of partnerships or technological collaborations, innovations or new products by us or our competitors;
- governmental regulation;
- developments in patent or other proprietary rights;
- public concern as to the safety of drugs developed by us or others;
- the results of preclinical testing and clinical studies or trials by us, our partners or our competitors;
- litigation;
- general stock market and economic conditions;
- number of shares available for trading (float);
- inclusion in or dropping from stock indexes.

Future sales of common stock, or the prospect of future sales, may depress our stock price.

Sales of a substantial number of shares of common stock, or the perception that sales could occur, could adversely affect the market price of our common stock. As of December 31, 2003, we had outstanding options to purchase up to 4,276,958 shares of common stock which are currently exercisable and additional options to purchase up to 1,558,883 shares of common stock are exercisable over the next several years. In addition, an aggregate of 25,000 shares of common stock have been reserved for issuance under our Directors' Deferred Compensation Plan, of which 6,310 shares are available for future grants. The holders of these options or rights have an opportunity to profit from a rise in the market

price of our common stock with a resulting dilution in the interests of the other. The existence of these options or rights may adversely affect the terms on which the Company may be able to obtain additional financing.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our primary investment objective is to preserve principal while maximizing yield without significantly increasing risk. Our investments consist of U.S. Treasuries, commercial paper and corporate notes. Our investments totaled $40,899 at December 31, 2003. Of this total, $36,999 had fixed interest rates, of which $29,178 were short-term and $7,821 were long-term investments, and $3,900 had variable interest rates, all of which were long-term investments.

Due to the conservative nature of our short-term fixed interest rate investments (maturities in less than one year), we do not believe that it has a material exposure to interest rate risk. The value of our fixed interest rate long-term investments is sensitive to changes in interest rates. Interest rate changes would result in a change in the fair value of these investments due to differences between the current market interest rate and the rate prevailing at the date of original purchase of the investment. Reasonably expected changes in prevailing interest rates would not materially impact the value of our long term investments.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and financial statement schedules begin on page F-1 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

We conducted an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. The evaluation was conducted under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer. Based upon this evaluation, each concluded that our disclosure controls and procedures are effective in alerting them on a timely basis to material information required to be included in our filings under the Securities Exchange Act of 1934. There has been no significant change in our internal controls over financial reporting during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the system are met and cannot detect all deviations. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or deviations, if any, within the Company have been detected. While we believe that our disclosure controls and procedures have been effective, in light of the foregoing, we intend to continue to examine and refine our disclosure controls and procedures and monitor ongoing developments in this area.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders. We have adopted a code of ethics applicable to our directors, chief executive officer, chief financial officer, controller and senior financial management. Our code of ethics is filed herewith as Exhibit 14.1.

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a)(1) Financial Statements

A list of the financial statements filed as a part of this report appears on page F-1.

(2) Financial Statement Schedules

Schedules have been omitted because the information required is not applicable or is shown in the Financial Statements or the corresponding Notes to the Consolidated Financial Statements.

(3) Exhibits

A list of the exhibits filed as a part of this report appears on pages E-1 and E-2, which follow immediately after the financial statements.

(b) Reports on Form 8-K

On November 18, 2003, we furnished a Current Report on Form 8-K containing a copy of a press release announcing our financial results for the quarterly period ended September 30, 2003 pursuant to Item 12 Results of Operations and Financial Condition.

On January 27, 2004, we filed a Current Report on Form 8-K pursuant to Item 5 Other Events announcing an action brought against us by Eli Lilly and Company.

On February 3, 2004, we filed a Current Report on Form 8-K pursuant to Item 5 Other Events announcing preliminary results from the first multiple-dose clinical study of an oral insulin tablet using our eligen(TM) technology.

On February 25, 2004, we furnished a Current Report on Form 8-K pursuant to Item 12 Results of Operations and Financial Condition containing a copy of a press release announcing our financial results for the quarter and year ended December 31, 2003.

(c) See Exhibits listed under the heading "Exhibit Index" set forth on page E-1.

(d) Not applicable.

SIGNATURES

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

Date: March 29, 2004

Emisphere Technologies, Inc.

By: /s/ Michael M. Goldberg

Michael M. Goldberg, M.D.
Chairman of the Board and
Chief Executive Officer

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

NAME AND SIGNATURE	TITLE	DATE
/s/ Michael M. Goldberg Michael M. Goldberg, M.D.	Director, Chairman of the Board and Chief Executive Officer (principal executive officer)	March 29, 2004
/s/ Howard M. Pack Howard M. Pack	Director	March 29, 2004
/s/ Mark I. Greene Mark I. Greene, M.D., Ph.D.	Director	March 29, 2004
/s/ Robert J. Levenson Robert J. Levenson	Director	March 29, 2004
/s/ Arthur Dubroff Arthur Dubroff	Director	March 29, 2004
/s/ Stephen K. Carter Stephen K. Carter, M.D.	Director	March 29, 2004
/s/ Michael Black Michael Black	Director	March 29, 2004
/s/ Elliot M. Maza Elliot M. Maza, J.D., C.P.A.	Chief Financial Officer (principal financial officer)	March 29, 2004

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED FINANCIAL STATEMENTS

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REPORT OF INDEPENDENT AUDITORS

To the Board of Directors and Stockholders
of Emisphere Technologies, Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of stockholders' equity and of cash flows present fairly, in all material respects, the financial position of Emisphere Technologies, Inc. and subsidiary, at December 31, 2003 and 2002, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP

New York, New York
February 11, 2004

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	DECEMBER 31,	
	2003	2002
ASSETS		
Current assets:		
Cash and cash equivalents	$ 31,287	$ 22,784
Investments	3,900	37,676
Prepaid expenses and other current assets	1,424	2,285
Total current assets	36,611	62,745
Equipment and leasehold improvements, net	14,005	23,282
Land, building and equipment held for sale, net	3,618	4,520
Purchased technology, net	2,512	2,752
Investments	7,821	13,241
Other assets	1,482	1,426
Total assets	$ 66,049	$ 107,966
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 2,638	$ 5,324
Deferred revenue	125	-
Current portion of capital lease obligation	211	-
Current portion of deferred lease liability	397	412
Total current liabilities	3,371	5,736
Note payable, including accrued interest	38,345	33,181
Capital lease obligation, net of current portion	469	-
Deferred lease liability, net of current portion	1,057	1,509
Total liabilities	43,242	40,426
Commitments and contingencies (Note 11)		
Stockholders' equity:		
Preferred stock, $.01 par value; authorized 1,000,000 shares; issued and outstanding-none	-	-
Common stock, $.01 par value; authorized 40,000,000 shares; issued 18,447,000 shares (18,203,000 outstanding) in 2003 and 18,253,000 shares (18,009,000 outstanding) in 2002	184	182

Additional paid-in capital	322,257	321,292
Note receivable from officer and director	(804)	(804)
Accumulated deficit	(295,033)	(250,164)
Accumulated other comprehensive (loss) income	(10)	821
Common stock held in treasury, at cost; 244,000 shares in 2003 and 2002	(3,787)	(3,787)
Total stockholders' equity	22,807	67,540
Total liabilities and stockholders' equity	$ 66,049	$ 107,966

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

EMISPHERE TECHNOLOGIES, INC.

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

	YEAR ENDED DECEMBER 31,		
	2003	2002	2001
Revenue	$ 400	$ 3,378	$ 4,728
Costs and expenses:			
Research and development	21,026	49,719	53,301
General and administrative	9,727	11,242	9,692
Restructuring	(79)	1,417	-
Loss on impairment of intangible and fixed assets	5,439	4,507	-
Depreciation and amortization	5,806	6,185	4,014
Total costs and expenses	41,919	73,070	67,007
Operating loss	(41,519)	(69,692)	(62,279)
Other (expense) and income:			
Investment and other income	1,882	3,044	9,612
Loss on impairment of investment	-	(222)	-
Loss on sale of fixed assets	(67)	-	-
Interest expense	(5,165)	(4,472)	(3,867)
Total other (expense) and income	(3,350)	(1,650)	5,745
Net loss	$ (44,869)	$ (71,342)	$ (56,534)
Net loss per share, basic and diluted	$ (2.48)	$ (3.98)	$ (3.18)
Weighted average shares outstanding, basic and diluted	18,077,000	17,919,000	17,755,000

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

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	YEAR ENDED DECEMBER 31,		
	2003	2002	2001
Cash flows from operating activities:			
Net loss	$ (44,869)	$ (71,342)	$ (56,534)
Adjustments to reconcile net loss to net cash used in operating activities:			
Non-cash interest expense	5,165	4,468	3,867
Depreciation and amortization of leasehold improvements	5,567	5,811	3,451
Amortization of purchased technology	239	374	563
Impairment of intangible and fixed assets	5,439	4,507	-
Amortization/deferral of deferred lease liability	(467)	(219)	-
Non-cash compensation and other non-cash charges	395	(15)	195
Amortization of discount (premium) on investments	(92)	(9)	334
Impairment of investment	-	222	-
Net realized gain on sale of investment	(493)	(387)	(274)
Loss on sale of fixed assets	67	-	-

Changes in assets and liabilities excluding non-cash charges:			
Decrease in prepaid expenses and other current assets	952	1,280	779
(Increase) in other assets	(5)	(473)	-
Increase (decrease) increase in deferred revenue	125	(8)	(1,355)
(Decrease) increase in accounts payable and accrued expenses	(2,686)	(8,271)	9,415
Total adjustments	14,206	7,280	16,975
Net cash used in operating activities	(30,663)	(64,062)	(39,559)
Cash flows from investing activities:			
Proceeds from sales of investments	56,193	97,076	223,590
Purchases of investments	(17,243)	(51,311)	(144,588)
Proceeds from sale of fixed assets	152	332	-
Capital expenditures	(1,168)	(3,439)	(18,656)
Net cash provided by (used in) investing activities	37,934	42,658	60,346
Cash flows from financing activities:			
Proceeds from exercise of stock options	551	1,335	4,034
Repurchase of common stock	-	-	(3,594)
Proceeds from capital lease obligation	681	-	-
Net cash provided by financing activities	1,232	1,335	440
Net increase (decrease) in cash and cash equivalents	8,503	(20,069)	21,227
Cash and cash equivalents, beginning of year	22,784	42,853	21,626
Cash and cash equivalents, end of year	$ 31,287	$ 22,784	$ 42,853
Supplemental disclosure of cash flow information:			
Tax refund	$ 119		
Non-cash investing and financing activities:			
Capital expenditures in accounts payable		$ 15	$ 690
Sale of equipment under a barter arrangement	$ 122		
Equipment donation	$ 4		
Other non-cash charges to equipment	$ 70	$ 425	$ 117

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

EMISPHERE TECHNOLOGIES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
For the years ended December 31, 2003, 2002 and 2001
(in thousands, except share data)

	COMMON STOCK		ADDITIONAL PAID-IN	NOTE		ACCUMULATED OTHER COMPREHENSIVE	COMMON STOCK HELD IN TREASURY		
	SHARES	AMOUNT	CAPITAL	RECEIVABLE	ACCUMULATED DEFICIT	(LOSS) INCOME	SHARES	AMOUNT	TOTAL
Balance, December 2000	17,703,000	$ 177	$ 315,591	$ (804)	$ (122,288)	$ 657	44,000	$ (193)	$ 193,140
Net Loss					(56,534)				(56,534)
Unrealized gain on investments.						302			302
Comprehensive loss									(56,232)
Sale of common stock under employee stock purchase plans and exercise of options	338,000	3	4,031						4,034
Repurchase of common stock							200,000	(3,594)	(3,594)
Issuance of stock options for services rendered			294						294
Balance, December 2001	18,041,000	180	319,916	(804)	(178,822)	959	244,000	(3,787)	137,642
Net Loss					(71,342)				(71,342)
Unrealized loss on investments.						(138)			(138)
Comprehensive loss									(71,480)
Sale of common stock under employee stock purchase plans and exercise of options.	212,000	2	1,333						1,335
Issuance of stock options for services rendered			43						43
Balance, December 2002	18,253,000	182	321,292	(804)	(250,164)	821	244,000	(3,787)	67,540
Net Loss					(44,869)				(44,869)
Unrealized loss on investments.						(831)			(831)
Comprehensive loss									(45,700)
Sale of common stock under employee stock purchase plans and exercise of options	194,000	2	549						551
Issuance of stock options for services rendered			416						416
Balance, December 2003	18,447,000	$ 184	$ 322,257	$ (804)	$ (295,033)	$ (10)	244,000	$ (3,787)	$ 22,807

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

EMISPHERE TECHNOLOGIES, INC.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

(in thousands, except share and per share data)

1. NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations. Emisphere Technologies, Inc. (the "Company" or "Emisphere") is a biopharmaceutical company specializing in the oral delivery of therapeutic macromolecules and other compounds that are not currently deliverable by oral means. Since its inception in 1986, the Company has devoted substantially all of its efforts and resources to research and development conducted on its own behalf as well as through collaborations with corporate partners and academic research institutions. The Company has no product sales to date. The Company operates under a single segment.

In 2002 the Company experienced a substantial increase in clinical development expenses for self-funded projects, including liquid oral heparin clinical development expenses for Phase III clinical trials. On May 14, 2002 Emisphere announced the initial results from its Phase III study with a liquid oral heparin solution (formulation) for the prevention of Deep Vein Thrombosis ("DVT", or blood clots) in total hip replacement surgery patients. The results did not demonstrate the superiority of liquid oral heparin solution, when dosed in a 30-day treatment regimen, compared to Aventis SA's LOVENOX (enoxaparin) administered by injection in a 10-day dosing regimen in preventing DVTs. On May 22, 2002, the Company announced a plan for restructuring its operations, which included the discontinuation of its liquid oral heparin program and related initiatives, and a scale back of any associated infrastructure. In September 2002, the decision was made to dispose of its Connecticut research facility in order to eliminate excess capacity, reduce spending and raise cash. Operations at that facility were terminated by the end of 2002 and the land, building and equipment are currently held for sale (see Note 3 for further discussion of the Farmington facility).

Emisphere's core business strategy is to develop oral forms of injectable drugs, either alone or with partners, by applying the eligen(TM) technology to those drugs. Typically, Emisphere conducts proof-of-concept Phase I and II clinical trials with the objective of attracting a partner to commercialize its product candidates without significant further funding. The Company also pursues development of certain product candidates on its own. The Company expects to continue to incur operating losses.

Liquidity. Since its inception in 1986, the Company has generated significant losses from operations and it anticipates that it will continue to generate significant losses from operations for the foreseeable future. On December 31, 2003, the Company's accumulated deficit was approximately $295 million. Operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments.

Emisphere expects its cash, cash equivalent and investment balances to decrease by approximately $27,000 in 2004. Absent additional financing, new collaborations, milestone payments and/or closing of the sale of the Farmington facility, the Company would expect to end 2004 with approximately $16,000 in cash, cash equivalents and investments. Reduced cash expenditures as a result of the surrender of a portion of the leased premises at the Tarrytown facility and closing on the sale of the Farmington facility, should it occur, will be partially offset by higher costs due to inflation and increases in employee compensation. The Company expects capital expenditures to be in the range of $400 to $600 in 2004. Capital purchases may be financed by lease arrangements.

This projection of cash usage and year end cash, cash equivalent and investment balances assumes that during 2004, the Company will not (i) enter into a partnership agreement for oral insulin, solid oral heparin or any other non-partnered program, (ii) receive any milestone payments on currently partnered programs, or (iii) close on the sale of the Farmington facility. The Company does have enough funds to continue its development programs, as presented to the Board of Directors, beyond 2004. There can be no assurance that the Company will be able to raise sufficient funds to continue operations and if the Company fails to generate sufficient revenue, raise additional funds or

undergo further restructuring, the resultant reduction of its available cash resources would have a material adverse effect on its ability to continue as a going concern. If the Company is successful in securing a partner for either oral insulin or solid oral heparin, it may receive milestone payments, upfront fees, expense reimbursements and/or cash infusions. Such cash inflows could delay the Company's need to raise additional funds to maintain operations beyond 2004. In the event that the Company is unable to achieve long-term profitability and/or obtain additional capital, future operations will need to be scaled back or discontinued.

Risks and Uncertainties. The Company has no products approved for sale by the U.S. Food and Drug Administration. There can be no assurance that the Company's research and development will be successfully completed, that any products developed will obtain necessary government regulatory approval or that any approved products will be commercially viable. In addition, the Company operates in an environment of rapid change in technology and is dependent upon the continued services of its current employees, consultants and subcontractors.

Use of Estimates. The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States involves the use of estimates and assumptions that affect the recorded amounts of assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results may differ substantially from these estimates. Significant estimates include the fair value and recoverability of the

carrying value of purchased technology, the fair value and recoverability of the Farmington research facility, recognition of on-going clinical trial costs, estimated costs to complete research collaboration projects and deferred taxes.

Principles of Consolidation. The consolidated financial statements include the accounts of one subsidiary. All inter-company transactions have been eliminated in consolidation.

Concentration of Credit Risk. Financial instruments, which potentially subject the Company to concentrations of credit risk, consist of cash, cash equivalents and investments. The Company invests excess funds in accordance with a policy objective seeking to preserve both liquidity and safety of principal. The Company generally invests its excess funds in obligations of the U.S. government and its agencies, bank deposits, money market funds, mortgage-backed securities, and investment grade debt securities issued by corporations and financial institutions. The Company holds no collateral for these financial instruments.

Cash, Cash Equivalents, and Investments. The Company considers all highly liquid, interest-bearing instruments with maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents may include demand deposits held in banks and interest bearing money market funds.

The Company considers its short- and long-term investments to be available for sale. Investments are carried at fair value, with unrealized holding gains and losses reported in stockholders' equity. The fair value of the investments has been estimated based on quoted market prices.

Realized gains and losses are included as a component of investment income. In computing realized gains and losses, the Company determines the cost of its investments on a specific identification basis. Such cost includes the direct costs to acquire the investments, adjusted for the amortization of any discount or premium. During 2003, the Company recognized a gain of $493 related to the call of a corporate bond. For the years ended December 31, 2002 and 2001, gross realized gains and losses were not significant.

The following is a summary of the fair value of available for sale investments:

	DECEMBER 31, 2003				
			UNREALIZED HOLDING		
	AMORTIZED COST BASIS	FAIR VALUE	GAINS	LOSSES	NET
Maturities less than one year:					

Corporate debt securities	$ 3,900	$ 3,900	$ -	$ -	$ -
Maturities between one and three years:					
U.S. government securities	7,831	7,821	-	(10)	(10)
	$ 11,731	$ 11,721	$ -	$ (10)	$ (10)

	DECEMBER 31, 2002				
			UNREALIZED HOLDING		
	AMORTIZED COST BASIS	FAIR VALUE	GAINS	LOSSES	NET
Maturities less than one year:					
U.S government securities	$ 20,054	$ 20,236	$ 187	$ (5)	$ 182
Corporate debt securities	17,290	17,440	159	(9)	150
Maturities between one and three years:					
U.S. government securities	9,516	9,524	17	(9)	8
Corporate debt securities	1,099	1,099	-	-	-
Maturities between five and ten years:					
Corporate debt securities	2,137	2,618	481	-	481
	$ 50,096	$ 50,917	$ 844	$ (23)	$ 821

Interest income, which is included in investment income, is recognized as earned.

Equipment and Leasehold Improvements. Equipment and leasehold improvements are stated at cost. Depreciation and amortization are provided for on a straight-line basis over the estimated useful life of the asset. Leasehold improvements are amortized over the life of the lease or of the improvements whichever is shorter. Expenditures for maintenance and repairs that do not materially extend the useful lives of the respective assets are charged to expense as incurred. The cost and accumulated depreciation or amortization of assets retired or sold are removed from the respective accounts and any gain or loss is recognized in operations.

Purchased Technology. Purchased technology represents the value assigned to patents underlying research and development projects of Ebbisham Ltd, related to oral heparin, that were commenced but not yet completed as of the date of the Company's acquisition of full ownership and which, if unsuccessful, have no alternative future use. In accordance with SFAS 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", the fair value of purchased technology is reviewed for impairment on a quarterly basis or whenever events and circumstances indicate that the carrying value might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is triggered if the carrying amount exceeds estimated undiscounted future cash flows. See Note 5 for a further discussion of purchased technology.

Impairment of Long-Lived Assets. In accordance with SFAS 144, the Company reviews its long-lived assets for impairment on a quarterly basis or whenever events and circumstances indicate that the carrying value of an asset might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is recognized if the carrying amount exceeds estimated undiscounted future cash flows. See Notes 3 and 5 for further discussion of impairments recognized under SFAS 144.

Deferred Lease Liability. Various leases entered into by the Company provide for rental holidays and escalations of the minimum rent during the lease term, as well as additional rent based upon increases in real estate taxes and common maintenance charges. The Company records rent expense from leases with rental holidays and escalations using the straight-line method, thereby prorating the total rental commitment over the term of the lease. Under this method, the deferred lease liability represents the difference between the minimum cash rental payments and the rent expense computed on a straight-line basis.

Repurchase of Common Stock. From time to time, the Company has repurchased shares of its common stock. Such stock, which is deemed to be treasury stock, is recorded at cost.

Revenue Recognition. The Company recognizes revenue from contract research and development and research progress payments in accordance with Staff Accounting Bulletin No. 104, "Revenue Recognition" ("SAB104"), and Financial

Accounting Standards Board ("FASB") Emerging Issues Task Force Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables" ("EITF 00-21"). SAB 104 superseded Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" ("SAB 101") in December 2003. The Company's revenue consists of contract research revenue. Contract research revenue includes revenue from collaborative agreements and feasibility studies and is comprised of reimbursed research and development costs, as well as upfront and research and development milestone payments. Deferred revenue represents payments received which are related to future performance. Non-refundable upfront and research and development milestone payments and payments for services are recognized as revenue as the related services are performed over the term of the collaboration. Revenue recognized is the lower of (i) the percentage complete, measured by incurred costs, applied to expected contractual payments or (ii) the total non-refundable cash received to date.

Research and Development and Clinical Trial Expenses. Research and development expenses include costs directly attributable to the conduct of research and development programs, including the cost of salaries, payroll taxes, employee benefits, materials, supplies, maintenance of research equipment, costs related to research collaboration and licensing agreements, the cost of services provided by outside contractors, including services related to the Company's clinical trials, clinical trial expenses, the full cost of manufacturing drug for use in research, preclinical development, and clinical trials. All costs associated with research and development are expensed as incurred.

Clinical research expenses represent obligations resulting from the Company's contracts with various research organizations in connection with conducting clinical trials for the Company's product candidates. The Company accounts for those expenses on an accrual basis according to the progress of the trial as measured by patient enrollment and the timing of the various aspects of the trial. Accruals are recorded in accordance with the following methodology: (i) the costs for period expenses, such as investigator meetings and initial start-up costs, are expensed as incurred based on management's estimates, which are impacted by any change in the number of sites, number of patients and patient start dates; (ii) direct service costs, which are primarily on-going monitoring costs, are recognized on a straight-line basis over the life of the contract; and (iii) principal investigator expenses that are directly associated with recruitment are recognized based on actual patient recruitment. All changes to the contract amounts due to change orders are analyzed and recognized in accordance with the above methodology. Change orders are triggered by changes in the scope, time to completion and the number of sites. During the course of a trial, we adjust our rate of clinical expense recognition if actual results differ from our estimates.

Income Taxes. Deferred tax liabilities and assets are recognized for the expected future tax consequences of events that have been included in the financial statements or tax returns. These liabilities and assets are determined based on differences between the financial reporting and tax basis of assets and liabilities measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is recognized to reduce deferred tax assets to the amount that

is more likely than not to be realized. In assessing the likelihood of realization, management considered estimates of future taxable income.

Stock-Based Employee Compensation. The accompanying financial position and results of operations of the Company have been prepared in accordance with APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"). Under APB No. 25, compensation expense is generally not recognized in connection with the awarding of stock option grants to employees, provided that, as of the grant date, all terms associated with the award are fixed and the quoted market price of the Company's stock as of the grant date is equal to or less than the option exercise price.

The Company has several stock-based compensation plans, which are described in Note 10. In accordance with Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation Transition and Disclosure, an amendment of SFAS 123" ("SFAS 148"), pro forma operating results have been determined as if the Company had prepared its financial statements in accordance with the fair value based method. The

following table illustrates the effect on net loss and net loss per share based upon the fair value based method of accounting for stock based compensation. Since option grants awarded during 2003, 2002, and 2001 vest over several years and additional awards are expected to be issued in the future, the pro forma results shown below are not likely to be representative of the effects on future years of the application of the fair value based method.

	YEAR ENDED DECEMBER 31,		
	2003	2002	2001
Net loss, as reported	$ (44,869)	$ (71,342)	$ (56,534)
Add: Stock-based employee compensation expense included in reported net loss	211	43	294
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(7,847)	(7,378)	(9,032)
Pro forma net loss	$ (52,505)	$ (78,677)	$ (65,272)
Net loss per share amounts, basic and diluted:			
As reported	$ (2.48)	$ (3.98)	$ (3.18)
Pro forma	$ (2.90)	$ (4.39)	$ (3.68)

For the purpose of the above pro forma calculation, the fair value of each option granted was estimated on the date of grant using the Black-Scholes option pricing model. The following assumptions were used in computing the fair value of options granted: expected volatility of 95% in 2003 and 85% in 2002 and 2001, expected lives of five years (except for the Employee Stock Purchase Plans, where the expected lives are six months), zero dividend yield, and weighted-average risk-free interest rate of 3.3% in 2003, 3.9% in 2002 and 3.0% in 2001.

The fair value of options granted to non-employees for goods or services is expensed as the goods are utilized or the services performed.

Other disclosures required by SFAS 123 have been included in Note 10.

Net Loss Per Share. Net loss per share, basic and diluted, is computed using the weighted average number of shares of the Company's common stock outstanding during the period. For all periods presented, the Company reported net losses and, therefore, no common stock equivalents were included in the computation of diluted net loss per share, since such inclusion would have been anti-dilutive. Stock options that have been excluded from diluted loss per share amounted to 5,529,507, 4,850,552 and 4,794,148, for the years ended December 31, 2003, 2002 and 2001, respectively.

Fair Value of Financial Instruments. The carrying amounts for cash, cash equivalents, accounts payable, and accrued expenses approximate fair value because of their short-term nature. The Company has determined that it is not practical to estimate the fair value of its note payable because of its unique nature and the costs that would be incurred to obtain an independent valuation. The Company does not have comparable outstanding debt on which to base an estimated current borrowing rate or other discount rate for purposes of estimating the fair value of the note payable and the Company has not yet obtained or developed a valuation model. Additionally, the Company is engaged in research and development activities and has not yet developed products for sale. Accordingly, at this stage of the Company's development, a credit risk assessment is highly judgmental. These factors all contribute to the impracticability of estimating the fair value of the note payable. At December 31,

2003, the carrying value of the note payable and accrued interest was $38,345. See Note 7 for further discussion of the note payable.

Comprehensive Loss. Comprehensive loss represents the change in net assets of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive loss of the Company includes net loss adjusted for the change in net unrealized gain or loss on marketable securities. The disclosures required by Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" for the years ended December 31, 2003, 2002 and 2001 have been included in the consolidated statements of stockholders' equity.

Reclassification of Prior Year Balances. Certain balances in prior years' consolidated financial statements have been reclassified to conform with current year presentation. Reclassification had no effect on the consolidated statement of operations.

Future Impact of Recently Issued Accounting Standards. In June 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)" ("EITF 94-3"). FAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred, rather than on the date of an entity's commitment to an exit plan and establishes fair value as the objective for initial measurement of the liability. The provisions of SFAS 146 are effective for exit or disposal activities initiated after December 31, 2002. The provisions of EITF 94-3 shall continue to apply for an exit activity initiated under an exit plan that met the criteria of EITF 94-3 prior to SFAS 146's initial application. The adoption of the provisions of SFAS 146 did not have a material effect on the Company's results of operations or financial position.

In December 2003, the Staff of the Securities and Exchange Commission issued SAB 104, "Revenue Recognition" ("SAB 104"), which supercedes SAB 101, "Revenue Recognition in Financial Statements" ("SAB 101"). SAB 104's primary purpose is to rescind accounting guidance contained in SAB 101 related to multiple element revenue arrangements, superceded as a result of the issuance of EITF 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables" (EITF 00-21"). Additionally, SAB 104 rescinds the SEC's "Revenue Recognition in Financial Statements Frequently Asked Questions and Answers" (the "FAQ") issued with SAB 101 that had been codified in SEC Topic 13, "Revenue Recognition". Selected portions of the FAQ have been incorporated into SAB 104. While the wording of SAB 104 has changed to reflect the issuance of EITF 00-21, the revenue recognition principles of SAB 101 remain largely unchanged by the issuance of SAB 104. Adoption of SAB 104 was required immediately and did not have a material effect on the Company's financial statements.

In December 2003, the FASB issued a revision to Interpretation No. 46, "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51" ("FIN 46R"), which was issued in January 2003. FIN 46R clarifies the application of ARB No. 51, "Consolidated Financial Statements," to certain entities in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support. FIN 46R requires the consolidation of these entities, known as variable interest entities ("VIEs"), by the primary beneficiary of the entity. The primary beneficiary is the entity, if any, that will absorb a majority of the entity's expected losses, receive a majority of the entity's expected residual returns, or both. Among other changes, the revisions of FIN 46R (a) clarified some requirements of the original FIN 46, which had been issued in January 2003, (b) eased some implementation problems, and (c) added new scope exceptions. FIN 46R deferred the effective date of the Interpretation for public companies, to the end of the first reporting period ending after March 15, 2004, except that all public companies must at a minimum apply the provisions of the Interpretation to entities that were previously considered "special-purpose entities" under the FASB literature prior to the issuance of FIN 46R by the end of the first reporting period ending after December 15, 2003. Adoption of FIN 46R did not have a material impact on the Company's financial statements.

In May 2003, the FASB issued Statement No. 150, "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity" ("SFAS 150"). SFAS 150 specifies that instruments within its scope embody obligations of the issuer and that the issuer must classify them as liabilities. SFAS 150 requires issuers to classify as liabilities the following three types of freestanding financial instruments: (1) mandatorily redeemable financial instruments, (2) obligations to repurchase the issuer's equity shares by transferring assets, and (3) certain obligations to issue a variable number of shares. SFAS 150 defines a "freestanding financial instrument" as a financial instrument that (1) is entered into separately and apart from any of the entity's other financial instruments or equity transactions or (2) is entered into in conjunction with some other transaction and can be legally detached and exercised on a separate basis. For all financial instruments entered into or modified after May 31, 2003, SFAS 150 is effective immediately. For all other instruments of public companies, SFAS 150 went into effect at the beginning of

the first interim period beginning after June 15, 2003. The adoption of SFAS 150 did not have a material impact on the Company's financial statements. In November 2003, the Financial Accounting Standards Board deferred the effective date for selected provisions of SFAS 150, limited to mandatorily redeemable noncontrolling interests associated with finite-lived

subsidiaries. The deferral of those selected provisions is not expected to have a material impact on the Company's financial statements.

On November 25, 2002, the FASB issued FASB Interpretation No. 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others". FIN 45 elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The initial recognition and measurement provisions of this Interpretation are applicable to guarantees issued or modified after December 31, 2002. The adoption of the disclosure and recognition provisions of FIN 45 did not have a material effect on the Company's results of operations or financial position.

2. RESTRUCTURING

In May 2002, the Company announced a plan for restructuring its operations, which included the discontinuation of its liquid oral heparin program and any related initiatives, and a reduction of associated infrastructure. Additionally, in the third quarter of 2002, the Company evaluated several alternatives to consolidate its two research facilities in Tarrytown, New York and Farmington, Connecticut in order to eliminate excess capacity, reduce spending, and raise cash. The decision was made to dispose of the Farmington research facility. As a result of the restructuring plan, the Company announced a reduction in force, which was implemented in the second quarter of 2002 at the Tarrytown facility and in the fourth quarter at the Farmington facility. The restructuring plan resulted in the reduction of the Company's full-time work force by approximately 50%.

In 2002, the Company terminated 91 full-time and 26 temporary employees, including 14 administrative personnel and 103 scientists and research assistants. In 2002 the Company paid approximately $178 in stay bonuses to the severed employees during the phase out of operations at Farmington. At the end of 2002, five administrative personnel remained at the Farmington facility. In 2003 four of the remaining five personnel at the Farmington facility were terminated. One employee will remain until the sale is complete. As further discussed in Note 3, in December 2003 the Company accepted an offer from a real estate developer to purchase the Farmington facility and entered into a contract of sale.

The following tables present the original restructuring accruals for Tarrytown and Farmington, the adjustments to these accruals, and the amounts paid through December 31, 2003:

	RESTRUCTURING RESERVE AS OF JANUARY 1, 2003	NET ADJUSTMENTS FOR THE YEAR ENDED DECEMBER 31, 2003	PAYMENTS DURING THE YEAR ENDED DECEMBER 31, 2003	RESTRUCTURING RESERVE AS OF DECEMBER 31, 2003
Severance and accrued vacation	$ 48	$ (6)	$ (18)	$ 24
Outplacement services	-	-	-	-
Employee benefits	1	-	-	1
Contract exit costs	73	(73)	-	-
Other	-	-	-	-
Total restructuring	$ 122	$ (79)	$ (18)	$ 25

	RESTRUCTURING RESERVE AS OF JANUARY 1, 2002	NET CHARGES FOR THE YEAR ENDED DECEMBER 31, 2002	PAYMENTS DURING THE YEAR ENDED DECEMBER 31, 2002	RESTRUCTURING RESERVE AS OF DECEMBER 31, 2002

Severance and accrued vacation.....	$ -	$ 1,008	$ (960)	$ 48
Outplacement services.....	-	54	(54)	-
Employee benefits.....	-	59	(58)	1
Contract exit costs.....	-	267	(194)	73
Other (1)	-	29	(29)	-
Total restructuring	$ -	$ 1,417	$ (1,295)	$ 122

(1) Payments include $21 in non-cash charges related to the forgiveness of certain employee loans.

As of December 31, 2003 and 2002, the remaining reserve is included in accounts payable and accrued expenses on the consolidated balance sheets. The reserve remaining at December 31, 2003 is expected to be paid in the first quarter of 2005.

3. FIXED ASSETS

Tarrytown Facility Transaction. During 2003, in order to streamline operations and reduce expenditures, the Company entered into a transaction to surrender to the landlord approximately 27% of its leased space (the "surrendered space") at the Tarrytown facility. The surrendered space primarily consists of office space which was subsequently leased to another tenant (the

"subsequent tenant") at the Tarrytown facility. In the event that the subsequent tenant vacates the space before August 31, 2005, the Company will be contingently liable for the rent payments and will be required to re-let the space through August 31, 2007. Completion of the lease amendment and related agreements took place in October 2003. The agreement describes four distinct areas to be surrendered, three of which were vacated and surrendered to the subsequent tenant as of December 31, 2003. The fourth space was vacated in March 2004.

In connection with this transaction, Emisphere agreed to sell most of the furniture and equipment in the surrendered space to the subsequent tenant. Through a contractual agreement with Emisphere, the subsequent tenant has agreed to make certain payments ("furniture payments") which will be made directly to the landlord on a monthly basis. A rental credit equal to the furniture payment will be applied against Emisphere's rent payment to the landlord on a monthly basis. Total payments under the agreement are $1,023 and extend through August 2012. The transaction between Emisphere and the subsequent tenant has been accounted for as an operating lease, with all furniture payments recorded as rental income. The Company retains a security interest in the furniture and equipment until all required payments have been made. The Company removed assets with a net book value of $353 for use elsewhere in the Tarrytown facility.

Emisphere compared the net book value of the furniture and equipment to be leased to the fair value, which was determined to be the net present value of the furniture payments of $737, and determined that the assets were impaired. Based on this evaluation, the Company recorded an impairment charge of $4,327 during the year ended December 31, 2003 which has been included in loss on impairment of intangible and fixed assets on the consolidated statements of operations.

In connection with this restructuring, the Company identified equipment that had no future use. This equipment was segregated and classified as available for sale as of December 31, 2003. This equipment was evaluated for potential impairment based on quotes from scientific equipment resellers. These evaluations resulted in an impairment charge of $69 for the year ended December 31, 2003, which has been included in loss on impairment of intangible and fixed assets on the consolidated statements of operations. The remaining net book value of the equipment of $27 is included in land, building and equipment held for sale, net on the consolidated balance sheets.

Farmington Facility Transaction. In December 2003, the Company entered into a contract of sale for the Farmington facility with a real estate developer. The purchaser's obligations to close on the facility are contingent on receiving certain governmental approvals, including but not limited to zoning approvals in final form, wetlands approvals and state environmental approvals, by August 12, 2004. In the event that the purchaser has not terminated the contract by August 12, 2004 because of the failure to obtain governmental approvals, the purchaser is obligated to close on the premises by the earlier date of the thirtieth day

after receipt of governmental approvals or November 12, 2004. The purchaser does have the right to adjourn the closing date for six months after November 12, 2004 if governmental approvals have not been received and provided the purchaser shall pay the sum of $35 per month to Emisphere. As of December 31, 2003, the Company performed an evaluation of the land, building and equipment available for sale at the Farmington facility, which has a carrying value of $3,591. The Company evaluated the following two components of the facility: (i) land, building and equipment that would most likely be transferred to the buyer when the sale is consummated (such as equipment which is attached to the structure and expensive to remove), and (ii) equipment that is portable and available for sale and would most likely be retained by the Company. The Company evaluated the land, building and attached equipment based on the sale price in the contract and determined that an impairment loss of the carrying value of the land, building and attached equipment had not been triggered as of December 31, 2003. In the event that the Company is not successful in closing the sale of the Farmington facility, the Company may need to write down the carrying value of the land, building and equipment further. Because the sale is contingent in part on certain governmental approvals, the Company cannot predict with certainty when, or if, the closing will take place.

Equipment Impairment. Subsequent to the decision to sell the Farmington facility, equipment with a net book value of $435 was transferred for use at the Tarrytown facility and equipment with a net book value of $314 was sold. The remaining items of equipment were then evaluated for potential impairment. The evaluations were based on the age and condition of the equipment, potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by the Company. Based on this evaluation, the Company recorded an impairment charge of $1,003 during the year ended December 31, 2003, which has been included in loss on impairment of intangible and fixed assets on the consolidated statement of operations.

The land, building, and equipment that are available for sale are included at their carrying value in land, building and equipment held for sale, net on the condensed consolidated balance sheet as of December 31, 2003. The $435 of equipment transferred out of the Farmington facility is included in equipment and leasehold improvements, net on the consolidated balance sheets.

In accordance with SFAS No. 144, during 2003, the Company evaluated certain assets for use at the Tarrytown facility for impairment. As a result, the Company recorded an impairment charge of $40 which is included in loss on impairment of intangible and fixed assets on the consolidated statement of operations.

In connection with the discontinuation of the liquid oral heparin development program in the second quarter of 2002, management performed an evaluation of the recoverability of certain fixed assets and determined that an impairment of a reactor and associated accessories, which were to be used only for the manufacture of liquid oral heparin, had occurred. The Company recorded a $494 charge representing the difference between the carrying value of the reactor and associated accessories and the selling price of the equipment. The Company also performed an evaluation of the recoverability of certain equipment at the Tarrytown facility. The Company determined that there was no future use for a gene chip array system and its related accessories. The Company recorded a $103 charge representing the difference between the carrying value of the gene chip array system and its related accessories and the selling price of the equipment. These charges are included in impairment of intangible and fixed assets on the consolidated statements of operations for the year ended December 31, 2002.

Fixed Assets. Equipment and leasehold improvements, net, including assets held under capital lease, consists of the following:

	USEFUL LIVES IN YEARS	DECEMBER 31, 2003	DECEMBER 31, 2002
Equipment	3-7	$ 13,685	$ 14,003
Leasehold improvements	Life of lease	18,852	26,502

	32,537	40,505
Less, accumulated depreciation and amortization.....	18,532	17,223
	$ 14,005	$ 23,282

Depreciation expense for the years ended December 31, 2003, 2002 and 2001, was $5,567, $5,811 and $3,451, respectively. Included in equipment and leasehold improvements are assets which were acquired under capital leases in the amount of $681 at December 31, 2003 (see Note 11).

Land, building and equipment held for sale, net consists of the following:

	USEFUL LIVES IN YEARS	DECEMBER 31, 2003	DECEMBER 31, 2002
Land.....	--	$ 1,170	$ 1,170
Building.....	13	1,983	1,940
Equipment.....	3-7	1,088	2,057
		4,241	5,167
Less, accumulated depreciation and amortization.....		623	647
		$ 3,618	$ 4,520

Land, building and equipment held for sale of $3,591 is related to the Farmington facility, while $27 represents excess equipment held for sale at the Tarrytown facility. Land, building and equipment held for sale were classified as such on December 31, 2002 and therefore no depreciation was recorded for those assets during 2003.

4. OTHER THAN TEMPORARY IMPAIRMENT OF INVESTMENTS

In 2002, the Company recorded a charge of $222 related to the write-down to fair value of its $310 investment in the preferred stock of a biotech company which has products that could potentially use Emisphere's oral delivery technology. The Company considered the following factors to be primary indicators of impairment: (i) the biotech company's need to raise sufficient capital to ensure funding of its research and development projects, (ii) its inability to meet its obligations as they become due and (iii) the possibility that the company may not be able to continue as a going concern unless additional financing is obtained. Fair value was estimated based on the price of the biotech company's publicly-traded common stock. No further impairment was recorded at December 31, 2003 as the fair value of the investment exceeds the carrying value.

5. PURCHASED TECHNOLOGY

Purchased technology represents the value assigned to patents underlying research and development projects related to oral heparin which, if unsuccessful, have no alternative future use. Purchased technology is amortized over a period of 15 years, which represents the average life of the patents.

In connection with the discontinuation of the liquid oral heparin development program in the second quarter of 2002, management performed an evaluation of the recoverability of purchased technology related to the program and related initiatives. Management concluded that a total impairment of the portion of the purchased technology representing patents for the liquid form of oral heparin was required because the Company does not anticipate realization of the carrying value of this asset. Accordingly the Company recorded a $3,910 impairment charge which is included in loss on impairment of intangible and fixed assets on the consolidated statements of operations.

At December 31, 2003 and 2002, management performed an evaluation of the recoverability of the remaining purchased technology related to the solid forms of oral heparin. The Company is proceeding with planned studies related to this

formulation and management estimates that future undiscounted cash flows from programs related to the solid forms of oral heparin are sufficient to realize the carrying value of the asset and, therefore, no impairment of the remaining purchased technology has been recorded.

The carrying value of the purchased technology is comprised as follows:

	DECEMBER 31,	
	2003	2002
Gross carrying amount	$ 4,533	$ 4,533
Accumulated amortization	2,021	1,781
Net book value	$ 2,512	$ 2,752

Estimated amortization expense for the purchased technology is $239 for each of the next five years.

6. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses consist of the following:

	DECEMBER 31,	
	2003	2002
Accounts payable	$ 1,321	$ 2,044
Clinical trial expenses and contract research	514	2,332
Compensation	489	441
Professional fees	314	434
Other	-	73
	$ 2,638	$ 5,324

7. NOTE PAYABLE

Ebbisham Limited ("Ebbisham") was an Irish corporation owned jointly by Elan Pharmaceuticals, Inc. ("Elan") and the Company. Ebbisham was formed to develop and market heparin products using technologies contributed by Elan and the Company.

In July 1999, the Company acquired from Elan its ownership interest in Ebbisham in exchange for a seven year, $20,000 zero coupon note due July 2006 carrying a 15% interest rate, compounding semi-annually (the "Note"), plus royalties on oral heparin product sales, subject to an annual maximum and certain milestone payments. In connection with any payment on the Note made by the Company, the Company has the right to require Elan to purchase the Company's common stock at the market price at an aggregate price equal to such payment made, subject to the following conditions: (i) the acceptance by the FDA of a new drug application from the Company involving any heparin product, (ii) the Company's closing stock price remaining at or above $25.00 per share for the 20 consecutive trading days prior to the date the Company exercises this right and (iii) the exercise of this right would not require the application of the equity accounting method by Elan. At December 31, 2003, the balance on the Elan Note was $38,345.

On February 28, 2002 Ebbisham was voluntarily liquidated.

8. INCOME TAXES

As of December 31, 2003, the Company has available unused net operating loss carry-forwards of $260,469. If not utilized, $1,755, $3,902 and $6,023 of the net operating loss carry-forwards will expire in 2004, 2005 and 2006, respectively with the remainder expiring in various years from 2007 to 2023. The Company's research and experimental tax credit carry-forwards expire in various years from 2004 to 2023. Future ownership changes may limit the future utilization of these net operating loss and research and development tax credit carry-forwards as defined by the Internal Revenue Code. The tax effect of temporary

differences, net operating loss carry-forwards, and research and experimental tax credit carry-forwards as of December 31, 2003 and 2002 is as follows:

	DECEMBER 31,	
	2003	2002
Deferred tax assets and valuation allowance:		
Accrued liabilities	$ 1,190	$ 1,144
Fixed and intangible assets	2,747	2,438
Fixed asset impairments	456	-
Net operating loss carry-forwards	106,691	86,850
Research and experimental tax credit carry-forwards	14,368	13,330
Valuation allowance	(125,452)	(103,762)
Net deferred tax asset	$ -	$ -

9. STOCKHOLDERS' EQUITY

The Company's certificate of incorporation provides for the issuance of 1,000,000 shares of preferred stock with the rights, preferences, qualifications, and terms to be determined by the Company's Board of Directors. As of December 31, 2003 and 2002, there were no shares of preferred stock outstanding.

The Company has a stockholder rights plan in which Preferred Stock Purchase Rights (the "Rights") have been granted at the rate of one one-hundredth of a share of Series A Junior Participating Cumulative Preferred Stock ("A Preferred Stock") at an exercise price of $80 for each share of the Company's common stock.

The Rights are not exercisable, or transferable apart from the common stock, until the earlier of (i) ten days following a public announcement that a person or group of affiliated or associated persons have acquired beneficial ownership of 20% or more of the outstanding common stock of the Company or (ii) ten business days (or such later date, as defined) following the commencement of, or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in the beneficial ownership by a person, or group, of 20% or more of the outstanding common stock of the Company.

Furthermore, if the Company enters into consolidation, merger, or other business combinations, as defined, each Right would entitle the holder upon exercise to receive, in lieu of shares of A Preferred Stock, a number of shares of common stock of the acquiring company having a value of two times the exercise price of the Right, as defined. The Rights contain antidilutive provisions, are redeemable at the Company's option, subject to certain defined restrictions for $.01 per Right, and expire on February 23, 2006.

As a result of the Rights dividend, the Board designated 200,000 shares of preferred stock as A Preferred Stock. A Preferred Stockholders will be entitled to a preferential cumulative quarterly dividend of the greater of $1.00 per share or 100 times the per share dividend declared on the Company's common stock. Shares of A Preferred Stock have a liquidation preference, as defined, and each share will have 100 votes and will vote together with the common shares.

In addition to 44,000 shares of the Company's common stock which had been purchased in prior years the Company repurchased an additional 200,000 shares of its common stock for a total of $3,594 during 2001. Such repurchased stock is held by the Company as treasury stock.

The note receivable from officer and director resulted from the July 31, 2000 exercise of stock options by an officer and director of the Company. The exercise price and income taxes resulting from the exercise were loaned to the officer by the Company. The loan is in the form of a full recourse promissory note bearing a variable interest rate based upon LIBOR plus 1.00% (2.1% and 2.4% at December 31, 2003 and 2002, respectively), and collateralized by the stock issued upon exercise of the stock options. Interest is payable monthly and principal is due the earlier of July 31, 2005 or upon the sale of stock held as collateral.

10. STOCK PLANS

Stock Option Plans. Under the Company's 1991 and 2000 Stock Option Plans, the 2002 Broad Based Plan and the 1995 Non-Qualified Stock Option Plan (individually, the "91 Plan", "00 Plan", "02 Plan" and "95 Plan," respectively, or collectively, the "Plans") a maximum of 2,500,000, 1,419,500, 160,000 and 2,550,000 shares of the Company's common stock, respectively, are available for issuance under the Plans. The 91 Plan is available to employees and consultants; the 00 Plan is available to employees, directors and consultants; and the 02 Plan is available to employees only. The 91, 00 and 02 Plans provide for the grant of either incentive stock options ("ISOs"), as defined by the Internal Revenue Code, or non-qualified stock options, which

do not qualify as ISOs. The 95 Plan provides for grants of non-qualified stock options to officers and key employees. Generally, the options expire within a five- to ten-year period, as determined by the Committee and as defined by the Plans. As of December 31, 2003, shares available for future grants under the Plans amounted to 191,189.

The following table summarizes stock option information for the Plans as of December 31, 2003:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
$ 1.50	9,060	1.33	$ 1.50	9,060	$ 1.50
$ 2.63-$3.55	507,038	8.91	$ 3.14	54,195	$ 3.27
$ 4.00-$5.95	295,579	9.06	$ 5.49	158,399	$ 5.26
$ 6.13-$8.63	1,522,680	2.63	$ 8.35	1,415,980	$ 8.45
$ 10.00-$14.88	1,456,307	6.57	$ 12.81	1,112,237	$ 12.54
$ 15.13-$21.80	259,828	5.41	$ 17.87	188,380	$ 17.55
$ 23.00-$28.48	14,070	5.90	$ 25.61	11,628	$ 25.66
$ 38.50-$48.06	733,000	6.39	$ 46.95	442,800	$ 46.90
$ 1.50-$48.06	4,797,562	5.62	$ 15.43	3,392,679	$ 15.12

Transactions involving stock options awarded under the Plans during the years ended December 31, 2001, 2002 and 2003 are summarized as follows:

	NUMBER OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
Balance outstanding December 31, 2000	4,522,272	$ 16.72	3,126,606	$ 10.50
2001				
Granted	728,318	$ 15.59		
Canceled	(88,366)	$ 12.98		
Exercised	(231,290)	$ 10.46		
Balance outstanding December 31, 2001	4,930,934	$ 16.91	3,280,919	$ 10.85
2002				
Granted	1,246,970	$ 11.37		
Canceled	(1,820,470)	$ 14.00		
Exercised	(29,720)	$ 5.81		
Balance outstanding December 31, 2002	4,327,714	$ 16.86	2,927,003	$ 14.28
2003				
Granted	648,635	$ 4.78		
Canceled	(160,627)	$ 12.48		
Exercised	(18,160)	$ 4.27		
Balance outstanding December 31, 2003	4,797,562	$ 15.43	3,392,679	$ 15.12

Outside Directors' Plan. The Company has adopted a stock option plan for outside directors (the "Outside Directors' Plan"). As amended, a maximum of 725,000 shares of the Company's common stock is available for issuance under the Outside Directors' Plan. Directors who are neither officers nor employees of the Company nor holders of more than 5% of the Company's common stock are granted options (i) to purchase 35,000 shares of the Company's common stock on the date

of initial election or appointment to the Board of Directors and (ii) to purchase 21,000 shares on the fifth anniversary thereof and every three years thereafter. The options have an exercise price equal to the fair market value of the Company's common stock on the date of grant, vest at the rate of 7,000 shares per year, and expire ten years after the date of grant. As of December 31, 2003 shares available for future grants under the plan amounted to 184,000.

The following table summarizes stock option information for the Outside Directors' Plan as of December 31, 2003:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
$ 2.89	21,000	9.32	$ 2.89	-	-
$ 5.75-$8.63	231,000	6.61	$ 6.75	105,000	$ 7.79
$ 13.00-$14.04	170,000	6.97	$ 13.31	163,000	$ 13.28
$ 22.55-$23.50	42,000	3.91	$ 23.34	42,000	$ 23.34
$ 41.06	42,000	6.32	$ 41.06	42,000	$ 41.06
$ 2.89-$41.06	506,000	6.59	$ 13.02	352,000	$ 16.16

Transactions involving stock options awarded under the Outside Directors' Plan during the years ended December 31, 2001, 2002 and 2003 are summarized as follows:

	NUMBER OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
Balance outstanding December 31, 2000	476,000	$ 16.44	378,000	$ 12.64
2001				
Granted	21,000	$ 13.88		
Exercised	(35,000)	$ 13.00		
Balance outstanding December 31, 2001	462,000	$ 16.58	378,000	$ 14.27
2002				
Granted	128,000	$ 14.58		
Cancelled	(217,000)	$ 15.79		
Balance outstanding December 31, 2002	373,000	$ 16.36	317,000	$ 15.19
2003				
Granted	168,000	$ 5.13		
Cancelled	(35,000)	$ 10.75		
Balance outstanding December 31, 2003	506,000	$ 13.02	352,000	$ 16.16

Directors' Deferred Compensation Stock Plan. Pursuant to the Directors' Deferred Compensation Stock Plan (the "Directors' Deferred Plan"), as approved at the annual stockholders' meeting in May 2003, an eligible independent director has the option to elect to receive one half of his annual Board of Directors' retainer compensation, paid for his services as a Director, in deferred stocks. An aggregate of 25,000 shares of the Company's common stock has been reserved for issuance under the Directors' Deferred Plan. During the years ended December 31, 2003, 2002 and 2001, the outside directors earned the rights to receive an aggregate of 2,144 shares, 3,358 shares and 948 shares, respectively. Under the terms of the Directors' Deferred Plan, shares are to be issued to a director within six months after he or she ceases to serve on the Board of Directors. In accordance with the Directors' Deferred Plan, the Company issued 923 shares of common stock to Mr. Hutt in January 2003. In December 2003, Emisphere issued 1,602 shares to Dr. Goyan and 2,024 shares to Mr. Robinson. The Company records as an expense the fair market value of the common stock issuable under the plan. As of September 30, 2002 the compensation of Directors under this plan was stopped and reinstated on October 1, 2003 subsequent to the shareholders' approval of the 2003 Plan amendment. Prior to the amendment, an independent director had the right to receive for each meeting of the Board of Directors, or a committee thereof, attended a number of shares of the Company's common stock equal to the amount determined by the Board of Directors as compensation for the meeting divided by the fair market value of the Company's common stock on the date of the meeting.

Non-Plan Options. The Company's Board of Directors has granted options ("Non-Plan Options") which are currently outstanding for the accounts of an executive officer, a former executive officer, and two consultants. The Board of Directors determines the number and terms of each grant (option exercise price, vesting, and expiration date).

The following table summarizes stock option information for the Non-Plan Options as of December 31, 2003:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICE	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
$ 3.15-$4.12	10,000	9.04	$ 3.64	10,000	$ 3.64
$ 4.88	40,000	3.57	$ 4.88	40,000	$ 4.88
$ 8.00-$9.25	272,279	1.62	$ 8.83	272,279	$ 8.83
$ 12.38	200,000	1.76	$ 12.38	200,000	$ 12.38
$ 26.05	10,000	7.53	$ 26.05	10,000	$ 26.05
$ 3.15-$26.05	532,279	2.07	$ 10.09	532,279	$ 10.09

Transactions involving awards of Non-Plan Options during the years ended December 31, 2001, 2002 and 2003 are summarized as follows:

	NUMBER OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
Balance December 31, 2000	287,279	$ 8.87	287,279	$ 8.87
2001 and 2002				
Granted	10,000	$ 26.05		
Reissued	200,000	$ 12.38		
Exercised	(725)	$ 9.75		
Balance outstanding December 31, 2001 and 2002	496,554	$ 10.63	496,554	$ 9.45
2003				
Granted	50,000	$ 4.63		
Cancelled	(14,275)	$ 9.75		
Balance outstanding December 31, 2003	532,279	$ 10.09	532,279	$ 10.09

Employee Stock Purchase Plans. The Company has adopted two employee stock purchase plans (the "Purchase Plans")--the 1994 Employee Stock Purchase Plan (the "Qualified Plan") and the 1994 Non-Qualified Employee Stock Purchase Plan (the "Non-Qualified Plan"). The Purchase Plans provide for the grant to qualified employees of options to purchase the Company's common stock. These options are granted for dollar amounts of up to 15% of an employee's quarterly compensation. The exercise price per share is equal to the lesser of the fair market value of the Company's common stock on the date of grant or 85% of the fair market value on the date of exercise. Options are granted automatically on February 1, May 1, August 1, and November 1 and expire six months after the date of grant. The Qualified Plan is not available for employees owning more than 5% of the Company's common stock and imposes certain other quarterly limitations on the option grants. Options under the Non-Qualified Plan are granted to the extent that the option grants are restricted under the Qualified Plan. The Purchase Plans provide for the issuance of up to 1,200,000 shares of the Company's common stock under the Qualified Plan and 200,000 shares under the Non-Qualified Plan.

Purchases of common stock under the Purchase Plans during the year ended December 31, 2003, 2002 and 2001 are summarized as follows:

	QUALIFIED PLAN		NON-QUALIFIED PLAN	
	SHARES PURCHASED	PRICE RANGE	SHARES PURCHASED	PRICE RANGE

2001	68,109	$11.79-$25.48	2,640	$13.52-$23.43
2002	166,197	$2.62-$25.48	16,102	$2.47-$20.88
2003	140,764	$1.99-$4.38	30,484	$1.99-$4.38

As of December 31, 2003, there are 439,614 shares reserved for future purchases under the Qualified Plan and 97,959 shares reserved under the Non-Qualified Plan.

The weighted-average fair values and exercise prices for the options granted during the years ended December 31, 2003, 2002 and 2001 are presented in the table below.

	YEAR ENDED DECEMBER 31,		
	2003	2002	2001
Stock options granted in which the exercise price is equal to the market price of the stock on the grant date:			
Weighted average grant date fair market value	$ 3.55	$ 6.60	$ 10.71
Number of options granted	826,635	593,051	759,318
Weighted average exercise price	$ 4.84	$ 19.56	$ 15.68
Stock options granted in which the exercise price is more than the market price of the stock on the grant date:			
Weighted average grant date fair market value	$ 3.58	$ 9.16	N/A
Number of options granted	40,000	781,919	
Weighted average exercise price	$ 4.88	$ 13.27	

11. COMMITMENTS AND CONTINGENCIES

Commitments. The Company leases office and laboratory space under non-cancelable operating leases expiring in 2007. As of December 31, 2003, future minimum rental payments are as follows:

YEARS ENDING DECEMBER 31,	
2004	$ 1,746
2005	1,751
2006	1,759
2007	1,195
	$ 6,451

Future minimum lease payments under capital leases (see Note 3) are as follows:

YEARS ENDING DECEMBER 31,	
2004	$ 256
2005	256
2006	256
	768
Less: Amount representing interest at 8.5%	88
Present value of minimum lease payments	680
Less: Current portion	211
Long-term obligations	$ 469

Rent expense for the years ended December 31, 2003, 2002 and 2001 was $1,811, $1,919 and $2,004, respectively. Additional charges for real estate taxes and common maintenance charges for the years ended December 31, 2003, 2002 and 2001, were $1,127, $1,283 and $1,054, respectively.

The Company, for the years ended December 31, 2003, 2002 and 2001, made payments totaling approximately $314, $1,963 and $1,166, respectively, to universities and research organizations (the "Entities"), which is included in research and development expenses. Certain members of the Company's Board of Directors are affiliated with certain of these Entities.

Contingencies. The Company's bylaws provide for the indemnification of officers and directors for certain events or occurrences while the officer or

director is, or was, serving at the Company's request in such capacity. The maximum potential amount of future payments that the Company could be required to make under the bylaws is unlimited; however, the Company has Director and Officer insurance policies that, in most cases, would limit its exposure and enable it to recover a portion of any future amounts paid. As a result of the insurance policy coverage, the estimated fair value of these indemnification provisions is minimal. All of these indemnification provisions were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded for these provisions as of December 31, 2003.

Under the terms of the agreement with the landlord to surrender a portion of the space at the Tarrytown facility in 2003, the Company is contingently liable for the rent payments and will be required to re-let the space through August 31, 2007 if the

subsequent tenant vacates the surrendered space before August 31, 2005. At this time, the Company believes that the possibility of such an event occurring is very unlikely. In the event that the subsequent tenant vacates the space, the maximum amount which the Company would be obligated to pay would be $3,751 for rent, real estate taxes and operating expenses.

In the ordinary course of business, the Company enters into agreements with third parties that include indemnification provisions which, in its judgment, are normal and customary for companies in its industry sector. These agreements are typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, the Company generally agrees to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or incurred by the indemnified parties with respect to the Company's product candidates, use of such product candidates, or other actions taken or omitted by the Company. The maximum potential amount of future payments the Company could be required to make under these indemnification provisions is unlimited. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, the Company has no liabilities recorded for these provisions as of December 31, 2003.

In the normal course of business, the Company may be confronted with issues or events that may result in a contingent liability. These generally relate to lawsuits, claims, environmental actions or the action of various regulatory agencies. Management consults with counsel and other appropriate experts to assess the claim. If, in management's opinion, the Company has incurred a probable loss as set forth by accounting principles generally accepted in the United States, an estimate is made of the loss and the appropriate accounting entries are reflected in the Company's consolidated financial statements. Management, after consultation with legal counsel, does not anticipate that liabilities arising out of currently pending or threatened lawsuits and claims will have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

12. RETIREMENT PLAN

The Company has a defined contribution retirement plan (the "Retirement Plan"), the terms of which, as amended, allow eligible employees who have met certain age and service requirements to participate by electing to contribute a percentage of their compensation to be set aside to pay their future retirement benefits, as defined by the Retirement Plan. The Company has agreed to make discretionary contributions to the Retirement Plan. For the years ended December 31, 2003, 2002 and 2001, the Company made contributions to the Retirement Plan totaling approximately $318, $377 and $352, respectively.

13. COLLABORATIVE RESEARCH AGREEMENTS

Emisphere is a party to collaborative agreements with corporate partners to provide development and commercialization services relating to the collaborative products. These agreements are in the form of research and development collaboration and licensing agreements. In connection with these agreements, Emisphere has granted licenses or the rights to obtain licenses to our oral drug delivery technology. In return, Emisphere will receive certain payments upon the achievement of milestones and will receive royalties on sales of products should they be commercialized. Under these agreements, Emisphere will also be reimbursed for research and development costs. Emisphere also has the right to

manufacture and supply delivery agents developed under these agreements to its corporate partners.

The Company also performs research and development for others pursuant to feasibility agreements, which are of short duration and are designed to evaluate the applicability of the Company's drug delivery agents to specific drugs. Under the feasibility agreements, the Company is generally reimbursed for the cost of work performed.

All of Emisphere's collaborative agreements are retractable by its corporate partners without significant financial penalty to them.

ELI LILLY AND COMPANY.

In June 2000, Emisphere and Lilly executed a follow-on agreement to the 1997 multi-year research and option agreement to develop oral formulations of recombinant parathyroid hormone (teraparatide; "PTH 1-34") and recombinant human growth hormone (somatropin; "rhGH"). The Emisphere/Lilly oral PTH 1-34 program is currently in Phase I development. In August 2003, Emisphere and Lilly announced that Lilly would return all rights and data generated on an oral form of rhGH to Emisphere. In connection with the Lilly agreements, the Company recognized contract research revenues of $237, $2,923 and $3,828 for the years ended December 31, 2003, 2002, and 2001, respectively.

NOVARTIS PHARMA AG.

In December 1997, Emisphere entered into a collaboration agreement with Novartis to develop an oral salmon calcitonin ("sCT"), currently used to treat osteoporosis. In February 2000, Novartis agreed to execute its option to acquire an exclusive license to develop and commercialize oral sCT and as a result, Novartis made a $2,000 milestone payment to Emisphere. In

March 2000, Novartis paid Emisphere $2,500 to obtain the license to Emisphere's technology for sCT, and to obtain an option to use the eligen(TM) technology for a second compound. Novartis' rights to certain financial terms concerning the second compound have since expired. In February 2003, Emisphere announced favorable results of a Phase IIa study conducted by Novartis evaluating the performance in post-menopausal women of an oral tablet form of salmon calcitonin. Emisphere is entitled to receive an additional milestone payment for oral calcitonin upon the initiation of Phase III studies by Novartis. The Company has not recognized any revenue in connection with the Novartis agreement for the years ended December 31, 2003, 2002 and 2001

REGENERON PHARMACEUTICALS, INC.

During 2000, Emisphere established a research and development collaboration and option agreement with Regeneron for the development of an oral version of a derivative of ciliary neutrophic growth factor ("CNTF"), which is under development as an injectable by Regeneron as AXOKINE, for use in the treatment of obesity. Emisphere and Regeneron have conducted pre-clinical testing of an oral version of CNTF. In connection with the Regeneron agreement, the Company recognized contract research revenue of $28 and $206 for the years ended December 31, 2002 and 2001, respectively. Regeneron will continue to pay for all studies related to the pre-clinical product candidate development. Emisphere received no further contract research revenue related to this program for the year ended December 31, 2003.

CUBIST PHARMACEUTICALS, INC.

In November 2000, Cubist established a collaboration agreement with Emisphere for the development of an oral form of daptomycin, under development as an injectable by Cubist as CIDECIN(R) (now being developed as CUBICIN), an injectable for use in the treatment of serious or life-threatening soft skin tissue infections. As of November 2003, the agreement has expired, and the parties are no longer collaborating on the development of oral formulations of daptomycin, daptomycin analogues, or any other products. In connection with the Cubist agreement, the Company recognized contract research revenue of $267 and $401 for the years ended December 31, 2002 and 2001, respectively. Emisphere received no further contract research revenue related to this program for the year ended December 31, 2003.

U.S. ARMY MEDICAL RESEARCH INSTITUTE OF INFECTIOUS DISEASES

In June 2003, Emisphere announced that it signed a cooperative research and development agreement (CRADA) with the USAMRIID, the U.S. Department of Defense's lead medical research laboratory for the U.S. Biological Defense Research Program. USAMRIID is evaluating the use of Emisphere's eligen(TM) technology to create oral vaccines against anthrax using a new recombinant protein antigen. USAMRIID is a subordinate laboratory of the U.S. Army Medical Research and Materiel Command. USAMRIID has agreed to grant Emisphere an exclusive license to each U.S. patent application or issued patent as a result of the work performed under the CRADA. Emisphere will be eligible to receive royalties under a license agreement with the ultimate vaccine developer should an oral anthrax vaccine ultimately be developed. Emisphere received no contract research revenue related to this program for the year ended December 31, 2003.

14. SUMMARIZED QUARTERLY FINANCIAL DATA (Unaudited)

Following are summarized quarterly financial data for the years ended December 31, 2003 and 2002:

	2003			
	MARCH 31	JUNE 30	SEPTEMBER 30(1)	DECEMBER 31(1)
Total revenue	$ 26	$ 246	$ 100	$ 28
Operating loss	(8,998)	(10,515)	(13,825)	(8,181)
Net loss	(9,864)	(11,446)	(14,377)	(9,182)
Net loss per share, basic and diluted	$ (0.55)	$ (0.63)	$ (0.80)	$ (0.51)

	2002			
	MARCH 31	JUNE 30	SEPTEMBER 30	DECEMBER 31
Total revenue	$ 729	$ 1,089	$ 735	$ 825
Operating loss	(21,521)	(24,559)	(12,313)	(11,299)
Net loss	(21,400)	(24,930)	(13,016)	(11,996)
Net loss per share, basic and diluted	$ (1.20)	$ (1.39)	$ (0.72)	$ (0.67)

(1) Adjusted to properly reflect a third quarter billing adjustment of $62.

EXHIBIT INDEX

EXHIBIT		INCORPORATED BY REFERENCE(1)	
3.1	--Restated Certificate of Incorporation of the Company dated June 13, 1997, as amended by the Certificate of Amendment dated February 5, 1999.	A	
3.2	--By-Laws of Emisphere, as amended December 7, 1998.	A	
4.1	--Restated Rights Agreement dated as of February 23, 1996 between Emisphere and Mellon Investor Services, LLC.	B	
4.2	--Note Purchase Agreement, dated July 2, 1999, between Emisphere and Elan International Service, Ltd.	C	
4.3	--Zero Coupon note, dated July 2, 1999, issued by Emisphere to Elan International Services, Ltd. For an initial principal amount of $20 million.	C	
10.1	--1991 Stock Option Plan, as amended.	I	(2)
10.2	--Stock Option Plan for Outside Directors, as amended.	D	(2)
10.3	--Employee Stock Purchase Plan, as amended.	E	(2)
10.4	--Non-Qualified Employee Stock Purchase Plan.	E	(2)
10.5	--1995 Non-Qualified Stock Option Plan, as amended.	I	(2)
10.6	--Directors' Deferred Compensation Stock Plan.	F	(2)
10.7	--Employment Agreement, dated July 31, 2000, between Michael M. Goldberg and Emisphere.	J	(2)
10.8	--Employment Agreement, dated December 5, 2001, between Alan W. Dunton and Emisphere.	K	(2)
10.9	--Stock Option Agreements, dated January 1, 1991, February 15, 1991, December 1, 1991, August 1, 1992 and October 6, 1995 between Michael M. Goldberg and Emisphere.	E	(2)(3)
10.10	--Stock Option Agreement, dated July 31, 2000, between Michael M.Goldberg and Emisphere.	J	(2)

10.11(a)	--Non-Qualified Stock Option Agreement dated February 7, 2002, between Alan W. Dunton and Emisphere.	K	(2)
10.11(b)	--Incentive Stock Option Agreement dated February 7, 2002, between Alan W. Dunton and Emisphere.	K	(2)
10.12	--Termination Agreement, dated July 2, 1999, among Emisphere, Elan Corporation, plc and Ebbisham Limited, now a wholly owned Subsidiary of Emisphere.	C	
10.13	--Patent License Agreement, dated July 2, 1999, between Emisphere and Elan Corporation, plc.	C	
10.14	--Subscription Agreement, dated July 2, 1999 between Emisphere and Elan International Management, Ltd.	C	
10.15	--Registration Rights Agreement, dated July 2, 1999 between Emisphere and Elan International Management, Ltd.	C	
10.16	--Research Collaboration and Option Agreement dated as of December 3, 1997 between Emisphere and Novartis Pharma AG.	G	(4)
10.17	--Research Collaboration and Option Agreement dated as of June 8, 2000 between Emisphere and Eli Lilly and Company.	J	(4)
10.18	--Research Collaboration and Option Agreement dated March 8, 2000 between Emisphere and Regeneron Pharmaceuticals, Inc.	H	(4)
10.19(a)	--License Agreement dated as of April 7, 1998 between Emisphere and Eli Lilly and Company.	J	(4)

EXHIBIT		INCORPORATED BY REFERENCE(1)	
10.19(b)	--License Agreement, dated as of April 7, 1998, between Emisphere and Eli Lilly and Company.	J	(4)
10.20(b)	--Amendment to Lease Agreement, dated as of March 31, 2000, between Emisphere and Eastview Holdings, LLC.	J	
10.20(c)	--Amendment to Lease Agreement, dated as of March 31, 2000, between Emisphere and Eastview Holdings, LLC.	J	
10.21	--Promissory Note, dated June 15, 2001, by Lewis H. Bender in favor of Emisphere.	J	(2)
10.22	--Promissory Note, dated July 31, 2000, by Michael M. Goldberg in favor of Emisphere	J	(2)
10.23	--Emisphere Technologies, Inc. 2000 Stock Option Plan	J	(2)
10.24	--Amendment to Emisphere Technologies, Inc Qualified Employee Stock Purchase Plan	L	(2)
10.25	--Amendment to Lease Agreement, dated as of September 23, 2003, between Emisphere and Eastview Holdings, LLC.	*	
10.26	--Agreement, dated September 23, 2003, between Emisphere and Progenics Pharmaceuticals, Inc.	*	
10.27	--Consulting Agreement, dated November 13, 2003, between Emisphere and Dr. Jere Goyan	*	
10.28	--Consulting Agreement, dated November 13, 2003, between Emisphere and Mr. Joseph R. Robinson	*	
10.29	--Contract of Sale for the Farmington facility, dated December 15, 2003	*	(4)
14.1	--Emisphere Technologies, Inc. Code of Business Conduct and Ethics	*	
23.1	--Consent of PricewaterhouseCoopers LLP	*	
31.1	--Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002	*	
31.2	--Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002	*	
32.1	--Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	*	
32.2	--Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	*	

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* Filed herewith.

(1) If not filed herewith, filed as an exhibit to the document referred to by letter as follows:

A. Quarterly Report on Form 10-Q for the quarterly period ended January 31, 1999.
B. Registration Statement on Form 8-A12G/A dated and filed June 7, 2001.
C. Current Report on Form 8-K dated July 2, 1999.
D. Annual Report on Form 10-K for the fiscal year ended July 31, 1997.
E. Annual Report on Form 10-K for the fiscal year ended July 31, 1995.
F. Annual Report on Form 10-K for the fiscal year ended July 31, 1998.
G. Quarterly Report on Form 10-Q for the quarterly period ended October 31, 1997.
H. Quarterly Report on Form 10-Q for the quarterly period ended April 30, 2000.
I. Annual Report on Form 10-K for the fiscal year ended July 31, 1999.
J. Annual Report on Form 10-K for the fiscal year ended July 31, 2000.

K. Annual Report on Form 10-K for the year ended December 31, 2002.
L. Registration statement on Form S-8 dated and filed on November 27, 2002.

(2) Management contract or compensatory plan or arrangement.
(3) Omitted in part pursuant to Instruction 2 of Item 601 of Regulation S-K.
(4) Portions of this exhibit have been omitted based on a request for confidential treatment filed separately with the Securities and Exchange Commission.

EXHIBIT 10.25

SEVENTH AMENDMENT OF LEASE
(PARTIAL TERMINATION AND SURRENDER AGREEMENT)

THIS AGREEMENT (this "Agreement") is made as of the 23rd day of September 2003 between EASTVIEW HOLDINGS LLC ("Landlord"), a Delaware limited liability company, having an address at c/o LCOR Asset Management L.P., One Penn Plaza, Suite 3310, New York, New York 10119, and EMISPHERE TECHNOLOGIES, INC. ("Tenant"), a Delaware corporation, having an address at 765 Old Saw Mill River Road, Tarrytown, New York 10591.

W I T N E S S E T H :

WHEREAS, Landlord's predecessor-in-interest and Tenant entered into a Lease dated as of March 31, 1997 (the "Original Lease"), for certain premises shown on Exhibit A of the Original Lease in the Linde Building (765 Old Saw Mill River Road) (the "Linde Building") and the Spine Building (777 Old Saw Mill River Road) (the "Spine Building") located within the project (the "Project") known as The Landmark at Eastview, in the Towns of Mt. Pleasant and Greenburgh, New York, as the Original Lease was amended by the Amendment of Lease dated as of January 31, 1999, as further amended by the Second Amendment of Lease (Partial Termination and Surrender Agreement) dated as of July 31, 2000, as further amended by the Third Amendment of Lease dated as of July 31, 2000, as further amended by the Fourth Amendment of Lease dated as of May 30, 2001 (the "Fourth Amendment"), as further amended by the Fifth Amendment of Lease dated as of February 11, 2002 and as further amended by the Sixth Amendment of Lease dated as of January 24, 2003 (collectively, as amended, the "Lease"), which Lease covers certain premises in the Linde Building and the Spine Building as more particularly described in the Original Lease and the amendments thereto (collectively, the "Premises"); and

WHEREAS, Tenant wishes to surrender, and to be released and excused from performing certain of its obligations under the Lease with respect to certain spaces located in the Spine Building and the Linde Building (collectively, the "Surrender Space"), which Surrender Space is comprised of the following spaces: (i) approximately 13,912 r.s.f. of space on the first floor of the Spine Building and approximately 7,222 r.s.f. of space on the Mezzanine level of the Linde Building as such spaces are shown on Schedules A-1 and A-2 attached hereto (collectively, "Surrender Space A"); (ii) approximately 7,888 r.s.f. of space on the first floor of the Spine Building as shown on Schedule B attached hereto ("Surrender Space B") and (iii) approximately 2,056 r.s.f. of space on the first floor of the Spine Building as shown on Schedule C attached hereto ("Surrender Space C"). Landlord is willing to grant such release and accept such surrender of the Surrender Space, upon the terms and conditions set forth in this Agreement.

WHEREAS, Landlord and Tenant desire to amend the Lease to add approximately 3,000 rentable square feet of space on the C-level of the Spine Building substantially as shown hatched on the floor plan annexed hereto as Schedule D (the "Additional Premises No. 6") to the Premises and otherwise amend the Lease, all on the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. All capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Lease.

2. (a) On or before the dates set forth below, (each such date, a "Surrender Date") Tenant shall vacate and surrender possession of the applicable Surrender Space to Landlord and shall surrender all of Tenant's right, title and interest in and to such Surrender Space under the Lease, (except to the extent Tenant is required to re-let all or a portion of the Surrender Space as set forth in Paragraph 13 below) with the intent and purpose that the Term of the Lease with respect to such Surrender Space shall be extinguished in the same manner and with the same effect as if the Term of the Lease with respect to such Surrender Space had expired on such Surrender Date.

Surrender Space	Surrender Date

Surrender Space A:	October 23, 2003
Surrender Space B:	December 15, 2003
Surrender Space C:	March 1, 2004

Tenant acknowledges that Progenics shall be deemed a third party beneficiary of Tenant's agreement with Landlord to surrender the Surrender Space on the dates provided for herein, and Progenics shall have the right to bring an action for monetary damages if tenant fails to vacate the Surrender Space on or before the applicable Surrender Dates.

(b) Notwithstanding the foregoing, in the event Tenant surrenders Surrender Space B and/or Surrender Space C in the condition required hereunder prior to the foregoing Surrender Date with respect to such Surrender Space and has delivered to Landlord written notice of Tenant's intention to surrender such Surrender Space at least 15 days prior to the date such Surrender Space is surrendered, the Surrender Date for such space shall be deemed to be the date such Surrender Space is actually surrendered.

(c) Tenant acknowledges and agrees that this Agreement is being entered into by the parties in connection with a lease of the Surrender Space (the "Progenics Lease") to Progenics Pharmaceuticals, Inc. ("Progenics"). The effectiveness of this Agreement is conditioned upon the execution and delivery of the Progenics Lease by Progenics and Landlord. In the event the Progenics Lease has not been executed and delivered by Progenics and Landlord on or before the earliest Surrender Date, the earliest Surrender Date (and any later Surrender Date that shall have occurred) shall be postponed until such time as Progenics and Landlord have executed and delivered the Progenics Lease. In the event the Progenics Lease has not been executed and delivered by Landlord and Progenics by November 15, 2003, either party may terminate this Agreement upon five (5) days prior written notice to the other party. In the event the Progenics Lease has been signed by the parties but Progenics terminates the Progenics Lease as to all or a part of the Surrender Space as a result of Tenant's failure to surrender all or any part of the Surrender Space upon the Surrender Dates set forth above, this Agreement shall terminate and be of no further force or effect with respect to such portion of the Surrender Space that Progenics is not obligated to lease. It is the intention of the parties hereto that there shall be no lapse in time between the date the Lease terminates as to all or any portion of the Surrender Space and the date the Progenics Lease commences as to such Surrender Space and Tenant shall be obligated to pay all Fixed Rent and Additional Rent payable under the Lease to the extent such lapse in time shall have occurred.

3. Tenant shall pay all Fixed Rent and Additional Charges accruing under the Lease with respect to the Surrender Space through and including the applicable Surrender Date in accordance with the Lease.

4. On each applicable Surrender Date, Tenant shall deliver the Surrender Space to Landlord vacant, broom clean and free and clear of all tenancies, subtenancies and occupancies, and otherwise in the condition in which the Premises are required to be surrendered to Landlord under the terms of the Lease (as amended by this Agreement) upon the expiration of the Term of the Lease, and otherwise in accordance with the terms of the Lease (as amended by this Agreement), including, without limitation, Articles 12 and 13 of the Lease. Notwithstanding the foregoing, Landlord acknowledges and agrees that Progenics has agreed to accept the Surrender Space in "as is" condition, subject to Tenant removing any Tenant's Property which Progenics has not agreed to use during the term of their Lease. Therefore, Landlord agrees to accept the Surrender Space in the same condition as Progenics agrees to accept it.

5. On each applicable Surrender Date, Landlord shall accept the surrender of such Surrender Space and release Tenant from its obligations under the Lease with respect only to such Surrender Space, except that Tenant shall continue to remain liable thereafter: (a) for Landlord's liabilities, costs and expenses of every nature occasioned by Tenant's failure to surrender the Surrender Space to Landlord in accordance with the terms of the Lease, as amended by this Agreement (including, without limitation, reasonable attorneys' fees and disbursements and reasonable attorneys' fees and disbursements incurred in establishing liability under this Paragraph 5 and in collecting amounts payable hereunder); (b) for all liabilities and claims incurred by or made against Landlord and/or Tenant for labor and materials asserted to have been furnished to Tenant or anyone claiming by, through or under

Tenant with respect to such Surrender Space, up to and including the applicable Surrender Date; (c) for any claims by Landlord against Tenant for contribution or indemnification or both arising out of third-party claims against Landlord to the extent provided for in the Lease, as amended by this Agreement; (d) for all obligations and liabilities of Tenant with respect to such Surrender Space accruing on or prior to the applicable Surrender Date; and (e) for all other obligations of Tenant with respect to such Surrender Space expressly provided in the Lease to survive the termination or expiration of the Lease.

6. Effective on each applicable Surrender Date, Tenant releases Landlord and its successors and assigns from and against any and all claims, obligations and liabilities of every kind or nature whatsoever thereafter arising out of or in connection with the applicable Surrender Space except any claim relating to the current audit involving taxes, operating expenses and utility charges for Operating Years 2002 and 2003.

7. Effective on each applicable Surrender Date, the Lease shall be deemed amended as follows in order to reflect the Surrender of the applicable Surrender Space:

(a) "Tenant's Proportionate Share" as defined in Section 4.0(c) of the Original Lease, as last amended in Paragraph 5 of the Fourth Amendment, shall be reduced as follows with respect to each Surrender Space:

Surrender Space A:	2.85%
Surrender Space B:	1.06%
Surrender Space C:	.28%

Upon the surrender of all of the Surrender Space, the "Tenant's Proportionate Share" shall mean 11.35% (subject to change as set forth in Sections 4.01(c) and 4.06 of the Original Lease).

(b) The "Fixed Rent" as defined in Section 1.04 of the Original Lease, as amended, shall be reduced by the following amounts:

Surrender Space A:	$453,583 per annum ($37,798.59 per month)
Surrender Space B:	$173,536 per annum ($14,461.33 per month)
Surrender Space C:	$45,232 per annum ($3,769.33 per month)

From and after the Surrender Date, all references in the Lease to "Exhibit B", as amended, shall be deemed to mean Exhibit B as modified by this Paragraph 7(b).

(c) The number of parking spaces Tenant may use on a non-exclusive basis as set forth in Section 35.01 and Exhibit D of the Original Lease shall be decreased by 70 and the total number of parking spaces Tenant may use on a non-exclusive basis as set forth in Section 35.01 and Exhibit D of the Original Lease shall be 280.

8. Except as expressly set forth in this Agreement, nothing contained in this Agreement shall affect Tenant's obligations and liabilities with respect to the remainder of the Premises, other than the Surrender Space, demised to Tenant under the Lease (the "Remaining Premises"), which obligations and liabilities shall continue under the Lease (as amended by this Agreement) as if this Agreement had not been made. From and after each applicable Surrender Date, the term "Premises" under the Lease (and all references in the Lease thereto) shall be deemed to mean only the Remaining Premises.

9. Landlord shall have no obligation to perform any work in, or to otherwise alter or improve the Remaining Premises (or to pay Tenant any sum toward any such work, alterations or improvements), in order to separately demise the Remaining Premises or otherwise, in connection with, or as a result of, this Agreement.

10. Tenant represents and warrants on behalf of itself and its successors and assigns, that it has not done or suffered to be done (and Tenant agrees that it will not do or suffer to be done) anything whereby the

Surrender Space or any alteration, decoration, installation or improvement in and to the Surrender Space (collectively, the "Improvements") has or will become encumbered in any way whatsoever and that no one other than Tenant has acquired or will acquire through or under Tenant any right, title or interest in, to or

under the Surrender Space or the Improvements. This Paragraph 10 shall survive the termination or expiration of the Lease and this Agreement.

11. Simultaneously with the execution and delivery of this Agreement, Landlord and Tenant shall execute a New York State Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (the "TP-584"). Tenant shall file the TP-584 on or before the date required by law with the New York State Department of Taxation and Finance and shall give Landlord written notice of such filing. Although Landlord and Tenant do not anticipate that any New York State Real Estate Transfer Tax ("State Transfer Tax") will be payable in connection with this Agreement or the transaction contemplated hereby, to the extent any State Transfer Tax is due and payable by Tenant as transferor, Tenant shall pay same as and when due and shall also pay any and all late fees, penalties and interest assessed for failure to pay same when due. Tenant shall indemnify and hold harmless Landlord for, from and against any and all liabilities, losses, claims, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and reasonable attorneys' fees and disbursements incurred in establishing liability, and in collecting amounts payable, under this Paragraph 11) arising from a breach of Tenant's obligations under this Paragraph 11 or incurred in connection with any State Transfer Tax and/or any other real estate or real property transfer tax that is or may become, or may be asserted to be or become, due, owing or imposed in connection with this Agreement or the surrender of the Surrender Space now or hereafter by the State of New York or any agent or instrumentality of such State, including, without limitation, any late charges, penalties and interest imposed or to be imposed in connection therewith. Tenant shall file such other returns, affidavits and/or other documents, if any, that may be required in connection with such other taxes and Landlord shall sign such returns, affidavits and documents as required by law and otherwise cooperate with Tenant in making any filing required in connection with such taxes. This Paragraph 11 shall survive the termination or expiration of the Lease and this Agreement.

12. Landlord acknowledges that Progenics and Tenant have agreed in a separate agreement that, prior to August 31, 2005, Progenics will not make any structural changes to the Surrender Premises without first obtaining Tenant's consent which consent shall not be unreasonably withheld or delayed and shall be granted or denied within 10 days of the date Progenics delivers notice of such alteration to Tenant, which notice shall include a copy of the plans for such alteration that are delivered to Landlord under the terms of the Progenics Lease. Tenant acknowledges and agrees that Progenics intends to change the use of some or all of the office space to laboratory space (including the installation of a bio-reactor and ancillary facilities in Surrender Space B).

13. In the event that Progenics should vacate or surrender any of the Surrender Space on or before August 31, 2005 (such space being hereinafter referred to as the "Put Space"), Tenant shall be required to re-let such space that has been vacated or surrendered by Progenics under the terms and conditions set forth in the Lease upon thirty (30) days written notice to Tenant. Fixed rent and additional rent for the Put Space shall commence thirty (30) days after the delivery of such notice to Tenant. The space to be re-let by Tenant pursuant to this Paragraph must be an entire Surrender Space, and not a portion of the Surrender Space, so that Tenant is obligated only to re-let the Surrender Space shown on Schedules "A-1", "A-2", "B" or "C" and not a portion of any of those four separate areas of space. In the event Tenant is required to re-let Surrender Space C, Tenant shall be permitted to surrender to Landlord the new archival space that will be constructed by Tenant to replace Surrender Space C. The Fixed Rent, Tenant's Proportionate Share and number of parking space shall be adjusted to reflect the addition of the Put Space. Upon notice from Landlord that Progenics has vacated or surrendered any Put Space, such space shall automatically be deemed part of the Premises without any further action, though the parties agree to sign an agreement memorializing the addition of the Put Space to the Premises, however, a failure by either party to sign such an agreement shall not affect the addition of the Put Space to the Premises. Landlord shall not be required to furnish any materials or perform any work to prepare the Put Space for Tenant's occupancy (except the Put Space shall be delivered vacant and in "broom clean" condition) and Landlord shall not be required to reimburse Tenant for any alterations made or to be made by Tenant to the Put Space.

14. (a) Provided (i) the Lease is in full force and effect and there shall not then be existing a default continuing beyond all notice and grace periods under the Lease and (ii) Tenant is actually occupying the entire Remaining Premises, if after August 31, 2005 any of the Surrender Space becomes available for rental (which for

purposes of this Paragraph shall mean an entire Surrender Space as shown on Schedules "A-1", "A-2", "B" or "C" and not a portion of such four Surrender Spaces), after taking into account any right of Progenics (and it successors and/or assigns) to extend or renew its lease (such available portion of the Surrender Space being hereinafter referred to as the "Available Space"), Landlord shall deliver a written notice (the "Offer Notice") to Tenant offering to lease to Tenant the Available Space upon the same terms as set forth in the Lease for similar space, and Landlord shall not lease the Available Space to any person or entity unless and until Landlord has complied with the provisions of this Paragraph 14(a). The Offer Notice shall specify the approximate square footage of the Available Space, the rate of Fixed Rent per rentable square foot, and the date the Available Space will become available for lease (the "Option Space Commencement Date"). Fixed Rent shall be defined for purposes of this Paragraph as the rent for the period ending December 31, 2007 as set forth under the terms of the Lease, (i.e., $23.00 per rsf NNN), and for the period ending December 31, 2009 as the rent to be paid under the Progenics Lease for such Surrender Space. Thereupon, Tenant shall have one option exercisable within, but in no event later than, thirty (30) days after the giving of the Offer Notice to elect by notice (the "Acceptance Notice") given to Landlord within said thirty (30) day period to lease the entire Available Space upon the terms and conditions set forth in the Offer Notice and otherwise on the terms contained in the Lease.

(b) If Tenant shall duly exercise its option to lease the Available Space within the time and in the manner specified in Paragraph 14(a) above, and there shall not then be existing a default continuing beyond all notice and grace periods under the Lease, then automatically on the Option Space Commencement Date, Landlord shall deliver to Tenant vacant possession of the Available Space and the Available Space shall automatically be deemed and added to and form part of the Premises under the Lease upon all of the same terms and conditions as are contained in the Lease except that:

(i) The Fixed Rent payable by Tenant under the Lease shall be increased by the Fixed Rent for the Available Space (as determined in Paragraph 14(a) above).

(ii) Tenant's Proportionate Share shall be increased to reflect the addition of the Available Space to the Premises.

(iii) The number of parking spaces allocated for Tenant's use shall be increased by 3 spaces for each 1000 rentable square feet in the Available Space.

(c) It is an express condition of the option granted to Tenant pursuant to the terms of this Paragraph 14 that time is of the essence with respect to Tenant's exercise of its option within the period above provided.

(d) Tenant shall have only one first refusal option with respect to the Available Space (whether or not it elects to exercise such option), and after Landlord offers to lease to Tenant any Available Space and Tenant fails to exercise its option to lease the Available Space, Tenant shall have no further first refusal option with respect to the Available Space. However, Tenant shall continue to have a first refusal option to lease any portion of the Surrender Space that was not the subject of an Offer Notice.

15. (a) The Additional Premises No. 6 is hereby added to, and shall be considered a part of, the Premises effective on the date Tenant surrenders Surrender Space C (the "Additional Premises No. 6 Commencement Date"). The leasing of the Additional Premises No. 6 shall be upon all of the terms, conditions and provisions of the Lease, except as otherwise provided in this Agreement. After the Additional Premises No. 6 Commencement Date, all references in the Lease to the "Premises" or the "demised premises" shall be deemed to include the Additional Premises No. 6, unless the context requires otherwise and except as otherwise provided in this Agreement.

(b) Tenant shall accept possession of the Additional Premises No. 6 in "as is" condition on the Additional Premises No. 6 Commencement Date and Landlord shall have no obligation to perform any work or make any installations in order to prepare the Additional Premises No. 6 for Tenant's occupancy. Tenant, at Tenant's sole cost and expense, shall build the demising wall in the Additional Premises No. 6. The taking of

occupancy of the whole or any part of the Additional Premises No. 6 by Tenant shall be conclusive evidence, as against Tenant, that Tenant accepts possession of the same and that the Additional Premises No. 6 were in good and satisfactory condition at the time such occupancy was so taken and that the Additional Premises No. 6 were substantially as shown on Schedule D. The parties agree to have the rentable square footage of the Additional Premises No. 6 measured by an independent architect selected by Landlord using BOMA standards (which includes the loss factor for the Building) after Tenant has constructed the demising wall in the Additional Premises No. 6. The Fixed Rent for Additional Premises No. 6 and Office Tenant's Proportionate Share (as hereinafter defined) shall be determined using such measurement.

(c) Effective on the Additional Premises No. 6 Commencement Date, the per annum Fixed Rent under the Lease shall be increased on account of Additional Premises No. 6 by an amount equal to the product of (x) the number of rentable square feet in Additional Premises No. 6 (as determined in Paragraph 15(b) above) and (y) $20. In the event the number of rentable square feet in the Additional Premises No. 6 has not been determined by the Additional Premises No. 6 Commencement Date, Tenant shall pay the Fixed Rent based on 3,000 r.s.f.. Upon obtaining the correct measurement of the Additional Premises No. 6 the parties shall adjust the Fixed Rent accordingly and either Landlord shall credit Tenant for any overpayment or Tenant shall pay Landlord for any underpayment within 30 days of the date such measurement is obtained.

(d) Notwithstanding anything to the contrary in the Lease, the Additional Premises No. 6 shall only be used for general administrative and executive offices and/or archival space.

(e) For the purpose of this Agreement, the following terms shall have the following meanings:

(i) "Electric Inclusion Amount" shall mean the amount equal to the product of (x) the number of rentable square feet in Additional Premises No. 6 (as determined in Paragraph 15(b) above) and (y) $2.25.

(ii) "Office Tenant's Proportionate Share" shall mean the quotient obtained by dividing the number of rentable square feet in the Additional Premises No. 6 (as determined in Paragraph 15(b) above) by 741,495, subject to any changes as a result of the applicable provisions in Sections 4.01(c) and 4.06 of the Original Lease.

(iii) "Base Tax Factor" shall mean the Taxes payable for the Tax Year beginning January 1, 2004.

(iv) "Base Operating Factor" shall mean the Operating Expenses paid or incurred with respect to the Operating Year beginning January 1, 2004.

(f) The first sentence of Section 4.03 of the Original Lease shall not apply to Additional Premises No. 6. In lieu thereof, the following provision shall apple: For each Tax Year, any part of which shall occur during the Term, Tenant shall pay to Landlord an amount (prorated to the extent provided in Section 4.05 of the Original Lease, if applicable) (herein called "Office Tenant's Tax Payment") equal to Office Tenant's Proportionate Share of the amount by which the Taxes for such Tax Year are greater than the Base Tax Factor. Office Tenant's Tax Payment shall be added to and deemed part of the Tax Payment and paid in accordance with the payment terms in Section 4.03 of the Original Lease.

(g) Section 5.02 of the Original Lease shall not apply to Additional Premises No. 6. In lieu thereof, the following provision shall apply: For each Operating Year, any part of which occurs during the Term, Tenant shall pay to Landlord an amount (prorated to the extent provided in Section 5.6 of the Original Lease, if applicable) (herein called "Office Tenant's Operating Payment") equal to Office Tenant's Proportionate Share of the amount by which Operating Expenses for such Operating Year are greater than the Base Operating Factor. Office Tenant's Operating Payment shall be added to and deemed part of the Operating Payment and said payments shall be made as provided in Section 5.3 of the Original Lease.

(h) Electricity shall be supplied to the Additional Premises No. 6 by Landlord in accordance with the terms set forth in Schedule F attached hereto and made a part hereof.

16. Landlord and Tenant each represents and warrants to the other that it has not dealt with any broker in connection with this Agreement other than Insignia/ESG and LCOR Asset Management L.P. (collectively, the "Brokers"). The execution and delivery of this Agreement by each party shall be conclusive evidence that such party acknowledges that the other party has relied upon the foregoing representation and warranty. Landlord and Tenant shall indemnify and hold harmless the other from and against any and all claims for commission, fee or other compensation by any person (other than the Brokers), who claims to have dealt with such party in connection with this Agreement and for any and all costs incurred by the indemnified party in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. This Paragraph 16 shall survive the expiration or earlier termination of the Lease or this Agreement. Landlord and Tenant shall each pay Insignia/ESG a portion of the total commission due in connection with this Agreement and the Lease of the Surrender Space to Progenics pursuant to separate agreements with Insignia/ESG. Landlord shall pay any commission due LCOR Asset Management L.P. pursuant to a separate agreement. Notwithstanding anything to the contrary in this Paragraph 16, Tenant shall indemnify and hold harmless Landlord from and against any and all claims for a commission, fee or other compensation by Insignia/ESG (and its successors and assigns) arising out of this Agreement and the lease to Progenics through the period ending August 31, 2007 (but not including (i) any claim for the commission due on the Progenics Lease for the portion of the lease term after August 31, 2007 and (ii) any claim for a commission under any written agreement between Insignia/ESG and Landlord).

17. (a) Landlord and Tenant acknowledge and agree that, under the terms of the Lease between Landlord and Progenics, the fixed rent includes certain amounts, as such amounts are shown on Schedule E attached hereto, which are attributable to the use of certain furniture and equipment in Surrender Space A and Surrender Space B. For purposes of this Agreement, the payment by Progenics of the fixed rent attributable to the use of such furniture and equipment is hereinafter referred to as the "Furniture Payment." Landlord agrees to pay to Tenant, or credit Tenant's Fixed Rent, an amount equal to the Furniture Payment, but only to the extent the Furniture Payment is paid to Landlord by Progenics. Such payment or credit to Tenant by Landlord shall be made within thirty (30) days of the date Landlord receives the Furniture Payment from Progenics. If Landlord decides to credit Tenant (instead of making a payment to Tenant for the Furniture Payment) and Landlord informs Tenant that it intends to credit Tenant's rent payment such amount, and in reliance thereon Tenant pays to Landlord its rental payment (less the anticipated Furniture Payment credit), Tenant shall not be charged a late charge, interest or penalties with respect to such monthly payment, notwithstanding that such credit was actually given after the date Tenant's rental payment was due. If Tenant is no longer a tenant at the Premises, the Furniture Payment due Tenant shall be mailed within thirty (30) days of receipt of payment by Landlord to Tenant at an address designated by Tenant. Except as set forth herein, Landlord shall have no liability to Tenant for Progenics' failure to pay to Landlord the Furniture Payment. Landlord agrees to give Tenant notice of Progenics' failure to pay the fixed rent (or any portion thereof) to Landlord if such payment is not received within 30 days after the date such payment is due. If Landlord does not receive all or a portion of the fixed rent from Progenics within 20 days of the date such payment is due, Landlord agrees to demand such Furniture Payment from Progenics by letter, a copy of which is to be delivered to Tenant. Tenant shall be deemed a third party beneficiary to the agreement by Progenics to pay Landlord the Furniture Payment, and Tenant shall have the right to bring an action against Progenics to enforce Progenics obligation to pay the Furniture Payment to Landlord. Landlord agrees to cooperate with Tenant in the enforcement of Tenant's rights as a third party beneficiary under this Agreement, as well as any rights Tenant may seek to assert under any other additional documents executed or instruments filed with respect to the Furniture Payment.

(b) If an "Event of Default" occurs under the Progenics Lease as a result of Progenics' failure to pay the fixed rent due thereunder (a "Progenics Rent Default"), and as a result thereof Landlord fails to pay to or credit Tenant the Furniture Payment, Landlord agrees to bring a legal action against Progenics in order to enforce the terms of the Progenics Lease (taking into consideration that Landlord cannot bring a separate action if Progenics files for bankruptcy). Landlord agrees to give Tenant notice of the nature of

the legal action taken against Progenics promptly after such action is taken and Landlord shall deliver to Tenant copies of all legal documents served upon Progenics in connection with such action. In the event Landlord fails to take any legal action against Progenics, to the extent required by the prior sentence, within 60 days after the date such Event of Default shall have occurred, Landlord shall be obligated to pay to or credit Tenant the Furniture Payments coming due after the

expiration of such 60 day period until Landlord commences such legal action against Tenant (but only to the extent such payments have not been made to Tenant through a draw down on the Progenics LC (as hereinafter defined)). In addition to the foregoing, if a Progenics Rent Default occurs, Landlord shall be required to draw down on the Letter of Credit held by Landlord under the Progenics Lease (the "Progenics LC"), in one or more draws, within forty (40) days after a Progenics Rent Default, in the amounts necessary to pay the Furniture Payment and to pay such drawn down amount to Tenant as the Furniture Payment come due, provided however, the maximum amount of the Progenics LC that will be applied to the Furniture Payment is $50,000. Nothing in the foregoing sentence is intended to restrict Landlord from drawing down the entire amount of the Progenics LC, provided that $50,000 of the proceeds thereof are, to the extent necessary, used as provided in the prior sentence. Prior to August 31, 2012, Landlord shall not be permitted to apply $50,000 of the Security Deposit for any purpose other than to pay Tenant the Furniture Payment as provided herein in the event Progenics defaults in making such payments. The forgoing sentence shall not apply if Tenant and Progenics agree to an earlier termination of the Furniture Payments at which point Tenant shall no longer have any interest in the Progenics LC or the proceeds thereof.

(c) If less than 100% of the fixed rent payable by Progenics is paid for any month, and such partial fixed rent payment is not due to a rent abatement or setoff by Progenics due to Tenant's failure to provide HVAC Service as provided in Paragraph 18 below, Landlord and Tenant shall share such partial fixed rent payment based on each parties' pro rata share of the fixed rent payable by Progenics. Notwithstanding anything to the contrary herein, if Progenics abates the portion of its fixed rent attributable to the Furniture Payment as a result of Tenant's failure to provide the HVAC Service, as such abatement is provided for in Section 28.1(F) of the Progenics Lease, Landlord shall (i) not be required to bring a legal action against Progenics for such abated rent and (ii) not be liable to pay to or credit Tenant the Furniture Payment to the extent Progenics has abated the fixed rent allocated to the Furniture Payment. Any sums recovered by Landlord as a result of a legal action against Progenics as provided under this Paragraph 16 shall be shared by Landlord and Tenant based on each parties pro rata share of the fixed rent under the Progenics Lease, after first deducting Landlord's legal fees and expenses incurred in connection with obtaining such recovery.

18. Tenant acknowledges and agrees that the air-handler unit (the "Air Handler") that provides heating and air conditioning service (the "HVAC Service") to Surrender Space B is operated and maintained by Tenant and that Tenant is required to continue to provide HVAC Service to Surrender Space B during the term of Tenant's Lease in quantities necessary to provide for the comfortable occupancy of Surrender Space B by the occupants of such space. Tenant shall continue to be liable to Landlord for the cost of all of the electric power used by the Air Handler as provided in the Lease. Landlord and Tenant acknowledge and agree that, under the terms of the Lease between Landlord and Progenics, Progenics has agreed to pay to Landlord an amount equal to Progenics' pro rata share of the cost of providing the HVAC service to Surrender Space B based on a measurement of the airflow provided to the Surrender Space B. Such payments are hereinafter referred to as the "HVAC Payment". Landlord agrees to pay to Tenant or credit Tenant's Fixed Rent an amount equal to the HVAC Payment, but only to the extent the HVAC Payment is paid to Landlord by Progenics. Such payment or credit to Tenant by Landlord shall be made within thirty (30) days of the date Landlord receives the HVAC Payment from Progenics. Landlord shall have no liability to Tenant for Progenic's failure to pay to Landlord the HVAC Payment, however, Landlord agrees to give Tenant notice of Progenics' failure to pay the HVAC Payment to Landlord if such payment is not received within 30 days after the date such payment is due. If Landlord does not receive the HVAC Payment within 20 days of the date such payment is due, Landlord agrees to demand such HVAC Payment from Progenics by letter, a copy of which is to be delivered to Tenant. Tenant shall be deemed a third party beneficiary to the agreement by Progenics to pay Landlord the HVAC Payment, and Tenant shall have the right to bring an action against Progenics to enforce

Progenics obligation to pay the HVAC Payment to Landlord. Tenant shall indemnify and hold harmless Landlord from and against any and all costs and expenses, including reasonable attorneys fees and expenses, arising out of or related to any action commenced by Tenant against Progenics with respect to the HVAC Payment, and all cost and expenses, including reasonable attorneys fees and expenses, in connection with enforcing this indemnification. At Tenant's expense, Landlord agrees to cooperate with Tenant in the enforcement of Tenant's rights as third party beneficiary under this Agreement, as well as any rights Tenant may seek to assert under any other additional documents executed or instruments filed with respect to the HVAC Payment. Progenics shall be deemed a third party beneficiary to Tenant's obligation to provide HVAC Service to Surrender Space B.

19. Landlord acknowledges and agrees that, pursuant to the terms of a separate agreement between Tenant and Progenics, Tenant's IT/telecom personnel shall have access to the satellite closets located in Surrender Space A until such time as Tenant has surrendered Surrender Space B. Tenant has agreed to access such satellite closets during business hours on telephonic notice to Progenics. Landlord shall have no liability to Tenant in the event Progenics breaches its agreement to provide the foregoing access. In addition, Progenics has agreed in a separate agreement with Tenant to permit Tenant to have access through Surrender Space A in order to access Surrender Space C until such time as Surrender Space C is delivered to Progenics.

20. This Agreement shall not be binding upon or enforceable against Landlord or Tenant unless and until Landlord and Tenant shall have each executed and unconditionally delivered to the other an executed counterpart of this Agreement. This Agreement may not be amended, modified or changed except in writing executed by both parties.

21. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. This Agreement shall be governed by, and construed and interpreted in accordance with, New York law, without regard to conflicts of law principles.

23. Except as amended by this Agreement, the Lease is ratified and confirmed and remains in full force and effect.

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

LANDLORD:

EASTVIEW HOLDINGS LLC

By: EASTVIEW SPE INC., its managing member

By: /S/ David W. Klock
Name:
Title: SVP

TENANT:

EMISPHERE TECHNOLOGIES, INC.

By: /S/ Shepard M. Goldberg
Name:
Title: SVP, Operations

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 26th day of Sept. in the year 2003 before me, the undersigned, personally appeared David W. Klock, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/S/ Alicia M. Thomas
Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 23rd day of September in the year 2003 before me, the undersigned, personally appeared Shepard Goldberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/S/Loretta Miraglia
Notary Public

SCHEDULE A-1

Surrender Space A (Spine Building)

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SCHEDULE A-2

Surrender Space A (Linde Building)

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SCHEDULE B

Surrender Space B

[FOLLOWS THIS PAGE]

SCHEDULE C

Surrender Space C

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SCHEDULE D

Additional Premises No. 6

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SCHEDULE E

Furniture Payment

(a) $158,505 per annum ($13,208.75 per month) from the Commencement Date to and including August 31, 2007; and

(b) $105,670.00 per annum ($8,805.84 per month) from September 1, 2007 to and including December 31, 2009.

(c) $63,402 per annum ($5,283.50 per month) from January 1, 2010 to and including August 31, 2012.

(d) $0 after August 31, 2012 (even if Progenics extends the term of its Lease).

SCHEDULE F

Electricity Provisions for Addition Premises No. 6

1. Landlord shall furnish the electric energy that Tenant reasonably requires in the Additional Premises No. 6 on a rent inclusion basis. That is, the Fixed Rent for the Additional Premises No. 6 includes the "Electric Inclusion Amount" (as adjusted pursuant to this Schedule F), which the parties have agreed is the reasonable value to Tenant of normal electric service for lighting, light office equipment and the usual small business machines during Operating Hours. Accordingly, there shall be no charge to Tenant for such electric energy by way of measuring the same on any meter or otherwise, such electric energy being included in Landlord's services which are covered by the Fixed Rent. Landlord shall not be liable in any way to Tenant for any interruption or failure of or defect in the supply or character of electric energy furnished to the Additional Premises No. 6 or for any loss, damage or expense Tenant may sustain if either the quantity or character of electric service is changed or is no longer suitable for Tenant's requirements, whether by reason of any requirement, act or omission of the public utility or other provider serving the Building with electricity or for any other reason, except for the gross negligence or willful misconduct of Landlord.

2. Tenant shall at all times comply with the rules, regulations, terms and conditions applicable to service, equipment, wiring and requirements of the public utility or other provider supplying electricity to the Building. Tenant agrees that at no time will the electrical demand load in the Additional Premises No. 6 exceed in the aggregate eight (8) watts per usable square foot of the Additional Premises No. 6. Tenant shall not, without Landlord's prior written consent in each instance, connect any fixtures, machinery, appliances or equipment to the Building electric distribution system or make any alteration or addition to Tenant's machinery, appliances or equipment, or the electric system of the Additional Premises No. 6, if the effect thereof would be to increase the electrical load in the Additional Premises No. 6 over the load specified in this Paragraph 2 or in Paragraph 4 below. Should Landlord grant such consent, all additional risers or other equipment required therefor shall be provided by Tenant at Tenant's sole cost and expense.

3. If the public utility (or other provider) rate schedule for the supply of electric energy to the Building and/or the surcharge for fuel cost or any other charge made by the public utility or other provider supplying electric energy to the Building and/or the taxes payable by Landlord with respect to such electric energy are increased or decreased after the date of this Lease and/or the service classification at which Landlord purchases electric energy is changed after the date of this Lease resulting in an increase or decrease in the cost to Landlord of electrical energy, the Fixed Rent shall be increased or decreased by an amount equal to the product of (i) the then-existing Electric Inclusion Amount and (ii) the percentage increase or decrease in such public utility (or other provider) rate schedule, fuel adjustment or other charge, taxes or cost. Any such increase or decrease shall be effective as of the date of such increase or decrease and shall be made retroactively if necessary. Upon the request of either party, Landlord

and Tenant shall execute a supplementary agreement confirming the increase or decrease. In no event shall the provisions of this Paragraph 3 operate to reduce the Fixed Rent for the Addition Premises No. 6 below the amount stated in this Agreement nor the Electric Inclusion Amount below the amount stated in the this Agreement.

4. The Electric Inclusion Amount is based upon Landlord's assumption that Tenant's initial electrical installation will not result in a total demand electrical load for lighting and equipment in excess of eight (8) watts per usable square foot made available for the Additional Premises No. 6 and that Tenant will, except for the purpose of office cleaning, use electrical energy only during Operating Hours. Accordingly, if Tenant's initial electrical installation exceeds such criteria, or if from time to time Tenant makes material use of electricity during hours other than Operating Hours, or if from time to time Tenant after completion of its initial installation adds or changes any machinery, appliances or equipment which materially increases the aggregate electrical load in the Additional Premises No. 6, the Electric Inclusion Amount and the Fixed Rent shall from time to time be equitably adjusted to reflect the resulting increase in such use. Landlord shall furnish a statement of Landlord's determination as to the amount of the adjustment, and the same shall become binding upon the parties unless, within thirty (30) days, Tenant notifies Landlord that it disputes the amount of such adjustment, in which event the parties shall in good faith make reasonable attempts to come to agreement, and, if Landlord and Tenant cannot agree thereon, the amount of such adjustment shall be determined, based on standard practices, by an independent electrical consultant selected by Landlord.

Tenant shall permit such consultant to have access to the Additional Premises No. 6 and Tenant's electrical facilities for the foregoing purpose at all reasonable times. The fee of such consultant shall be paid by Tenant unless such consultant finds that Tenant's use does not justify an increase in Fixed Rent, in which case the fee shall be paid by Landlord. When the amount of such adjustment is so determined, Landlord and Tenant shall execute a supplementary agreement to reflect such adjustment, which shall be effective from the date of the increase of such usage as determined by such electrical consultant and be made retroactively if necessary. Any adjustment shall be effective even if such supplementary agreement is not executed and delivered. Pending the determination of the adjustment, Tenant shall pay to Landlord the amount of such adjustment as specified in Landlord's statement. Thereafter if it is determined that Tenant has overpaid, Tenant shall receive a credit against Fixed Rent in the amount of the overpayment, said credit to be applied against the next accruing installment(s) of Fixed Rent.

5. Landlord reserves the right to discontinue furnishing electric energy to the Additional Premises No. 6 at any time upon not less than sixty (60) days notice to Tenant, but in any event, not sooner than Tenant is able to arrange for alternative electric energy. If Landlord exercises such right of termination, this Lease shall continue in full force and effect and shall be unaffected thereby, except only that, from and after the effective date of such discontinuance, Landlord shall not be obligated to furnish electric energy to Tenant and the Fixed Rent payable under this Lease shall be reduced by the Electric Inclusion Amount then in effect. If Landlord voluntarily discontinues furnishing electric energy to Tenant, Landlord shall, prior to the effective date of such discontinuance, at Landlord's expense, make such changes in panel boards, feeders, risers, wiring and other conductors and equipment to the extent required to permit Tenant to obtain electric energy directly from the public utility company or other provider. If, on the other hand, Landlord is required by any law, rule, regulation or requirements to discontinue furnishing electric energy to Tenant, Tenant shall reimburse Landlord promptly upon demand for the cost incurred by Landlord in making such changes in panel boards, feeders, risers, wiring and other conductors and equipment in order to permit Tenant to obtain electric energy direct from the public utility company or other provider.

6. If any tax is imposed upon Landlord with respect to electrical energy furnished as a service to Tenant by any government authority, Tenant agrees that, where permitted by law or applicable regulations, Tenant's pro rata share of such taxes shall be reimbursed by Tenant to Landlord

upon demand.

7. Landlord shall have the option of installing submeters at Landlord's expense to measure Tenant's consumption of electrical energy. If Landlord exercises such option, the Fixed Rent shall be reduced by an amount equal to the then Electric Inclusion Amount with such reduction to be effective as of the commencement of the operation of such submeters and, commencing at such time, Tenant shall pay to Landlord, as additional rent, on demand made from time to time but no more frequently than monthly, for its use of electrical energy in the Additional Premises No. 6, based upon both consumption and demand factors, at the seasonally adjusted rate then payable by Landlord to the utility company or other provider, plus an amount equal to five (5%) percent thereof to reimburse Landlord for its overhead, administration and supervision in connection therewith. For the purpose of this Paragraph 7 the rate to be paid by Tenant in the event of submetering shall include any taxes, energy charges, demand charges, fuel adjustment charges, rate adjustment charges, or other charges actually imposed in connection therewith. If any tax is imposed upon Landlord's receipts from the sale or resale of electrical energy to Tenant by any federal, state, city or local authority, the pro rata share of such tax allocable to the electrical energy service received by Tenant shall be passed on to and paid by Tenant as additional rent if and to the extent permitted by law.

EXHIBIT 10.26

AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of the 23rd day of September 2003 between PROGENICS PHARMACEUTICALS, INC. ("Progenics"), a Delaware corporation, having an address at 765 Old Saw Mill River Road, Tarrytown, New York 10591 ,and EMISPHERE TECHNOLOGIES, INC. ("Emisphere"), a Delaware corporation, having an address at 765 Old Saw Mill River Road, Tarrytown, New York 10591.

W I T N E S S E T H :

WHEREAS, Emisphere entered into a Lease dated as of March 31, 1997 (the "Original Lease"), for certain premises shown on Exhibit A of the Original Lease in the Linde Building (765 Old Saw Mill River Road) (the "Linde Building") and the Spine Building (777 Old Saw Mill River Road) (the "Spine Building") located within the project (the "Project") known as The Landmark at Eastview, in the Towns of Mt. Pleasant and Greenburgh, New York, as the Original Lease was amended by the Amendment of Lease dated as of January 31, 1999, as further amended by additional Amendments of Lease dated as of July 31, 2000 (two separate amendments of such date), May 30, 2001, February 11, 2002, and January 24, 2003 (collectively, as amended, the "Lease"), which Lease covers certain premises in the Linde Building and the Spine Building as more particularly described in the Original Lease and the amendments thereto (collectively, the "Premises"); and

WHEREAS, EMISPHERE is to surrender a portion of the Premises to EASTVIEW HOLDINGS LLC, (the "Landlord") and will be released and excused from performing certain of its obligations under the Lease with respect to certain spaces within the Premises located in the Spine Building and the Linde Building (collectively, the "Surrender Space"), which Surrender Space is comprised of the following spaces: (i) approximately 13,912 r.s.f. of space on the first floor of the Spine Building and approximately 7,222 r.s.f. of space on the Mezzanine level of the Linde Building as such spaces are shown on Schedules A-1 and A-2 attached hereto (collectively, "Surrender Space A"); (ii) approximately 7,888 r.s.f. of space on the first floor of the Spine Building as shown on Schedule B attached hereto ("Surrender Space B") and (iii) approximately 2,056 r.s.f. of space on the first floor of the Spine Building as shown on Schedule C attached hereto ("Surrender Space C").

WHEREAS, Progenics intends to lease the Surrender Space from the Landlord under the terms of a separate agreement hereinafter referred to as the "Progenics Lease"; and

WHEREAS, certain outstanding issues remain between Progenics and Emisphere, which the parties intend to resolve by this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Emisphere and Progenics agree as follows:

1. All capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Lease.

2.(a) On or before the dates set forth below, (each such date, a "Surrender Date") Emisphere shall vacate and surrender possession of the applicable Surrender Space to Landlord and shall surrender all of its right, title and interest in and to such Surrender Space under the Lease, except as set forth in the Seventh Amendment of Lease between Emisphere and Landlord. It is understood that Progenics shall take possession of the Surrender Space on the dates set forth below.

Surrender Space	Surrender Date
Surrender Space A:	October 23, 2003
Surrender Space B:	December 15, 2003.
Surrender Space C:	March 1, 2004

(b) Emisphere acknowledges and agrees that this Agreement is being entered into by the parties in connection with a lease of the Surrender Space to Progenics (the "Progenics Lease"). The effectiveness of this Agreement is conditioned upon the

execution and delivery of the Progenics Lease by Progenics and Landlord. In the event the Progenics Lease has not been executed and delivered by Progenics and Landlord on or before the earliest Surrender Date, the earliest Surrender Date (and any later Surrender Date that shall have occurred) shall be postponed until thirty days after Progenics and Landlord have executed and delivered the Progenics Lease. In the event the Progenics Lease has not been executed and delivered by Landlord and Progenics by October 31, 2003, either party may terminate this Agreement upon five (5) days prior written notice to the other party.

3. The parties agree that should Surrender Space "A-2" become available prior to the date set forth for Surrender Space "A", Progenics shall accept Surrender Space "A-2" on forty eight (48) hours facsimile notice to Rob McKinney, Vice President, at 914-789-2817 and to Philip Yachmetz, General Counsel at 914-789-2856. The parties shall notify the Landlord as to the date of transfer of the Surrender Space. If Emisphere has paid the rent for Surrender Space "A-2" prior to the Surrender Date set forth above, Progenics shall reimburse Emisphere for the pro-rata Fixed Rent and Additional Charges previously paid by Emisphere to Landlord within ten (10) days of notification of the transfer of Surrender Space "A-2".

4. Emisphere shall pay all Fixed Rent and Additional Charges accruing under the Lease with respect to the Surrender Space through and including the applicable Surrender Date in accordance with the Emisphere Lease. Progenics shall pay all Fixed Rent and Additional Charges as set forth in the Progenics Lease commencing on the Surrender Date, or earlier as set forth above.

5. Progenics will accept the Surrender Space in "as is" condition, subject to the Furniture and Equipment remaining on the Premises at the request of Progenics, as set forth in Exhibit "A" annexed hereto. In the event Progenics makes all Furniture Payments due through August 31, 2012 as set forth below, Emisphere will convey any and all right, title and interest to the Furniture and Equipment effective as of August 31, 2012.

6. On each applicable Surrender Date, Progenics agrees to assume responsibility for all obligations and liabilities set forth in the Progenics Lease with respect to such Surrender Space accruing on or after the applicable Surrender Date. Emisphere shall have no obligation to perform any work in, or to otherwise alter or improve the Surrender Space, or to pay Progenics any sum toward any such work, alterations or improvements with respect to the Surrender Space.

7. Progenics and Emisphere agree that, prior to August 31, 2007, Progenics will not make any structural changes to the Surrender Premises without first obtaining Emisphere's consent, which consent shall not be unreasonably withheld or delayed, and which consent shall be granted or denied within 10 days of the date Progenics delivers notice of such alteration to Emisphere, along with a copy of the plans for such alteration that are delivered to Landlord simultaneously under the terms of the Progenics Lease. Emisphere acknowledges that Progenics intends to install a bio-reactor, together with ancillary facilities, in Surrender Space "B".

8. Progenics and Emisphere each represent and warrant to the other that it has not dealt with any broker in connection with this Agreement other than Insignia/ESG and LCOR Asset Management L.P. (collectively, the "Brokers"). The execution and delivery of this Agreement by each party shall be conclusive evidence that such party acknowledges that the other party has relied upon the foregoing representation and warranty. Progenics and Emisphere shall indemnify and hold harmless the other from and against any and all claims for commission, fee or other compensation by any person (other than the Brokers), who claims to have dealt with such party in connection with this Agreement and for any and all costs incurred by the indemnified party in connection with such claims, including, without limitation, reasonable attorneys' fees and disbursements. This Paragraph shall survive the expiration or earlier termination of the Lease or this Agreement. Notwithstanding anything to the contrary in this Paragraph 8, Emisphere shall indemnify and hold harmless Progenics from and against any and all claims for a commission, fee or other compensation by Insignia/ESG (and its successors and assigns), as well as any costs, expenses and liabilities and reasonable attorneys' fees and expenses incurred in connection therewith arising out of this Agreement and the lease of the Surrender Space to Progenics for the rental of the Premises through the period ending August 31, 2007, but not including any claim for a commission due on the Progenics Lease for that portion of the Progenics Lease after August 31, 2007 (unless a commission is claimed pursuant to a written agreement signed by Emisphere.) 9. Progenics acknowledges

and agrees that, under the terms of the Progenics Lease, Progenics has agreed to pay to Landlord the amounts set forth below for the use of certain furniture and equipment in Surrender Space "A" and "B". Such payments are hereinafter referred to as the "Furniture Payment", which are deemed part of the Fixed Rent under the Progenics Lease. Progenics agrees to make such Furniture Payment to the Landlord as a portion of the Fixed Rent and additional charges under the Progenics Lease. The Furniture Payment shall be as follows:

(a) $158,505 per annum ($13,208.75 per month) from the Commencement Date to and including August 31, 2007; and

(b) $105,670.00 per annum ($8,805.84 per month) from September 1, 2007 to and including December 31, 2009; and

(c) Provided that Progenics exercises its option to extend the Progenics Lease beyond December 31, 2009, the sum of $63,402 per annum ($5,283.50 per month) from January 1, 2010 to and including August 31, 2012.

(d) $0 after August 31, 2012.

10. Landlord has agreed to provide Emisphere with notice of Progenics' failure to pay the Furniture Payment/Fixed Rent to Landlord if such payment is not received within 30 days after the date the Furniture Payment is due. If Landlord does not receive the Furniture Payment in a timely manner as set forth in the Progenics Lease, Landlord has agreed to demand such Furniture Payment from Progenics by letter, a copy of which is to be delivered to Emisphere. Emisphere shall be deemed a third party beneficiary to the Progenics Lease as it relates to Progenics' agreement to pay Landlord the Furniture Payment. Emisphere shall have the right to bring an action against Progenics to enforce Progenics obligation to pay the Furniture Payment to Landlord under the terms of this Agreement, and may join any action brought by the Landlord under the terms of the Progenics Lease.

11. Progenics agrees to provide Emisphere with a UCC-1 and Security Agreement on all furniture and equipment remaining on the Premises on the Surrender Date as set forth on Exhibit "A" hereto, to secure Progenics' obligation to make the Furniture Payments.

12. In the event of default under the Progenics Lease for the payment of Fixed Rent for a period in excess of thirty days, Emisphere may, under the terms of this Agreement, commence an action based on such failure to pay. In the event Progenics fails to make two Furniture Payments to Landlord, Emisphere may accelerate all payments due under this Agreement through December 31, 2012, discounted to present value at an interest rate equal to one (1%) percent over the Libor Rate as reported in the Wall Street Journal on the last business day of the month in which the second event of default occurs. The only defenses Progenics may assert in any action under this provision, shall be the defense of (a) payment under the Progenics Lease, or (b) failure to deliver the Furniture and Equipment set forth on Exhibit "A" upon delivery of possession of the Premises to Progenics. Progenics must notify Emisphere within thirty (30) days of the Surrender Dates as set forth above if Emisphere has failed to deliver the Furniture and Equipment set forth on Exhibit "A" or Progenics will be deemed to have waived this defense. Progenics shall indemnify and hold harmless Emisphere from and against any and all costs and expenses, including reasonable attorneys fees and expenses, arising out of or related to any action commenced by Emisphere against Progenics with respect to the then unpaid Furniture Payment, the UCC-1 and the Security Agreement, and all cost and expenses, including reasonable attorneys fees and expenses, in connection with enforcing this indemnification.

13. Emisphere acknowledges and agrees that the air-handler unit (the "Air Handler") that provides heating and air conditioning service (the "HVAC Service") to Surrender Space B is operated and maintained by Emisphere and that Emisphere is hereby required to continue to provide HVAC Service to Surrender Space B during the term of Emisphere's Lease in quantities necessary to provide for the comfortable occupancy of Surrender Space B by the occupants of such space. Emisphere shall continue to be liable to Landlord for the cost of all of the electric power used by the Air Handler as provided in the Lease. Progenics agrees to pay to Landlord an amount equal to Progenics' pro rata share of the cost of providing the HVAC service to Surrender Space B based on a measurement of the airflow provided to the Surrender Space B. Such payments are hereinafter referred to as the "HVAC Payment". Landlord agrees to pay to Emisphere or credit

Emisphere's Fixed Rent in an amount equal to the HVAC Payment, but only to the extent the HVAC Payment is paid to Landlord by Progenics. Landlord agrees to cooperate with Tenant in the enforcement of Tenant's rights as third party beneficiary under this Agreement, as well as any rights Tenant may seek to assert under any other additional documents executed or instruments filed with respect to the HVAC Payment. If Landlord does not receive the HVAC Payment in a timely manner, Landlord has agreed to demand such HVAC Payment from Progenics by letter, a copy of which is to be delivered to Emisphere. Landlord has agreed to provide Emisphere with notice of Progenics' failure to pay the HVAC Payment to Landlord if such payment is not received within 20 days after the date such payment is due. Tenant shall be deemed a third party beneficiary to the agreement by Progenics to pay Landlord the HVAC Payment, and Tenant shall have the right to bring an action against Progenics to enforce Progenics obligation to pay the HVAC Payment to Landlord. In the event Progenics fails to make three (3) HVAC payments during the course of this Agreement, Tenant shall be permitted to provide notice by letter to Progenics that Progenics must construct its own air handler unit for the Premises, at Progenics cost and expense. In the event Progenics does not comply with such demand within thirty days of said notice, Tenant shall be entitled to commence any action at law or in equity, as well as move for specific performance of this provision in any court of competent jurisdiction in New York State, and Progenics shall assert no defense to this action, provided Emisphere has provided the HVAC Service. Progenics shall indemnify and hold harmless Emisphere from and against any and all costs and expenses, including reasonable attorneys fees and expenses, arising out of or related to any action commenced by Emisphere against Progenics with respect to any unpaid HVAC Payment and the Security Agreement, and all cost and expenses, including reasonable attorneys fees and expenses, in connection with enforcing this indemnification.

14. Notwithstanding anything to the contrary contained herein, in the event that Emisphere fails for any reason other than due to "force majeure" (as defined below) to provide the HVAC Service to Surrender Space "B" and as a result Surrender Space "B" are rendered untenantable, in addition to all of Tenant's other rights and remedies at law or in equity, Tenant shall be entitled to offset against the Furniture Payment an amount equal to the Rent for Surrender Space "B" for the period from the date Surrender Space "B" becomes untenantable through the date when the required HVAC Service is restored, provided, however, that the foregoing offset right shall not apply from and after the date that the Emisphere's lease expires or earlier terminates and Landlord assumes responsibility for such HVAC Service. As used herein, the term "force majeure" shall mean events beyond Emisphere's reasonable control in accordance with the description set forth in Section 41.04 of the Lease.

15. Landlord has agreed to provide approximately 3,000 square feet of space on the C-level of the Spine Building in order that Emisphere may commence a build-out of that area (the "Build Out"). Progenics agrees to pay to Emisphere the actual costs associated with the Build-Out; however said sum to be expended by Progenics shall not exceed $100,000.00. Progenics agrees to pay the following approximate sums (adjusted based on actual contracts entered into by Emisphere, (copies of which Emisphere shall provide to Progenics prior to commencement of each stage of construction) for construction of the additional space, directly to Emisphere within ten (10) days of the commencement of each stage of construction.

A.	Demolition/Carpentry/ Doors/Finishes	$ 35,000.00
B.	Electrical/Data/Communication	$ 20,000.00
C.	Mechanical	$ 5,000.00
D.	Architectural	$ 5,000.00
E.	High Density Shelving	$ 35,000.00

Emisphere shall provide invoices for all work to be completed with respect to the Build-Out and shall, promptly after completion of the Build Out, refund to Progenics any amount paid pursuant to this Section in excess of the actual, out-of-pocket costs of the Build Out.

16. Progenics acknowledges and agrees that Emisphere's IT/telecom personnel shall have access to the satellite closets located in Surrender Space "A" until such time as Emisphere has surrendered Surrender Space "B". Emisphere

has agreed to access such satellite closets during business hours on telephonic notice to Progenics. In addition, Progenics acknowledges and agrees that Emisphere shall have access through Surrender Space "A" to Surrender Space "C", on telephonic notice to Progenics until Surrender Space "C" is delivered to Progenics.

17. This Agreement shall not be binding upon or enforceable against Progenics or Emisphere unless and until Progenics and Emisphere shall have each executed and unconditionally delivered to the other an executed counterpart of this Agreement. This Agreement may not be amended, modified or changed except in writing executed by both parties.

18. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

19. This Agreement shall be governed by, and construed and interpreted in accordance with, New York law, without regard to conflicts of law principles.

20. All notices and demands hereunder shall be in writing and shall be served in person, by prepaid certified United States Mail, return receipt requested, or by nationally recognized overnight courier, as follows:

If to Emisphere:

Emisphere Technologies, Inc.
765 Old Saw Mill River Road
Tarrytown, New York 10591
Attention: Shepard Goldberg
Senior Vice President, Operations

With a copy to:

Emisphere Technologies, Inc.
765 Old Saw Mill River Road
Tarrytown, New York 10591
Attention: Michael Blumenthal, Esq.

If to Progenics:

Progenics Pharmaceuticals, Inc.
777 Old Saw Mill River Road
Tarrytown, New York 10591
Attention: Philip Yachmetz, General Counsel

IN WITNESS WHEREOF, Progenics and Emisphere have duly executed this Agreement as of the day and year first written above.

PROGENICS PHARMACEUTICALS, INC.

By /s/ Robert A. McKinney
Name: Robert A. McKinney
Title: Vice President

EMISPHERE TECHNOLOGIES, INC.

By /s/ Shepard M. Goldberg
Name: Shepard M. Goldberg
Title: SVP, Operations

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 23rd day of September in the year 2003 before me, the undersigned, personally appeared Robert A. McKinney, personally known to me or proved to me

on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Loretta Miraglia

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the 23rd day of September in the year 2003 before me, the undersigned, personally appeared Shepard M. Goldberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/ Loretta Miraglia

Notary Public

EXHIBIT 10.27

CONSULTING AND OPTION AGREEMENT

This Agreement (this "Agreement") is effective as of the 13th day of November 2003, (the "Effective Date") between Emisphere Technologies, Inc., a Delaware corporation having its principal place of business at 765 Old Saw Mill River Road, Tarrytown, New York 10591 (the "Corporation"), and Dr. Jere Goyan, an individual with a principal place of business at 2110 Sunshine Point Drive, Kingwood, Texas 77345 (the "Consultant").

WHEREAS, the Consultant will provide advice and guidance in the areas of clinical research, regulatory affairs and general corporate development, as well as provide recommendations and counsel in these disciplines to the Corporation; and

WHEREAS, both parties are sensitive to the need to avoid all areas where there may be a conflict of interest.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions herein contained, the Corporation and the Consultant hereby agree as follows:

1. RETAINER.

The Corporation agrees to retain the Consultant on a consulting basis and the Consultant agrees to serve the Corporation as a consultant upon the terms and conditions hereafter set forth. The retainer includes full compensation for all administrative and any other consulting services to be rendered by the Consultant, who is retained only for the purposes and to the extent set forth in this Agreement.

2. TERM.

The term of this Agreement shall commence on the Effective Date, and shall continue until October 31, 2005, unless sooner terminated as hereinafter provided, or as extended by mutual written agreement of both parties.

3. COMPENSATION AND EXPENSES.

A. The Corporation agrees to grant to the Consultant the options to purchase shares of common stock of the Corporation evidenced in the agreement set forth at Exhibit A attached hereto.

B. The Corporation agrees to pay Consultant the sum of SIXTY THOUSAND DOLLARS ($60,000.00) payable in equal quarterly installments of $7,500.00 on November 13, 2003; February 1, May 1, August 1 and November 1 of calendar year 2004; and February 1, May 1, and August 1 of calendar year 2005. The Consultant's Employer Identification number is 554-28-3716, which is requested and shall be used by the Corporation solely for the purpose of preparing a Form 1099 or similar form as required by law. The Consultant shall be responsible for, and shall pay, all income, employment and other applicable taxes due on the compensation he receives pursuant to this Agreement, and shall indemnify and hold harmless the Corporation from all liability, claims and demands for payments under any applicable unemployment and disability insurance, self-employment, social security, income and other taxes, deductions and payments required by applicable law with regard to his compensation received under this Article 3. The Options granted pursuant to Paragraph A, the cash payments set forth in Paragraph B and the reimbursement of expenses pursuant to Paragraph C each of this Article 3 collectively represent the full payment due the Consultant for services performed under this Agreement.

C. The Corporation shall pay directly or shall reimburse the Consultant for all reasonable and necessary out-of-pocket expenses incurred by the Consultant. The Consultant shall not be paid for any travel time. Any direct or indirect expenses exceeding ONE THOUSAND DOLLARS ($1,000.00) in the aggregate during any one (1) month period shall require the prior written consent of the Corporation. In all events, reimbursable expenses must be directly related to the business of the Corporation, unless otherwise agreed to in advance by the parties hereto in a separate writing.

4. SERVICES.

A. The Consultant agrees to serve the Corporation faithfully and shall devote such time as the Consultant, in consultation with the Corporation,

determines is required to perform the services hereunder to the business of the Corporation. The Consultant shall perform his duties hereunder during regular office hours at the offices of the Corporation or at a site agreed upon by the parties. The Consultant shall provide additional time to the Corporation by telephone and/or other means of communication as reasonably requested by the Corporation. In the event that the Consultant and the Corporation are unable to reach agreement on a reasonably acceptable work schedule, the parties shall have the right to terminate this Agreement pursuant to Article 8 of this Agreement.

B. The Consultant agrees to render advice and services in connection with the development of the Corporation's clinical research, assist in all areas of regulatory affairs, and provide counsel and recommendations with regard to general corporate development, business relationships, overall strategy and any specific items submitted for the Consultant's review.

5. CORPORATION'S AUTHORITY.

The Consultant agrees to observe and comply with the rules and regulations of the Corporation in respect of the performance of the Consultant's duties and to carry out orders, directions and policies stated by the Corporation to the Consultant from time to time (whether orally or in writing); provided, however, that the Consultant shall determine the manner of carrying out the professional duties hereunder. The Consultant's relationship with the Corporation during the term of this Agreement shall be that of an independent contractor. The Consultant shall have no authority to contract with any third party on behalf of the Corporation or create any obligation on behalf of the Corporation. Neither party has any authority to make any statement, representation, or commitment of any kind or to take any action binding upon the other party, without the other party's specific prior written authorization. Nothing contained in the Agreement shall be construed to constitute the Consultant as a partner, employee, representative or agent of the Corporation and none of the Consultant, its officers, employees or affiliates shall hold itself out as such. As non-employees of the Corporation, neither the Consultant nor any of the Consultant's employees shall be eligible or entitled to participate or enroll in any employee benefit plan or arrangement of the Corporation, including without limitation any pension, stock, bonus, profit-sharing, savings, health, medical, or similar benefit plan or arrangement the Corporation may from time to time provide, or to receive any distributions from or with respect to any such plan or arrangement.

6. CONFIDENTIALITY.

During the course of this Agreement, the Consultant will be exposed to data and information that is confidential and proprietary to the Corporation, which includes, but is not limited to, trade secrets, privileged records, proprietary information, data, case report forms, laboratory work sheets, slides, research, reports, results, investigations, experiments, developmental work, experimental work, works in progress, plans, proposals, codes, and all concepts, ideas, materials or information related to the business, products, or operation of the Corporation, whether in written, verbal, physical, electronic, tangible or intangible form, made available, disclosed, or otherwise made known to the Consultant as a result of services rendered or to be rendered under this Agreement (hereinafter "Confidential Information").

The Consultant acknowledges and agrees that the Corporation is entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the compensation being paid by the Corporation to the Consultant, the Consultant agrees, except for purposes of this Agreement and the services rendered, to hold in strictest confidence and to maintain as confidential all Confidential Information obtained from the Corporation or developed by the Consultant for the Corporation and shall not use for any purpose, commercial or otherwise, or disclose to any third parties any Confidential Information. The Consultant acknowledges that Confidential Information is the sole and exclusive property of the Corporation. The Consultant is not permitted to use any such Confidential Information for teaching, research or publication purposes.

C. The Consultant agrees to disclose only such information that the Consultant is legally free to disclose and agrees that the Corporation shall have the right, without further payment other than as set forth in Article 3 above, to freely use any and all information disclosed by the Consultant to the Corporation. The Consultant shall avoid all circumstances and actions that place the Consultant in a position of divided loyalty with regard to his obligations

to the Corporation. All Confidential Information disclosed to the Consultant by the Corporation, as well as any information generated by the Consultant pursuant to the execution of services hereunder, shall be maintained by the Consultant in strictest confidence. Accordingly, the Consultant will use the Confidential Information furnished by the Corporation only for the purpose of fulfilling its obligations under this Agreement.

D. The above restrictions shall not prevent the Consultant from disclosing or using in any manner information that the Consultant can show by written records:

(i) was in the public domain at the time of disclosure; or

(ii) becomes part of the public domain other than by breach of this Agreement by the Consultant; or

(iii) was not acquired, directly or indirectly, from the Corporation; or

(iv) is received without restriction on use or disclosure from a third party who is under no such restriction; or

(v) is required by law, regulation or court order to be disclosed, provided prompt advance written notice is given to the Corporation to allow it the opportunity to obtain appropriate protection of Confidential Information.

E. All obligations of confidentiality and nondisclosure set forth in this Agreement will survive, without limitation, the expiration or earlier termination of this Agreement for any reason.

7. OWNERSHIP AND RETENTION BY CORPORATION.

A. The Consultant shall timely communicate in full detail and disclose all data, information, reports, results and other work product collected, generated, prepared or derived by the Consultant during the course of or as a result of Services performed by the Consultant pursuant to this Agreement ("Data"). All Data shall be and remains the sole and exclusive property of the Corporation, and shall be treated as Confidential Information. All Data, discoveries, inventions, improvements, new uses, processes, copyrights, trade secrets, techniques, and compounds, whether patentable or not, arising from advice provided and/or services rendered under this Agreement (collectively referred to hereinafter as "Inventions"), shall be the sole and exclusive property of the Corporation with full right of ownership, title, and interest thereto.

B. The Consultant shall promptly disclose to the Corporation any Inventions arising hereunder. The Consultant represents that any employees, agents, and consultants of the Consultant have agreed in writing to assign to the Consultant all Inventions made by such employee, agent or consultant in the course of his or her employment. The Consultant hereby assigns, and agrees unconditionally to assign, to the Corporation without the payment of additional compensation to the Consultant, any and all right, title and interest in and to any Inventions arising as a result of Consultant's activities on behalf of the Corporation. The Consultant shall fully cooperate with the Corporation in obtaining and maintaining, at the Corporation's cost and expense, any registration or other protection as may be available with respect to such Inventions, and shall execute all documents reasonably deemed necessary by the Corporation for purposes of procuring and maintaining such patent protection, and all documents necessary for assigning Inventions to the Corporation. The Corporation shall be free to exploit both the registration or other rights or protections it holds as a result of the services provided hereunder as well as any other results of the services provided hereunder without any additional compensation to the Consultant. All works authored by the Consultant under this Agreement shall be deemed or treated as "works for hire" to the extent permitted by federal copyright law. The Consultant may not use, publish, communicate, divulge or disclose any such information that has been designated as Confidential Information. Project results, findings, reports, notebook records, raw data and any other information arising out of the performance of this Agreement will not be released, published or referred to, in whole or in part, by the Consultant or any affiliates.

C. Neither party shall use the name or logo of the other party, nor the names of any of the other party's employees in any statement or presentation that is public or likely to become public (including, without limitation, in any

publicity, advertising or news release) without the prior written permission of the other party.

D. At the completion of advice provided and/or services rendered by the Consultant, all original Data, regardless of the method of storage or retrieval, shall at the direction and written request of the Corporation be delivered to the Corporation and all additional copies held by the Consultant shall be erased or destroyed.

E. The Consultant represents to the Corporation that he is not a party to any agreement that would prevent him from fulfilling his obligations under this Agreement. During the term of this Agreement, the Consultant agrees he will

not enter into any agreement to provide services, which would prevent him, in any way, from providing the services contemplated under this Agreement.

F. All obligations imposed on the Consultant by this Article 7 of this Agreement will survive, without limitation, the expiration or earlier termination of this Agreement for any reason.

G. In the event of a breach or potential breach of the restrictions and prohibitions in Articles 6 and 7, the Consultant acknowledges that the Corporation will be caused irreparable harm and that money damages may not be an adequate remedy. The Consultant also acknowledges that the Corporation shall be entitled to injunctive relief (in addition to its other remedies at law) to have such provisions enforced without posting any bond.

8. TERMINATION.

This Agreement shall be terminated upon the happening of the earliest of the following events:

(i) a date on which the Corporation and the Consultant mutually agree in writing to terminate the Consultant's services;

(ii) November 12, 2005;

(iii) determination by the Corporation that actions (or inactions) of the Consultant have made the Consultant's relationship with the Corporation professionally detrimental to the Corporation or its employees or customers; or

(iv) as set forth in Article 4A.

9. NOTICES.

Notices and requests for reimbursement pursuant to Paragraph C of Article 3 and other communication shall be in writing and shall be deemed to have been received upon the hand delivery thereof, or if sent by courier or overnight mail, or by certified, return receipt mail, postage prepaid, and addressed to the party at the address given below, or such other address as may be designated in writing, five (5) days after the mailing thereof if mailed in the State of New York, or eight (8) days after the mailing thereof if mailed outside the State of New York,

If to the Corporation, to:	If to the Consultant, to:
Dr. Michael M. Goldberg	Dr. Jere Goyan
Emisphere Technologies, Inc	2110 Sunshine Point Drive
765 Old Saw Mill River Road	Kingwood, Texas 77345
Tarrytown, NY 10591	

10. INDEMNIFICATION AND WARRANTIES.

The Consultant agrees to defend, indemnify and hold harmless the Corporation, its officers, agents, employees, executors and assigns with respect to all claims, damages, judgments, actions and causes of action, arising out of the Consultant's (or its employees') negligent or unlawful acts or omissions that are adverse to the Corporation or any of its employees or agents, including, without limitation, (a) activities contrary to the relevant interests and

recommendations of the Corporation, and (b) any use of Confidential Information, by the Consultant, including all costs, expenses and attorney's fees incurred in the defense of any and all claims and/or litigation.

11. WAIVER AND INVALID PROVISIONS.

The failure to enforce any right or provision herein shall not constitute a waiver of that right or provision. No failure or delay by the Corporation in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof. If any provisions herein are found to be unenforceable, it is the intent of the parties that such provisions be replaced, reformed or narrowed so that their original business purpose can be accomplished to the extent permitted by law. The validity or unenforceability of any particular provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. OTHER DOCUMENTS.

If at any time the Consultant exercises the Options granted to him pursuant to this Agreement or otherwise purchases Common Stock, then the Consultant agrees to sign documents submitted to him by the Corporation, from time to time, pertaining to stock trading restrictions based upon Securities and Exchange Regulations and Insider Trading prohibitions and designed to protect the Corporation from liability incurred as a result of a breach of any such regulation by the Consultant.

13. CONSTRUCTION.

This Agreement shall be governed by, construed, interpreted, applied and enforced in accordance with the laws of the State of New York applicable to contracts to be performed fully within the State of New York, exclusive of its conflicts of laws provisions. The Consultant consents to personal jurisdiction and service and venue in any Federal or State Court within the State of New York for the purpose of any action or suit arising out of this Agreement.

14. GENDERS AND USAGE.

As used in this Agreement, any gender shall be construed as including all other genders, and the singular shall be construed as including the plural and the plural the singular, as the sense requires.

15. AMENDMENT.

No amendment to any provision of this Agreement shall be effective unless in writing and signed by each party. This Agreement may not be changed, amended or supplemented, except in a writing signed by the parties.

16. ASSIGNMENT.

This Agreement may not be assigned or transferred, nor may any of the rights or obligations of any of the parties hereunder be assigned or delegated, by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that the Corporation may assign or transfer this Agreement to a parent or subsidiary corporation.

17. DISPUTE RESOLUTION.

Except as otherwise provided in Article 7G, any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a single arbitrator in New York, New York in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") then in effect. The Consultant and the Company irrevocably and unconditionally waive any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens to the bringing of any action or proceeding in such location. The decision of the arbitrator will be final and binding upon the parties hereto. Judgment may be entered on the arbitrator's award in any court having jurisdiction. Each party shall bear its own costs of arbitration and shall equally divide the charges of the arbitrator and the AAA.

17. ENTIRE AGREEMENT; COUNTERPARTS.

This Agreement contains the entire agreement of the parties and supersedes all prior oral or written representations, negotiations and understandings between the parties relating to subject matter within this Agreement. It may be executed in counterparts (including, by facsimile), and each such counterpart shall be deemed an original and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered on the date first above written by their respective officers duly authorized and empowered.

Emisphere Technologies, Inc.

By: /S/ Jere E. Goyan

Dr. Jere Goyan

EXHIBIT 10.28

CONSULTING AND OPTION AGREEMENT

This Agreement (this "Agreement") is effective as of the 13th day of November 2003, (the "Effective Date") between Emisphere Technologies, Inc., a Delaware corporation having its principal place of business at 765 Old Saw Mill River Road, Tarrytown, New York 10591 (the "Corporation"), and Dr. Joseph R. Robinson, an individual with a principal place of business at University of Wisconsin, 777 Highland Avenue, Madison, Wisconsin 53705-2222 (the "Consultant").

WHEREAS, the Consultant will provide advice and guidance in the areas of clinical research, regulatory affairs and general corporate development, as well as provide recommendations and counsel in these disciplines to the Corporation; and

WHEREAS, both parties are sensitive to the need to avoid all areas where there may be a conflict of interest.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions herein contained, the Corporation and the Consultant hereby agree as follows:

1. RETAINER.

The Corporation agrees to retain the Consultant on a consulting basis and the Consultant agrees to serve the Corporation as a consultant upon the terms and conditions hereafter set forth. The retainer includes full compensation for all administrative and any other consulting services to be rendered by the Consultant, who is retained only for the purposes and to the extent set forth in this Agreement.

2. TERM.

The term of this Agreement shall commence on the Effective Date, and shall continue until October 31, 2005, unless sooner terminated as hereinafter provided, or as extended by mutual written agreement of both parties.

3. COMPENSATION AND EXPENSES.

A. The Corporation agrees to grant to the Consultant the options to purchase shares of common stock of the Corporation evidenced in the agreement set forth at Exhibit A attached hereto.

B. The Corporation agrees to pay Consultant the sum of SIXTY THOUSAND DOLLARS ($60,000.00) payable in equal quarterly installments of $7,500.00 on November 13, 2003; February 1, May 1, August 1 and November 1 of calendar year 2004; and February 1, May 1, and August 1 of calendar year 2005. The Consultant's Employer Identification number is 092-32-6027, which is requested and shall be used by the Corporation solely for the purpose of preparing a Form 1099 or similar form as required by law. The Consultant shall be responsible for, and shall pay, all income, employment and other applicable taxes due on the compensation he receives pursuant to this Agreement, and shall indemnify and hold harmless the Corporation from all liability, claims and demands for payments under any applicable unemployment and disability insurance, self-employment, social security, income and other taxes, deductions and payments required by applicable law with regard to his compensation received under this Article 3. The Options granted pursuant to Paragraph A, the cash payments set forth in Paragraph B and the reimbursement of expenses pursuant to Paragraph C each of this Article 3 collectively represent the full payment due the Consultant for services performed under this Agreement.

C. The Corporation shall pay directly or shall reimburse the Consultant for all reasonable and necessary out-of-pocket expenses incurred by the Consultant. The Consultant shall not be paid for any travel time. Any direct or indirect expenses exceeding ONE THOUSAND DOLLARS ($1,000.00) in the aggregate during any one (1) month period shall require the prior written consent of the Corporation. In all events, reimbursable expenses must be directly related to the business of the Corporation, unless otherwise agreed to in advance by the parties hereto in a separate writing.

4. SERVICES.

A. The Consultant agrees to serve the Corporation faithfully and shall devote such time as the Consultant, in consultation with the Corporation,

determines is required to perform the services hereunder to the business of the Corporation. The Consultant shall perform his duties hereunder during regular office hours at the offices of the Corporation or at a site agreed upon by the parties. The Consultant shall provide additional time to the Corporation by telephone and/or other means of communication as reasonably requested by the Corporation. In the event that the Consultant and the Corporation are unable to reach agreement on a reasonably acceptable work schedule, the parties shall have the right to terminate this Agreement pursuant to Article 8 of this Agreement.

B. The Consultant agrees to render advice and services in connection with the development of the Corporation's clinical research, assist in all areas of regulatory affairs, and provide counsel and recommendations with regard to general corporate development, business relationships, overall strategy and any specific items submitted for the Consultant's review.

5. CORPORATION'S AUTHORITY.

The Consultant agrees to observe and comply with the rules and regulations of the Corporation in respect of the performance of the Consultant's duties and to carry out orders, directions and policies stated by the Corporation to the Consultant from time to time (whether orally or in writing); provided, however, that the Consultant shall determine the manner of carrying out the professional duties hereunder. The Consultant's relationship with the Corporation during the term of this Agreement shall be that of an independent contractor. The Consultant shall have no authority to contract with any third party on behalf of the Corporation or create any obligation on behalf of the Corporation. Neither party has any authority to make any statement, representation, or commitment of any kind or to take any action binding upon the other party, without the other party's specific prior written authorization. Nothing contained in the Agreement shall be construed to constitute the Consultant as a partner, employee, representative or agent of the Corporation and none of the Consultant, its officers, employees or affiliates shall hold itself out as such. As non-employees of the Corporation, neither the Consultant nor any of the Consultant's employees shall be eligible or entitled to participate or enroll in any employee benefit plan or arrangement of the Corporation, including without limitation any pension, stock, bonus, profit-sharing, savings, health, medical, or similar benefit plan or arrangement the Corporation may from time to time provide, or to receive any distributions from or with respect to any such plan or arrangement.

6. CONFIDENTIALITY.

During the course of this Agreement, the Consultant will be exposed to data and information that is confidential and proprietary to the Corporation, which includes, but is not limited to, trade secrets, privileged records, proprietary information, data, case report forms, laboratory work sheets, slides, research, reports, results, investigations, experiments, developmental work, experimental work, works in progress, plans, proposals, codes, and all concepts, ideas, materials or information related to the business, products, or operation of the Corporation, whether in written, verbal, physical, electronic, tangible or intangible form, made available, disclosed, or otherwise made known to the Consultant as a result of services rendered or to be rendered under this Agreement (hereinafter "Confidential Information").

The Consultant acknowledges and agrees that the Corporation is entitled to prevent the disclosure of Confidential Information. As a portion of the consideration for the compensation being paid by the Corporation to the Consultant, the Consultant agrees, except for purposes of this Agreement and the services rendered, to hold in strictest confidence and to maintain as confidential all Confidential Information obtained from the Corporation or developed by the Consultant for the Corporation and shall not use for any purpose, commercial or otherwise, or disclose to any third parties any Confidential Information. The Consultant acknowledges that Confidential Information is the sole and exclusive property of the Corporation. The Consultant is not permitted to use any such Confidential Information for teaching, research or publication purposes.

C. The Consultant agrees to disclose only such information that the Consultant is legally free to disclose and agrees that the Corporation shall have the right, without further payment other than as set forth in Article 3 above, to freely use any and all information disclosed by the Consultant to the Corporation. The Consultant shall avoid all circumstances and actions that place the Consultant in a position of divided loyalty with regard to his obligations

to the Corporation. All Confidential Information disclosed to the Consultant by the Corporation, as well as any information generated by the Consultant pursuant to the execution of services hereunder, shall be maintained by the Consultant in strictest confidence. Accordingly, the Consultant will use the Confidential Information furnished by the Corporation only for the purpose of fulfilling its obligations under this Agreement.

D. The above restrictions shall not prevent the Consultant from disclosing or using in any manner information that the Consultant can show by written records:

(i) was in the public domain at the time of disclosure; or

(ii) becomes part of the public domain other than by breach of this Agreement by the Consultant; or

(iii) was not acquired, directly or indirectly, from the Corporation; or

(iv) is received without restriction on use or disclosure from a third party who is under no such restriction; or

(v) is required by law, regulation or court order to be disclosed, provided prompt advance written notice is given to the Corporation to allow it the opportunity to obtain appropriate protection of Confidential Information.

E. All obligations of confidentiality and nondisclosure set forth in this Agreement will survive, without limitation, the expiration or earlier termination of this Agreement for any reason.

7. OWNERSHIP AND RETENTION BY CORPORATION.

A. The Consultant shall timely communicate in full detail and disclose all data, information, reports, results and other work product collected, generated, prepared or derived by the Consultant during the course of or as a result of Services performed by the Consultant pursuant to this Agreement ("Data"). All Data shall be and remains the sole and exclusive property of the Corporation, and shall be treated as Confidential Information. All Data, discoveries, inventions, improvements, new uses, processes, copyrights, trade secrets, techniques, and compounds, whether patentable or not, arising from advice provided and/or services rendered under this Agreement (collectively referred to hereinafter as "Inventions"), shall be the sole and exclusive property of the Corporation with full right of ownership, title, and interest thereto.

B. The Consultant shall promptly disclose to the Corporation any Inventions arising hereunder. The Consultant represents that any employees, agents, and consultants of the Consultant have agreed in writing to assign to the Consultant all Inventions made by such employee, agent or consultant in the course of his or her employment. The Consultant hereby assigns, and agrees unconditionally to assign, to the Corporation without the payment of additional compensation to the Consultant, any and all right, title and interest in and to any Inventions arising as a result of Consultant's activities on behalf of the Corporation. The Consultant shall fully cooperate with the Corporation in obtaining and maintaining, at the Corporation's cost and expense, any registration or other protection as may be available with respect to such Inventions, and shall execute all documents reasonably deemed necessary by the Corporation for purposes of procuring and maintaining such patent protection, and all documents necessary for assigning Inventions to the Corporation. The Corporation shall be free to exploit both the registration or other rights or protections it holds as a result of the services provided hereunder as well as any other results of the services provided hereunder without any additional compensation to the Consultant. All works authored by the Consultant under this Agreement shall be deemed or treated as "works for hire" to the extent permitted by federal copyright law. The Consultant may not use, publish, communicate, divulge or disclose any such information that has been designated as Confidential Information. Project results, findings, reports, notebook records, raw data and any other information arising out of the performance of this Agreement will not be released, published or referred to, in whole or in part, by the Consultant or any affiliates.

C. Neither party shall use the name or logo of the other party, nor the names of any of the other party's employees in any statement or presentation that is public or likely to become public (including, without limitation, in any

publicity, advertising or news release) without the prior written permission of the other party.

D. At the completion of advice provided and/or services rendered by the Consultant, all original Data, regardless of the method of storage or retrieval, shall at the direction and written request of the Corporation be delivered to the Corporation and all additional copies held by the Consultant shall be erased or destroyed.

E. The Consultant represents to the Corporation that he is not a party to any agreement that would prevent him from fulfilling his obligations under this Agreement. During the term of this Agreement, the Consultant agrees he will not enter into any agreement to provide services, which would prevent him, in any way, from providing the services contemplated under this Agreement.

F. All obligations imposed on the Consultant by this Article 7 of this Agreement will survive, without limitation, the expiration or earlier termination of this Agreement for any reason.

G. In the event of a breach or potential breach of the restrictions and prohibitions in Articles 6 and 7, the Consultant acknowledges that the Corporation will be caused irreparable harm and that money damages may not be an adequate remedy. The Consultant also acknowledges that the Corporation shall be entitled to injunctive relief (in addition to its other remedies at law) to have such provisions enforced without posting any bond.

8. TERMINATION.

A. This Agreement shall be terminated upon the happening of the earliest of the following events:

(i) a date on which the Corporation and the Consultant mutually agree in writing to terminate the Consultant's services;

(ii) October 31, 2005;

(iii) receipt of written notice from either party canceling this Agreement (with or without cause);

(iv) determination by the Corporation that actions (or inactions) of the Consultant have made the Consultant's relationship with the Corporation professionally detrimental to the Corporation or its employees or customers; or

(v) as set forth in Article 4A.

9. NOTICES.

Notices and requests for reimbursement pursuant to Paragraph C of Article 3 and other communication shall be in writing and shall be deemed to have been received upon the hand delivery thereof, or if sent by courier or overnight mail, or by certified, return receipt mail, postage prepaid, and addressed to the party at the address given below, or such other address as may be designated in writing, five (5) days after the mailing thereof if mailed in the State of New York, or eight (8) days after the mailing thereof if mailed outside the State of New York,

If to the Corporation, to:	If to the Consultant, to:
Dr. Michael M. Goldberg	Dr. Joseph Robinson
Emisphere Technologies, Inc	University of Wisconsin
765 Old Saw Mill River Road	777 Highland Avenue
Tarrytown, NY 10591	Madison, Wisconsin 53705-2222

10. INDEMNIFICATION AND WARRANTIES.

The Consultant agrees to defend, indemnify and hold harmless the Corporation, its officers, agents, employees, executors and assigns with respect to all claims, damages, judgments, actions and causes of action, arising out of the Consultant's (or its employees') negligent or unlawful acts or omissions that

are adverse to the Corporation or any of its employees or agents, including, without limitation, (a) activities contrary to the relevant interests and recommendations of the Corporation, and (b) any use of Confidential Information, by the Consultant, including all costs, expenses and attorney's fees incurred in the defense of any and all claims and/or litigation.

11. WAIVER AND INVALID PROVISIONS.

The failure to enforce any right or provision herein shall not constitute a waiver of that right or provision. No failure or delay by the Corporation in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof. If any provisions herein are found to be unenforceable, it is the intent of the parties that such provisions be replaced, reformed or narrowed so that their original business purpose can be accomplished to the extent permitted by law. The validity or unenforceability of any particular provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. OTHER DOCUMENTS.

If at any time the Consultant exercises the Options granted to him pursuant to this Agreement or otherwise purchases Common Stock, then the Consultant agrees to sign documents submitted to him by the Corporation, from time to time, pertaining to stock trading restrictions based upon Securities and Exchange Regulations and Insider Trading prohibitions and designed to protect the Corporation from liability incurred as a result of a breach of any such regulation by the Consultant.

13. CONSTRUCTION.

This Agreement shall be governed by, construed, interpreted, applied and enforced in accordance with the laws of the State of New York applicable to contracts to be performed fully within the State of New York, exclusive of its conflicts of laws provisions. The Consultant consents to personal jurisdiction and service and venue in any Federal or State Court within the State of New York for the purpose of any action or suit arising out of this Agreement.

14. GENDERS AND USAGE.

As used in this Agreement, any gender shall be construed as including all other genders, and the singular shall be construed as including the plural and the plural the singular, as the sense requires.

15. AMENDMENT.

No amendment to any provision of this Agreement shall be effective unless in writing and signed by each party. This Agreement may not be changed, amended or supplemented, except in a writing signed by the parties.

16. ASSIGNMENT.

This Agreement may not be assigned or transferred, nor may any of the rights or obligations of any of the parties hereunder be assigned or delegated, by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that the Corporation may assign or transfer this Agreement to a parent or subsidiary corporation.

17. DISPUTE RESOLUTION.

Except as otherwise provided in Article 7G, any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted before a single arbitrator in New York, New York in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") then in effect. The Consultant and the Company irrevocably and unconditionally waive any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens to the bringing of any action or proceeding in such location. The decision of the arbitrator will be final and binding upon the parties hereto. Judgment may be entered on the arbitrator's award in any court

having jurisdiction. Each party shall bear its own costs of arbitration and shall equally divide the charges of the arbitrator and the AAA.

17. ENTIRE AGREEMENT; COUNTERPARTS.

This Agreement contains the entire agreement of the parties and supersedes all prior oral or written representations, negotiations and understandings between the parties relating to subject matter within this Agreement. It may be executed in counterparts (including, by facsimile), and each such counterpart shall be deemed an original and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered on the date first above written by their respective officers duly authorized and empowered.

Emisphere Technologies, Inc.

By: /S/ Joseph R. Robinson

Dr. Joseph R. Robinson

EXHIBIT 10.29

71192522.2

028444-00010

December 15, 2003

CONTRACT OF SALE

Between

FARM TECH CORPORATION,

Seller

And

Buyer

Dated: December 15, 2003

Premises:

400 Farmington Avenue

Farmington, CT

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AGREEMENT dated December___, 2003, between FARM TECH CORPORATION ("Seller"), a Delaware corporation with an office at 765 Old Saw Mill River Road, Tarrytown, NY 10591; and ("Buyer"), an entity with an office at .

Seller and Buyer, in consideration of the mutual covenants herein contained, hereby covenant and agree as follows:

ARTICLE 1

Description of Premises.

Section 1.1 Description of Premises Seller shall sell to Buyer, and Buyer shall purchase from Seller, at the price and upon the terms and conditions set forth in this Agreement:

(a) the parcels of land more particularly described on Exhibit A attached hereto (the "Land")in the Town of Farmington, Connecticut (the "Town");

(b) all buildings and improvements situated on the Land (collectively, the "Building"); and

(c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land and all other appurtenances to the Land and Building, including any adjacent strips of land, (collectively, the "Appurtenances"); and

(d) the personal property set forth on Schedule A-1 annexed hereto (the "Personal Property").

The Land, the Building, the Personal Property and the Appurtenances are hereinafter collectively referred to as the "Premises". The Premises are commonly known as 400 Farmington Avenue, Farmington, CT. Seller is the owner of the Premises and all rights and interests appurtenant thereto.

ARTICLE 2

Purchase Price, Acceptable Funds and Escrow of Deposit.

Section 2.1 Purchase Price. The purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Premises is $, payable in accordance with the provisions of Section 2.3 herein as follows:

(a) $ by check subject to collection, or by wire, to be held by (the "Escrow Agent"), pursuant to Section 2.4 herein, delivered simultaneously with the execution of this Agreement; and

(b) $ delivered to Seller at the Closing (as hereinafter defined).

Section 2.2 Adjustment of Cash. The cash payment required at the Closing will be increased or decreased, as the case may be, to account for all items to be apportioned.

Section 2.3 Acceptable Funds. All monies payable under this Agreement, unless otherwise specified herein, shall be paid by immediately available funds, either wired to an account designated by Seller or as otherwise specified by Seller. If any funds are to be paid to any entity other than Seller, Seller shall provide Buyer with reasonable advance notice of the name of the entity designated to receive such funds.

Section 2.4 Escrow of Deposit.

(a) The sum paid under subsection 2.1(a) herein (the "Deposit") shall be delivered to the Escrow Agent and, if paid by check, shall be subject to collection. The Escrow Agent shall hold the proceeds thereof in escrow in an interest bearing account until the Closing or earlier termination of this Agreement and shall pay over or apply the Deposit (together with any interest accrued thereon) in accordance with the terms of this Agreement. At the Closing, the Escrow Agent shall pay the Deposit to Seller on account of the Purchase Price.

(b) If for any reason the Closing does not occur and either party makes a written demand upon the Escrow Agent for payment of such amounts, the Escrow Agent shall give written notice to the other party of such demand. If the Escrow Agent does not receive a written objection from the other party to the proposed payment within five (5) business days from the receipt of such notice by the other party, the Escrow Agent is hereby authorized to make such payment. If the Escrow Agent does receive such written objection within such five (5) business day period or if, for any other reason, the Escrow Agent in good faith shall elect not to make such payment, the Escrow Agent shall continue to hold the Deposit until otherwise directed by written instructions from Seller and Buyer or a final, unappealable and unappealed judgment of a court. However, the Escrow Agent shall have the right at any time to deposit the Deposit and accrued interest with a court of competent jurisdiction, giving written notice of such deposit to Seller and Buyer. Upon such deposit, the Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

(c) The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, and that the Escrow Agent shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this Agreement or involving gross negligence. Seller and Buyer shall jointly and severally indemnify, defend and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable counsel fees, incurred in connection with performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by the Escrow Agent in bad faith, in willful disregard of this Agreement or involving gross negligence on its part.

(d) Buyer acknowledges that the Escrow Agent has acted as counsel for Seller in this transaction and that, in the event of a dispute between Seller and Buyer, the Escrow Agent shall not be prevented from representing Seller in such dispute by reason of having acted as the agent,

provided that the Escrow Agent shall at such time deposit the funds with said court or as otherwise directed by the parties. The Escrow Agent has acknowledged acceptance of these provisions by signing in the place indicated on the signature page of this Agreement.

Section 2.5 Interest on the Deposit. Accrued interest, if any, shall be paid at the Closing, or at such other time that the Deposit is paid pursuant to this Agreement, to the party receiving the Deposit.

Section 2.6 Contingent Price. Anything in Section 2.1 herein to the contrary notwithstanding, the Purchase Price shall increase by $ for each square foot of gross usable floor area in excess of square feet covered and approved by Governmental Approvals (as hereinafter defined) obtained by Buyer prior to the Closing. If, at any time within seven (7) years after the Closing, Buyer (or its successor) shall obtain Governmental Approvals for additional gross useable floor area, then within 20 days after receipt of each such Governmental Approvals, Buyer (or its successor) shall pay to Seller an amount equal to $ for each square foot of gross usable floor area approved subsequent to the Closing Date. Rights and obligations under this Section shall survive the Closing, and Buyer shall include this obligation as a restrictive covenant in the deed if the Premises are conveyed within seven (7) years after the Closing. If Seller shall commence an action to enforce its rights hereunder, the prevailing party in such action shall recover its reasonable attorneys' fees and court costs.

ARTICLE 3

The Closing.

Section 3.1 Date, Place and Time of Closing. (a) The transfer of title to the Premises pursuant to this Agreement (the "Closing") shall occur on a date (the "Closing Date") which shall be on or before the 30th day after Buyer has received Governmental Approvals; provided however that if such 30th day shall not be a business day, then on the first business day thereafter. Buyer shall, within 48 hours after receipt, give notice to Seller of each Governmental Approval received, including a copy of same. The Closing shall be held at the offices of , commencing at 10:00 A.M. on the Closing Date or at such other location as shall be agreed to by Seller and Buyer. Counsels for Seller and Buyer are hereby respectively authorized to execute an agreement or agreements on behalf of the parties confirming or adjourning the Closing Date.

(b) In the event Buyer has not terminated this Agreement by August 12, 2004, Buyer shall be obligated to close on the Premises by the earlier of (i) the thirtieth day after receipt of Governmental Approvals; or (ii)

November_12, 2004, (the "Extension Notice Date") time being of the essence, notwithstanding whether Buyer has obtained the Governmental Approvals.

(c) Commencing eight (8) months from the date of execution of this Agreement until the earlier of (i) the Closing Date or (ii) November 12, 2004, Buyer shall pay to Seller all future real estate taxes (the "Taxes") incurred on the Premises, on a monthly basis. Seller shall invoice Buyer on the first day of each month, for the pro-rata portion of the Taxes, and Buyer shall pay same within ten (10) days thereafter.

(d) Notwithstanding anything to the contrary contained herein, Buyer shall have the right and option, upon notice to Seller to be provided no later than thirty (30) days prior to the Extension Notice Date, to adjourn the closing for a period of up to six (6) months after the Extension Notice Date, if, after exercising due diligence and proceeding in good faith, Buyer has been unable to obtain the Governmental Approvals on or before the Extension Notice Date and provided that with such notice to Seller, Buyer shall pay to the Seller the sum of ($.) per month (the "Extension Fee") on the 12th day of each and every month after the Extension Notice Date. This sum shall not be reimbursable to Buyer and shall not be credited against the Purchase Price.

(e) In the event Buyer has received the Governmental Approvals, and the Closing occurs subsequent to the scheduled Closing Date, as same may have been extended pursuant to 3.1 (d), the party responsible for such delay shall pay to other party at the Closing an amount equal to the sum of (a) $ per day [per annum on $], and (b) the per diem amount of real estate and other taxes payable with respect to the Premises, from and including the scheduled

Closing Date until (but not including) the actual date of the Closing; provided however that a permitted adjournment by Seller pursuant to subsection 4.2(b) herein or adjournment by Buyer pursuant to Section 3.1 (d) above shall not be subject to such per diem payment. The remedy provided to the non-defaulting party in this Section shall not operate to limit, restrict or waive the pursuit of any other remedy the non-defaulting party may have at law or in equity in the event of the other party's breach under this Agreement by failure to close on the scheduled Closing Date.

Section 3.2 Termination Fee. In the event Buyer shall terminate this Agreement for any reason subsequent to forty five (45) days after the execution date of this Agreement, Buyer shall pay to Seller the sum of ($) Dollars (the "Termination Fee") as and for a termination fee. This Termination Fee shall not in any way limit Seller's rights to the Deposit, if in fact Seller is entitled to the Deposit by way of Buyer's Default as set forth in Section 12.2 below or in any other way under the terms of the Agreement. Seller shall be permitted to authorize Escrow Agent to pay the Termination Fee to Seller from the Deposit and the balance of the Deposit to the Buyer. Buyer shall receive a credit against the Termination Fee for any payments of taxes made by Buyer pursuant to Section 3.1(c).

ARTICLE 4

Acceptable Title and Clearing Title.

Section 4.1 Acceptable Title. Seller shall convey and Buyer shall accept title to the Premises in accordance with the terms of this Agreement, subject only to the exceptions specified in Exhibit B and to the following:

(a) any restriction or limitations imposed or to be imposed by governmental authority, including the zoning and planning rules and regulations of the Town;

(b) real property and other taxes which become due and payable after the date of the Closing, which taxes Buyer will assume and agree to pay as part of the consideration for the deed;

(c) public improvement assessments and sewer connection charges, or other assessments and/or any unpaid installments thereof, which assessments and/or installments become due and payable after the date of the Closing, which assessments and/or installments Buyer will assume and agree to pay as part of the consideration for the deed;

(d) state of facts shown by accurate survey and physical inspection of the Premises; provided same does not render title unmarketable. Without limiting the foregoing, the state of facts shown on a survey entitled "ALTA/ACSM Land Title Survey for Oread Biosafety," made by Coneco Engineers, last revised April 21, 2001 (the "Survey"), shall be deemed not to render title unmarketable; and

(e) If, prior to Closing, Buyer receives notice of additional liens, encumbrances or other matters that did not exist as of the Title Contingency Date, as that term is defined below, then Buyer may submit a revised list to Seller adding additional title defects. Seller may, but shall not be obligated to, at its cost, cure, remove or insure over all additional title defects and give Buyer written notice thereof within thirty (30) days after receipt of Notice from Buyer; provided, however, Seller at its cost shall be obligated to cure, or otherwise remove by closing, all mortgages, deeds of trust, judgment liens, mechanic's and materialmen's liens, and other liens and encumbrances against the Premises (other than liens for taxes and assessments which are not delinquent) which arise at any time prior to Closing and which (i) secure indebtedness; or (ii) can be removed by payment of a liquidated sum of money; or (iii) were voluntarily placed against the Premises by Seller or any affiliate, whether or not Buyer objects thereto, up to and including the sum of $ in the aggregate.

Section 4.2 Clearing Title.

(a) Seller shall convey and Buyer shall accept fee simple title to the Premises in accordance with the terms of this Agreement, subject only to (i) the exceptions referred to in Section 4.1 herein; (ii) the standard

printed exceptions in the ALTA form of policy in use in the State of Connecticut; and (iii) such other matters as any reputable title insurance company qualified to do business in the State of Connecticut shall be willing to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises. Seller shall not be required to bring any action or proceeding or to incur any expense to cure any title defect.

(b) If examination of the title to the Premises shall reveal one or more defects which prevent Seller from conveying title in accordance with the terms of this Agreement, Buyer shall, within forty five (45) days from the date hereof (the "Title Contingency Date"), give Seller written notice of same, as to which notice time shall be of the essence. If Buyer fails to so notify Seller of such defects within said forty five (45) day period, Buyer shall be deemed to have accepted the state of title to the Premises as of the last day of such period. If Buyer does so notify Seller of such defects, Seller shall have until 60 days subsequent to the scheduled Closing Date (the "Title Cure Period") to cure such defects.. If Seller shall accomplish same within the Title Cure Period and shall be able to convey title in accordance with the terms of this Agreement, the Closing shall then occur. If Seller shall not accomplish same within the Title Cure Period, Buyer, within three (3) business days after the expiration of the Title Cure Period, shall give notice to Seller electing either (i) to accept a deed to the Premises conveying such title as Seller can give in accordance with all of the other provisions of this Agreement upon payment of the Purchase Price; or (ii) to cancel and terminate this Agreement, in which event the Escrow Agent shall pay to Buyer the Deposit and Seller shall pay to Buyer any expenses actually incurred by Buyer for examination of title to the Premises, not to exceed $1,500. If Buyer shall not make an election within the Title Cure Period, then Buyer shall be deemed to have elected alternative (i) above. If there develops an additional title defect after the Title Contingency Date which is not caused by the Buyer's actions, and the title defect is not cured within the provisions of Section 4.1 (e), then within three (3) business days after Buyer determines that Seller shall not cure the defect, Buyer shall give notice to Seller electing either (i) to accept a deed to the Premises conveying such title as Seller can give in accordance with all of the other provisions of this Agreement upon payment of the Purchase Price; or (ii) to cancel and terminate this Agreement, in which event the Escrow Agent shall pay to Buyer the Deposit and Seller shall pay to Buyer any expenses actually incurred by Buyer, not to exceed $25,000. Upon such payment being made, this Agreement shall be terminated, and neither party shall have any further liability to the other hereunder.

ARTICLE 5

Contingencies to Buyer's Obligations.

Section 5.1 Due Diligence Period. Commencing prior to or promptly after the date hereof and proceeding diligently thereafter, Buyer shall complete its due diligence with respect to the Premises, including without limitation environmental inspections. If Buyer shall not be satisfied with the results of such investigations, then Buyer may terminate this Agreement by notice to Seller on or before 5:00 p.m. on that date which is forty five (45) days after the contract date, as to which notice time shall be of the essence. With such notice Buyer shall include copies of all test results, reports, surveys and title insurance reports. If Buyer fails to terminate this Agreement by such form of notice on or before said date, then this Agreement shall remain in effect and the Closing shall occur on

the date specified in Section 3.1 herein. Upon such notice being timely given, this Agreement shall terminate without further liability of either party hereunder, and the Escrow Agent shall promptly refund the Deposit to Buyer.

Section 5.2 Governmental Approvals.(a) The obligations of Buyer hereunder shall be subject to Buyer obtaining the following zoning approvals in final form, with all appeal periods expired without an appeal having been taken (in such form, collectively, the "Governmental Approvals"): special permit and site plan approval for retail use comprising a minimum of square feet of retail space within the BR zone, including state traffic control, wetlands approvals, state environmental approvals, and any additional governmental approvals necessary to utilize the Premises for retail use. The Governmental

Approvals shall not include any applications or approvals for a building permit.

(b) Buyer shall promptly apply for and diligently pursue the Governmental Approvals, seeking an appropriate amount of gross usable floor area of retail space permitted on the Land in the BR zone. If Buyer shall not have obtained all Governmental Approvals on or before 5:00 p.m. on the date eight (8) months from the Contract date, Buyer shall commence paying the Taxes as set forth in Section 3.1(c) above. In the event this Agreement is terminated at any time by Buyer prior to August 12, 2004, Buyer shall promptly deliver to Seller all test results, reports, surveys, title insurance reports, governmental applications and site plans; and the Escrow Agent shall promptly refund the Deposit to Buyer, provided that Buyer has diligently and timely made and processed all applications for Governmental Approvals. Seller shall cooperate with Buyer in obtaining the Governmental Approvals and shall take all reasonable actions, which are necessary to assist Buyer in obtaining the necessary Governmental Approvals, at Buyer's expense.

ARTICLE 6

Representations and Warranties; Operation of Premises.

Section 6.1 Power, Authority, Execution and Delivery. Buyer and Seller each represents and warrants to the other the following: (a) each party has sole power and authority, respectively, to acquire and own or convey, as the case may be, the Premises;

(b) the execution and delivery of this Agreement by the persons so acting on Buyer's or Seller's behalf, respectively, have been authorized by all necessary formal action of each party, and this Agreement is the legal, valid and binding obligation of each party respectively, enforceable in accordance with its terms.

Section 6.2 Representations. (a) Buyer acknowledges and agrees that except as set forth herein, neither Seller nor any agent, employee, attorney or representative of Seller has made any statements, agreements, promises, assurances, representations or warranties, whether expressed, implied, or otherwise regarding the condition of the Premises, the suitability of the Premises for any uses or purposes contemplated by Buyer, the zoning of the

Premises, the right to occupy the Premises, the environmental condition of the Premises and/or any other aspect of or matter pertaining to the Premises or any other fact or matter whatsoever, whether pertaining to Seller, the Premises or otherwise. Buyer acknowledges that (a) it is acquiring the Premises in an "as is, where is" condition as of the Closing Date; (b) Seller shall not be responsible for making (or contributing in any way to the cost of making) changes or improvements to the Premises, or any other aspect of or matter pertaining to the Premises; and (c) in executing, delivering and performing its obligations under this Agreement, Buyer has not relied upon any statement, promise, representation or warranty to whomsoever made or given, directly or indirectly, orally or in writing, by any person or entity, except as specified herein. Buyer expressly waives any right of rescission and all claims for damages by reason of any statement, representation, warranty, assurance, promise, or agreement of any person, unless expressly contained in this Agreement. Buyer further releases and discharges Seller from any and all claims or causes of action which Buyer may now have or hereafter have against Seller, with respect to all costs, claims, expenses and causes of action, in connection with, or arising out of the condition of the Premises as of the Closing Date. The execution and delivery by Seller of, and the performance by Seller of Seller's obligations under, this Agreement does not conflict with or violate any other agreement or document to which Seller is a party or by which Seller is bound. Seller has not committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Premises or any interest therein to any party. No rights of first refusal regarding the Premises exist under the organizational documents of Seller or under any agreement by which Seller may be bound or affected. There are no unrecorded or undisclosed legal or equitable interests in the Premises owned or claimed by any party other than Seller. The Premises has a valid and subsisting certificate of occupancy for all the improvements located thereon for the use and occupancy thereof. As of the date hereof, there is no material work currently being performed at the Premises. All Personal Property and fixtures of any kind owned by Seller and attached to or used in connection with the ownership, maintenance, use, leasing, service, or operation of the Premises will be in the same condition at time of closing as presently existing,

subject to reasonable wear and tear, except for such repairs and/or noncompliance as would not materially adversely affect the use or operation of such Personal Property and fixtures. Other than loans, mortgages and contracts to be satisfied at Closing, there are no payables, guarantees, obligations, liabilities or other indebtedness that, are binding on or, affect the Premises. All representations set forth within this Section 6.2 (a) shall survive Closing for a one year period from the date of Closing.

(b) As of the date hereof, Seller has made available and provided access to Buyer of all copies of all environmental reports made to, by or on behalf of Seller or in its possession or under its control (the "Environmental Reports"). Except as set forth in such Environmental Reports and to the best of Seller's knowledge, Seller has no knowledge of, and Seller has not caused, the release, emission, presence, discharge or disposal of any Hazardous Materials (as hereinafter defined) on, under or at the Premises or any part thereof. Except as set forth in such Environmental Reports and to the best of Seller's knowledge, there are no underground or above ground storage tanks or any Hazardous Materials of any kind present at the Premises and to the best of Seller's knowledge, no mold conditions, mycotoxins, microbial matter, or other airborne pathogens, exist at, on, under or inside the Premises. Except as set forth in such Environmental Reports and to the best of Seller's knowledge, the Premises are in

compliance with all applicable Environmental Laws (as hereinafter defined). Such compliance includes, but is not limited to, the possession by Seller of all material licenses and other governmental authorizations required under relevant Environmental Laws, and material compliance with the terms and conditions thereof. Except as reflected in the Environmental Reports and to the best of Seller's knowledge, Seller has not received any communication (written or oral) whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Seller is not in full compliance with any relevant Environmental Laws or that there is an environmental matter or indoor air quality matter at, on, under, or inside the Premises that must be investigated or remediated, including, but not limited to, mold, mycotoxins, microbial matter (naturally occurring or otherwise), and there are no circumstances known to Seller that may prevent or interfere with such full compliance or cause such issues in the future. Except as disclosed by Seller to Buyer and except as set forth in the Environmental Reports, and to the best of Seller's knowledge, there are no known material environmental claims, actions, or causes of action pending or threatened against the Seller, the Premises or any person or entity for whom the Seller may have liability by law or contract. "Environmental Laws" means: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, 42 U.S.C. Section 9601 et seq.; (b) the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 et seq.; (c) the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended by the Clean Air Act Amendments of 1990; (d) the Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq.; (e) the Toxic Substances Control Act, 15 U.S.C.A. Section 2601 et seq.; (f) all other federal, state and local laws, or ordinances relating to pollution or protection of human health or the environment including without limitation, air pollution, water pollution, noise control, or the use, handling, discharge, disposal or release of Hazardous Materials; and (g) any and all regulations promulgated under or pursuant to any of the foregoing statutes. "Hazardous Materials" means any substance, material, or waste which is or becomes regulated, under any Environmental Laws, as hazardous to public health or safety or to the environment, including, but not limited to: (a) any substance or material designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq., or listed pursuant to Section 307 of the Clean Water Act, as amended; (b) any substance or material defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; (c) any substance or material defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq.; or (d) petroleum, petroleum products and petroleum waste materials, except, in each case, for substances, materials or wastes used in compliance with applicable laws.

(c) No bankruptcy, insolvency, rearrangement or similar action involving Seller, whether voluntary or involuntary, is pending or threatened, and Seller has never: (i) filed a voluntary petition in bankruptcy; (ii) been adjudicated a bankrupt or insolvent or filed a petition or action seeking any

reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Federal bankruptcy act or any other laws; (iii) sought or acquiesced in the appointment of any trustee, receiver or liquidator of all or any substantial part of its or his properties, the Premises, personal property or any portion thereof; or (iv) made an assignment for the

benefit of creditors or admitted in writing its or his inability to pay its or his debts generally as the same become due Seller is not anticipating or contemplating any of the actions set forth in (i) through (iv) of this subsection.

Section 6.3 Leases and Agreements. Seller represents to Buyer the following:

(a) The Building is vacant and there are no leases or other rights of occupancy in effect with respect to the Premises.

(b) There are no material agreements with respect to the maintenance or operation of the Premises which will survive the Closing. All service contracts and agreements relating to the premises will be terminated prior to Closing. All representations set forth within this Section 6.3 (a) and (b) shall survive Closing for a one year period from the date of Closing.

Section 6.4 Operation of Premises. Between the date hereof and the Closing, Seller shall continue to operate and maintain the Premises in normal course, including providing the same security that currently exists for the Premises, and shall be entitled to retain any income therefrom. Seller shall not have the right to lease any portion of the Premises. Seller shall, until closing, maintain casualty insurance in the same amount and under the same terms that currently exist on the Premises.

Section 6.5 Transfer Act. Buyer acknowledges that Seller has determined that the Premises constitute an "establishment" pursuant to Connecticut General Statutes Section 22a-134 et seq. (the "Transfer Act"). Seller shall (a) provide Buyer with a completed, executed Environmental Condition Assessment Form and an acknowledged Form III or Form IV filing (together with the applicable filing fee), and (b) otherwise comply with the Transfer Act in connection with the conveyance of the Premises; provided however, that (i) at the Closing, Buyer shall execute the certification provision of such Form III or Form IV filing, and (ii) Seller shall have no post-closing obligations or liability with respect to the Transfer Act.

Section 6.6 Seller shall not, without the prior written consent of Buyer, encumber any of the Premises unless such encumbrance is to be released at or prior to Closing.

Section 6.7 Seller shall not, without the prior written consent of Buyer, enter into any lease or other agreement in any manner in connection with the occupancy of any of the Premises.

Section 6.8 Seller shall promptly advise Buyer in writing of any material adverse change in the Premises known to Seller.

Section 6.9 Seller shall not solicit, negotiate or accept any offers to purchase any of the Premises from any party other than Buyer and not market the Premises to any other parties, and not engage or cause any broker, and any other agent or representative, to conduct such activity.

ARTICLE 7

Condemnation and Casualty by Fire or Other Hazard.

Section 7.1 Immaterial Casualty or Taking. If (a) an immaterial part of the Building is damaged by fire or other casualty, or (b) an immaterial part of the Premises is taken by eminent domain, this Agreement shall not be affected thereby and there shall be no reduction in the Purchase Price. Seller shall then assign to Buyer at the Closing all rights to any insurance proceeds or condemnation awards and Buyer shall accept an assignment of all of Seller's

claims or rights to receive any insurance proceeds or condemnation awards. If and to the extent that Seller shall have received any such insurance proceeds or condemnation award prior to the Closing Date, Seller shall pay over to Buyer at the Closing the net amount received by Seller. In any event, the assignment shall be reduced by the costs incurred by Seller as a result of the condemnation or casualty, including, without limitation reasonable counsel fees and reasonable costs of interim protection, appraisals, repair and restoration.

Section 7.2 Material Taking or Casualty. If all or a material part of the Premises is taken by eminent domain or damaged by casualty, Buyer may cancel this Agreement by notice to Seller given not later than ten (10) days after receipt of notice of such taking or casualty and, in such event, this Agreement shall be cancelled and terminated; the Escrow Agent shall refund to Buyer the Deposit; and neither party shall have any further liability to the other hereunder. If Buyer does not cancel this Agreement, the Closing shall occur as scheduled, and the provisions of Section 7.1 herein shall control.

Section 7.3 Definitions of Material and Immaterial. For purposes of this Article, a material part of the Premises shall be deemed to have been damaged by casualty if the estimated cost to repair the damage shall exceed $; otherwise the damage shall be deemed to be immaterial. A material part of the Premises shall be deemed to have been taken by eminent domain if (a) less than square feet of retail space may be constructed on the Land, upon demolition of the existing building, or (b) access to the Premises shall be materially impaired; otherwise the taking shall be deemed immaterial.

ARTICLE 8

Seller's Closing Obligations.

At the Closing, Seller shall deliver the following to Buyer:

(a) A special covenant warranty deed, executed in proper form for recording so as to convey the title required by this Agreement;

(b) Such affidavits as Buyer's title company shall reasonably require including without limitation, in order to omit from its title insurance policy all exceptions for tenants (other than those provided herein) and for unrecorded mechanics' liens, together with a certification that Seller is not a "foreign person" pursuant to Section 1445 of the Internal Revenue Code;

(c) Checks to the order of the appropriate officers in payment of all applicable conveyance taxes;

(d) Schedules certified correct by Seller containing the information required to calculate the apportionments described in Article 10 herein; and

(e) All other documents required by this Agreement or reasonably required by Buyer (at Buyer's cost and expense) to be delivered by Seller.

ARTICLE 9

Buyer's Closing Obligations.

At the Closing, Buyer shall:

(a) Deliver to Seller funds, complying with Section 2.3, in payment of the portion of the Purchase Price payable at the Closing and items apportioned pursuant to Article 10 herein;

(b) Cause the deed to be recorded and cause all conveyance tax returns and checks in payment of such taxes (which are Seller's responsibility to pay at Closing) to be delivered to the appropriate officers having jurisdiction over the Premises promptly after the Closing;

(c) Execute and deliver the Form described in Section 6.5 herein; and

(d) Deliver all other documents required by this Agreement to be delivered by Buyer.

ARTICLE 10

Apportionments at Closing.

Section 10.1 Items of Apportionment. The following items shall be apportioned between the parties and paid at the Closing:

(a) real estate and all other taxes not paid by Buyer, and sewer and other assessments and charges levied against or with respect to the operation of the Premises and the property and equipment therein which is included in this sale; and

(b) all utilities.

Section 10.2 Mistakes in Apportionments. Any error in calculation or payment of the items apportioned at Closing shall be corrected promptly upon discovery of the error. The foregoing obligation of the parties hereto shall survive for a period of six (6) months subsequent to the Closing. ARTICLE 11 Broker. The parties represent to each other that no broker or agent was, in any way, the procuring cause of this sale and purchase. Each party shall indemnify and hold harmless the other against any liability resulting from the indemnifying party's breach of such representation or covenant herein, said indemnity to include all costs of defending any claim of a broker or agent, including reasonable counsel fees. The provisions of this Section shall survive the Closing or, if the Closing does not occur, the termination of this Agreement.

ARTICLE 12

Default by the Parties and Indemnification.

Section 12.1 Seller's Default. In the event of a default by Seller under this Agreement, Buyer shall have the right to either (a) bring an action for specific performance; or (b) to terminate the Contract, receive the Deposit and be entitled to (i) its actual, out-of-pocket costs in connection with this Agreement, (ii) reasonable attorney's fees and (iii) additional damages up to a maximum of $.

Section 12.2 Buyer's Default. If Buyer fails to perform any of its obligations set forth in this Agreement, Buyer shall forfeit all claims to the Premises described herein, and the Deposit shall be construed as liquidated damages to and paid by the Escrow Agent to and retained by Seller. The actual tender of the deed shall not be necessary if Buyer has clearly indicated, prior to the date of Closing, that it will not or cannot make the payments agreed upon for a reason other than the default of Seller. In the event of such default, Buyer waives any right to claim the return of any portion of the Deposit, despite the reason for the default and/or the amount of actual damages incurred by Seller. Notwithstanding the foregoing, Seller shall have no right to allege that Buyer has wrongfully terminated this Agreement and Seller shall not be entitled to the Deposit or any damages arising out of Buyer's termination of this Agreement, if, after using commercially reasonable efforts and proceeding in good faith to receive the Governmental Approvals, Buyer concludes, in its good faith discretion, that (1) it shall not be able to obtain the Governmental Approvals in the time periods contemplated by this Agreement, or (2) that the on and off site improvement costs contemplated by the Buyer shall exceed ($.) Dollars as a result of

costs imposed by the Governmental Approvals, and as a result of any such occurrence, Buyer exercises its right to terminate this Agreement.

Section 12.3 Assumption and Indemnification. Buyer shall execute and deliver to Seller, at the Closing, an agreement or agreements pursuant to which Buyer shall acknowledge that, except as specified in this Agreement, it has accepted the Premises without any representation, warranty or covenant, express, implied or statutory, of any kind whatsoever.

ARTICLE 13

Notices

Section 13.1 Form and Addresses.

(a) Except as otherwise specifically provided in this Agreement, all notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be deemed to have been properly given when delivered in person or by overnight or similar courier service, addressed to the party to be notified at its address first above set forth or to such other address as such party shall have specified most recently by like notice.

(b) Notices to Seller shall be sent to the attention of Michael A. Blumenthal. At the same time any Notice is given to Seller, a copy thereof shall be sent as provided above to:

(c) Notices to Buyer shall be sent to the attention of . At the same time any notice is given to Buyer, a copy thereof shall be sent as provided above to:

ARTICLE 14

Assignment and Access to Premises.

Section 14.1 Assignment. Buyer shall not assign this Agreement without the prior written consent of Seller, and any assignment in violation of this Agreement shall be null and void. Anything herein to the contrary notwithstanding, Buyer may assign this Agreement to an entity in which Buyer or an affiliate of Buyer or or an affiliate thereof, individually or collectively, owns not less than 50% of the equity interests, without Seller's consent but on prior notice to Seller.

Section 14.2 Access. Seller shall permit Buyer and Buyer's representatives, upon reasonable notice, to enter the Premises at reasonable hours for the purpose of inspecting the Premises and conducting examinations thereof prior to Closing, provided that same shall not interfere with Seller's use and occupancy of the Premises. Buyer shall restore the Premises to their condition prior to the making of any borings or tests if such borings or tests are made. Buyer shall indemnify and hold Seller harmless with respect to any damage other than normal wear and tear to the Premises and claims for damage made against Seller as the result of any of Buyer's activities on the Premises prior to the Closing.

ARTICLE 15

Survival and Delivery of Deed.

Section 15.1 Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants or other obligations of Seller set forth in this Agreement shall survive the Closing, and no action based thereon shall be commenced after the Closing.

Section 15.2 Delivery of Deed. The delivery of the deed by Seller, and the acceptance thereof by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing.

ARTICLE 16

Miscellaneous Provisions.

Section 16.1 Entire Understanding. This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

Section 16.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Connecticut.

Section 16.3 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

Section 16.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

Section 16.5 Construction. As used in this Agreement, the singular shall include the plural and the plural shall include the singular, as the context may require. Each and every provision of this Agreement has been mutually negotiated, prepared and drafted, each party has been represented by legal counsel, and, in connection with the construction of any provision hereof or deletions herefrom, no consideration shall be given to the issue of which party actually negotiated, prepared, drafted or requested any provision or deletion.

Section 16.6 Execution and Delivery. Delivery of this Agreement for inspection or otherwise by Seller to Buyer and/or its attorneys shall not constitute an offer or create any rights in favor of Buyer or others and shall in no way obligate or be binding upon Seller, and this Agreement shall have no force or effect unless and until the same is fully executed and delivered by the parties and fully executed copies exchanged by the parties hereto.

Section 16.7 Exhibits. If the provisions of any Exhibit to this Agreement are inconsistent with the provisions of this Agreement, the provisions of such Exhibit shall prevail.

Section 16.8 No Assumption of Liabilities. Notwithstanding any provision contained in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of assets and none of the provisions hereof shall be deemed to create any obligation or liability of any party to any person or entity that is not a party to this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise. Except as specifically provided otherwise in this Agreement, Buyer shall not assume and shall not discharge or be liable for any debts, liabilities or obligations of Seller including, but not limited to, any (a) liabilities or obligations of Seller to its creditors, shareholders or owners, (b) liabilities or obligations of the Seller with respect to any acts, events or transactions occurring prior to, on or after the Closing, (c) liabilities or obligations of the Seller for any federal, state, county or local taxes, except as set forth elsewhere in this Agreement; or (d) any contingent liabilities or obligations of Seller, whether known or unknown by the Seller or Buyer. Except as otherwise provided in this Agreement, Buyer shall have no duty whatsoever to take any action or receive or make any payment or credit arising from or related to any services provided or costs incurred in connection with the management and operation of the Premises or any business conducted on the Premises prior to the Closing, including, but not limited to, any matters relating to cost reports, collections, audits, hearings, or legal action arising there from.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

SELLER: FARM TECH CORPORATION

By:

BUYER:

By:

Escrow Terms Agreed To:

By:

, Partner

EXHIBIT A

Land

EXHIBIT B

Permitted Exceptions to Title

1. Water user charges due The Metropolitan District.

2. Riparian rights of others in and to a brook crossing the Premises.

3. Such state of facts as is shown on a map filed in Map Cabinet 67, Map Number 4846 in the Office of the Farmington Town Clerk.

4. Obligations contained in Easement Agreement by and between Professional Park Associates and Stauffer Chemical Company dated March 13, 1980 and recorded in Volume 280, Page 275 of the Farmington Land Records (FLR), as amended by Amendment of Easement Agreement dated June 13, 1981 and recorded in Volume 282, Page 832 of the FLR.

5. AS TO PARCEL NO. 1

   (a) Right of Way Agreement front Julia M. Collins, et al in favor of Northeastern Gas Transmission Company dated September 11, 1953 and recorded in Volume 115, Page 1 of the FLR, as amended by instrument by and between Oread Biosafety, Inc. and Tennessee Gas Pipeline Company dated August 5, 1999 and recorded in Volume 607, Page 528 of the FLR.

   (b) Easement in favor of The Connecticut Power Company dated December 15, 1953 and recorded in Volume 116, Page 69 of the FLR, and as shown on maps filed in Map Volume 57, Map Numbers 10 and 29 in the Office of the Farmington Town Clerk.

   (c) Caveat from James M. Collins, et al in favor of The Water Bureau of The Metropolitan District dated June 27, 1967 and recorded in Volume 184, Page 451 of the FLR.

   (d) Right-of-way reserved in Warranty Deed from James M. Collins, et al to James S. Minges dated August 6, 1973 and recorded in Volume 224, Page 408 of the FLR, and as shown on the map filed in Map Cabinet 60, Map Number 3981 in the Office of the Farmington Town Clerk.

   (e) Easements and right set forth in Certificate of Condemnation by the State of Connecticut dated January 18, 1990 and recorded in Volume 406, Page 465 of the FLR, and as shown on a map filed in Map Cabinet 64, Map 4407 in the Office of the Farmington Town Clerk.

6. AS TO PARCEL NO.2

   (a) Easement set forth in Declaration by James S. Minges and The Society For Savings dated May 26, 1971 and recorded in Volume 205, Page 142 of the FLR, and as shown on the map filed in Map Cabinet 47, Map Number 2914 in the Office of the Farmington Town Clerk.

   (b) Grants of Easements from First Newport Realty Investors to Edward H. Warner, et al, Trustees of Wachovia Realty Investments

dated as of May 3, 1977 and recorded in Volume 254, Page 98 and Volume 254, Page 117 of the FLR, and as shown on map filed in Map Cabinet 52, Map Number 3254 in the Office of the Farmington Town Clerk.

(c) Grant of Easements from First Newport Realty Investors to Talcott Forest Associates dated as of May 3, 1977 and recorded in Volume 254, Page 306 of the FLR, and as shown on the map filed in Map Cabinet 52, Map Number 3254 in the Office of the Farmington Town Clerk.

(d) Easements and right set forth in Certificate of Condemnation by the State of Connecticut dated January 18, 1990 and recorded in Volume 406, Page 465 of the FLR, and as shown on the map filed in Map Cabinet 64, Map Number 4407 in the Office of the Farmington Town Clerk.

(e) Obligations as set forth in Warranty Deed from Stauffer Chemical Company to Professional Park Associates recorded March 13, 1981 in Volume 280, Page 271 of the FLR.

7. AS TO PARCEL NO. 3

(a) Easement in favor of The Connecticut Power Company dated December 15, 1953 and recorded in Volume 116, Page 69 of the FLR, and as shown on map filed in Map Volume 57, Map Numbers 10 and 29 in the Office of the Farmington Town Clerk.

(b) Grant of Easements from First Newport Realty Investors to Edward H. Warner, et al, as Trustees of Wachovia Realty Investments dated as of May 3, 1977 and recorded in Volume 254, Page 117 of the FLR, and as shown on map filed in Map Cabinet 52, Map Number 3254 in the Office of the Farmington Town Clerk.

(c) Grant of Easements from First Newport Realty Investors to Talcott Forest Associates dated as of May 3, 1977 and recorded in Volume 254, Page 306 of the FLR, and as shown on map filed in Map Cabinet 52, Map Number 3254 in the Office of the Farmington Town Clerk.

(d) Obligations as set forth in Warranty Deed From Stauffer Chemical Company to Professional Park Associates recorded March 13, 1981 in Volume 280, Page 271 of the FLR.

8. AS TO APPURTENANT EASEMENTS

(a) Terms and conditions set forth in Grant of Easements from Edward H. Warner, et al, as Trustees of Wachovia Realty Investments to First Newport Realty Investors dated as of May 3, 1977 and recorded in Volume 254, Page 88 of the FLR.

(b) Terms and conditions set forth in Grant of Easements from Talcott Forest Associates to First Newport Realty Investors dated as of May 3, 1977 and recorded in Volume 254, Page 327 of the FLR.

(c) Terms and conditions set forth in Grant of Easement from First Newport Realty Investors to Stauffer Chemical Company dated March 27, 1978 and recorded in Volume 260, Page 45 of the FLR.

Terms and conditions set forth in Easement Agreement by and between Professional Park Associates and Stauffer Chemical Company dated March 13, 1980 and recorded in Volume 280, Page 275 of the FLR, as amended by Amendment of Easement Agreement dated June 13, 1981 and recorded in Volume

EXHIBIT 14.1

EMISPHERE TECHNOLOGIES, INC.

CODE OF BUSINESS CONDUCT AND ETHICS FOR DIRECTORS

The Board of Directors (the "Board") of Emisphere Technologies, Inc. ("Emisphere") has adopted a Code of Business Conduct and Ethics (the "Code") for members of the Board. The members of the Board acknowledge and accept their role as a strategic asset of Emisphere, measured by the contributions made collectively and individually towards the long term success of the enterprise.

The members of the Board are expected to carry out their duties with integrity and within the scope of their authority, as set forth in Emisphere's By Laws. Directors are entrusted with the oversight of Emisphere's assets and business affairs. The Board's key responsibilities include: Knowing and understanding Emisphere's business; providing intellectual capital; establishing high standards and goals for executive management; enhancing decision making by bringing knowledge, rigorous analysis and constructive engagement to the process; energizing the leadership team by empowering and holding management accountable and responsible for operating within a high performance framework; helping to attract top leadership talent; constructively engaging in strategic issues through both attention and involvement; creatively linking executive management's compensation to the creation and enhancement of shareholder value; acting within the bounds of the authority conferred upon them and making informed decisions and policies in the best interest of Emisphere and its shareholders.

In carrying out these responsibilities, Board members will:

- Comply with all applicable laws, rules and regulations of federal, state, provincial and local governments, and all other applicable private and public regulatory agencies.

- Engage in honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships.

- Promote full, fair, accurate, timely and understandable disclosure in reports and documents that the Emisphere files with, or submits to, the Securities and Exchange Commission and in other public communications made by Emisphere.

- Act in the best interests of, and fulfill their fiduciary obligations to Emisphere's shareholders.

- Act in good faith, responsibly and with due care, with competence and diligence, without misrepresenting material facts or allowing one's independent judgment to be subordinated.

- Act with honesty and integrity, avoiding actual or apparent conflicts of interest in personal and professional relationships.

- Proactively promote and be an example of ethical behavior as a responsible partner among peers, in the work environment, and the community. Disclose potential conflicts of interests, promote ethical behavior, and encourage an environment which encourages openness and candor and the reporting of observed illegal or unethical behavior.

- Share information with fellow Directors as appropriate, to ensure proper conduct and sound operation of the Board, collectively.

- Exercise sound business judgment and practical wisdom, based on experience and expertise.

- Share knowledge and maintain skills important and relevant to stake holder's needs; work effectively with others through mutual respect.

- Respect the confidentiality of information relating to the affairs of Emisphere acquired in the course of service as Director, except when authorized or otherwise legally required to disclose such information; confidential information acquired in the course of one's work will not be used for personal advantage.

- Promptly report to Emisphere's legal counsel and/or the Chairman of the Audit Committee any conduct that the individual believes to be a violation of law or business ethics or of any provision of the Code of Business Conduct and Ethics, including any transactions or relationship that reasonably could be expected to give rise to such a conflict.

- Determine appropriate actions to be taken in the event of violations of this Code.

A Director who has concerns or questions regarding compliance with this Code should raise those concerns with the Chairman of the Board and the Chair of the Audit Committee, who will determine what action should be taken to address the concern, and will also cause this Code to be enforced. Directors will sign a confirmation that they have read and will comply with this Code. Any waiver of this Code may be made only by the Board and will be promptly publicly disclosed. Directors are encouraged to bring questions about particular circumstances that may involve one or more of the provisions of this Code to the attention of the Chair of the Audit Committee, who may consult with legal counsel as appropriate.

EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (File Nos. 33-44516, 33-46026, 33-62226, 33-88598, 333-02751, 333-29981, 333-52457, 333-75065, 333-34188, 333-54200 and 333-101525) of Emisphere Technologies, Inc., of our report dated February 11, 2004, relating to the financial statements of Emisphere Technologies, Inc., which appears in this Form 10-K.

PricewaterhouseCoopers LLP

New York, New York
March 26, 2004

EXHIBIT 31.1

CERTIFICATION

I, Michael M. Goldberg, M.D., certify that:

1. I have reviewed this annual report on Form 10-K of Emisphere Technologies, Inc;

2. Based on my knowledge, this annual report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within that entity, particularly during the period in which this annual report is being prepared;

    b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual report, based on such evaluation; and

    c) Disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors:

    a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls.

/S/ Michael M. Goldberg, M.D.

Michael M. Goldberg, M.D.
Chairman and CEO
March 29, 2004

EXHIBIT 31.2

CERTIFICATION

I, Elliot M. Maza, certify that:

1. I have reviewed this annual report on Form 10-K of Emisphere Technologies, Inc;

2. Based on my knowledge, this annual report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within that entity, particularly during the period in which this annual report is being prepared;

    b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this annual, based on such evaluation; and

    c) Disclosed in this annual report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors:

    a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls.

/S/ Elliot M. Maza

Elliot M. Maza
Chief Financial Officer
March 29, 2004

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Emisphere Technologies, Inc. (the "Company") on Form 10-K for the year ended December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael M. Goldberg, as Chief Executive Officer of the Company, certify, pursuant to and for the purpose of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael M. Goldberg, M.D.

Michael M. Goldberg, M.D.
Chief Executive Officer
March 29, 2004

A signed original of this written statement required by Section 906 has been provided to Emisphere Technologies, Inc. and will be retained by Emisphere Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Emisphere Technologies, Inc. (the "Company") on Form 10-K for the year ended December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Elliot M. Maza, as Principal Financial Officer of the Company, certify, pursuant to and for the purpose of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Elliot M. Maza

Elliot M. Maza
Chief Financial Officer
March 29, 2004

A signed original of this written statement required by Section 906 has been provided to Emisphere Technologies, Inc. and will be retained by Emisphere Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.