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As filed with the Securities and Exchange Commission on , 2013
Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

EVOKE PHARMA, INC.
(Exact name of registrant as specified in its charter)

Delaware	**2834**	**20-8447886**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

308 N. Sierra Ave.
Solana Beach, CA 92075
(760) 487-1255

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

David A. Gonyer, R.Ph.
President and Chief Executive Officer
Evoke Pharma, Inc.
308 N. Sierra Ave.
Solana Beach, CA 92075
(760) 487-1255

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Scott N. Wolfe, Esq. **Cheston J. Larson, Esq.** **Matthew T. Bush, Esq.** **Latham & Watkins LLP** **12636 High Bluff Drive, Suite 400** **San Diego, CA 92130** **(858) 523-5400**	**Matthew J. D'Onofrio** **Executive Vice President, Chief Business Officer** **Evoke Pharma, Inc.** **308 N. Sierra Ave.** **Solana Beach, CA 92075** **(760) 487-1255**	**Jeffrey J. Fessler, Esq** **Marcelle Balcombe, Esq.** **Sichenzia Ross Friedman Ference LLP** **61 Broadway, 32nd Floor** **New York, New York 10006** **(212) 930-9700**

Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement is declared effective.

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	**Accelerated filer**	☐
Non-accelerated filer	☒	**Smaller reporting company**	☐
(Do not check if a smaller reporting company)			

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	**Proposed Maximum Aggregate Offering Price (1)**	**Amount of Registration Fee (2)**
Common Stock, $0.0001 par value per share (3)	$	$
Representative's Warrant to Purchase Common Stock (4)		
Common Stock Underlying Representative's Warrant (3)(5)		

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.
(3) Pursuant to Rule 416 under the Securities Act, the shares of common stock registered hereby also include an indeterminate number of additional shares of common stock as may from time to time become issuable by reason of stock splits, stock dividends, recapitalizations or other similar transactions.
(4) No registration fee pursuant to Rule 457(g) under the Securities Act.
(5) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. The warrants are exercisable at a per share exercise price equal to 175% of the public offering price. As estimated solely for the purpose of recalculating the registration fee pursuant to Rule 457(g) under the Securities Act, the proposed maximum aggregate offering price of the representative's warrant is $ (which is equal to 4% of $).

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities or the solicitation of an offer to buy these securities in any state in which such offer, solicitation or sale is not permitted.

PRELIMINARY PROSPECTUS SUBJECT TO COMPLETION DATED APRIL 19, 2013

Shares
Common Stock

This is a firm commitment initial public offering of our common stock. No public market currently exists for our common stock. We are offering all of the shares of common stock offered by this prospectus. We expect the public offering price to be between $ and $ per share.

We have applied to list our common stock on The NASDAQ Capital Market under the symbol "EVOK."

We are an emerging growth company as that term is used in the Jumpstart Our Business Startups Act of 2012, and, as such, we have elected to take advantage of certain reduced public company reporting requirements for this prospectus and future filings

Before investing in our common stock, you should carefully read the discussion of "Risk Factors" beginning on page 9.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public offering price	$	$
Underwriting discounts and commissions(1)	$	$
Proceeds to us, before expenses	$	$

(1) The underwriters will receive compensation in addition to the underwriting discount. See "Underwriting" beginning on page 110.

We have granted a 30-day option to the representative of the underwriters to purchase up to additional shares of common stock solely to cover over-allotments, if any.

The underwriters are offering the common stock as set forth under "Underwriting." Delivery of the shares will be made on or about , 2013.

Aegis Capital Corp

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Neither we nor the underwriters have authorized anyone to provide you with information that is different from that contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. When you make a decision about whether to invest in our common stock, you should not rely upon any information other than the information in this prospectus or in any free writing prospectus that we may authorize to be delivered or made available to you. Neither the delivery of this prospectus nor the sale of our common stock means that the information contained in this prospectus or any free writing prospectus is correct after the date of this prospectus or such free writing prospectus. This prospectus is not an offer to sell or the solicitation of an offer to buy the shares of common stock in any circumstances under which the offer or solicitation is unlawful.

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations and market position, market opportunity and market share, is based on information from our own management estimates and research, as well as from industry and general publications and research, surveys and studies conducted by third parties. Management estimates are derived from publicly available information, our knowledge of our industry and assumptions based on such information and knowledge, which we believe to be reasonable. Our management estimates have not been verified by any independent source, and we have not independently verified any third-party information. In addition, assumptions and estimates of our and our industry's future performance are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from our assumptions and estimates. See "Special Note Regarding Forward-Looking Statements."

We use our registered trademark, EVOKE PHARMA, in this prospectus. This prospectus also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this prospectus appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. You should read this entire prospectus carefully, especially the section in this prospectus entitled "Risk Factors" beginning on page 9 and our financial statements and the related notes thereto appearing at the end of this prospectus, before making an investment decision. As used in this prospectus, unless the context otherwise requires, references to "we," "us," "our," "our company" and "Evoke" refer to Evoke Pharma, Inc.

Overview

We are a specialty pharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. We are developing EVK-001, a metoclopramide nasal spray for the relief of symptoms associated with acute and recurrent diabetic gastroparesis in women with diabetes mellitus. Diabetic gastroparesis is a GI disorder afflicting millions of sufferers worldwide, in which the stomach takes too long to empty its contents resulting in serious digestive system symptoms. Metoclopramide is the only product currently approved in the United States to treat gastroparesis, and is currently available only in oral and intravenous forms. EVK-001 is a novel formulation of this drug, designed to provide systemic delivery of metoclopramide through intranasal administration.

Gastroparesis

Gastroparesis is a condition of delayed gastric emptying in the absence of mechanical obstruction. Gastroparesis results in food remaining in the stomach for a longer time than normal, yielding a variety of symptoms. Gastroparesis is a common problem in individuals with diabetes, but also is observed in patients with prior gastric surgery, a preceding infectious illness, pseudo-obstruction, collagen vascular disorders and anorexia nervosa. According to the American Motility Society Task Force on Gastroparesis, the prevalence of gastroparesis is as high as 4% to 6% of the United States population. Symptoms of gastroparesis include nausea, vomiting, abdominal pain, bloating, early satiety, lack of appetite, and weight loss. The disorder can lead to considerable pain and discomfort, poor nutrition, impaired glycemic control and diminished quality of life. According to a 2008 study published in the *American Journal of Gastroenterology*, it is estimated that hospitalization costs associated with gastroparesis exceed $3.5 billion annually.

EVK-001: Metoclopramide Nasal Spray

We believe intranasal administration has the potential to offer our target gastroparesis patients a preferred treatment option because, unlike oral metoclopramide, EVK-001 is designed to effectively bypass the digestive system and allow for more predictable drug administration of our proprietary nasal spray formulation across the thin mucosa in the nasal cavity. Intranasal drug delivery effectively bypasses the gut, unlike oral formulations which might be delayed in absorption due to gastroparesis itself. For patients suffering from nausea and vomiting, EVK-001 is designed to allow for rapid and predictable drug administration.

We have evaluated EVK-001 in a multicenter, randomized, double-blind, placebo-controlled parallel group, dose-ranging Phase 2b clinical trial in 287 patients with diabetic gastroparesis where EVK-001 was observed to be effective in improving the most prevalent and clinically relevant symptoms associated with gastroparesis in women while exhibiting a favorable safety profile.

We plan to initiate a Phase 3 trial of EVK-001 in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in the second half of 2013.

Our Strategy

Our objective is to develop and bring to market products to treat acute and chronic GI motility disorders that are not satisfactorily treated with current therapies and that represent significant market opportunities. Our business strategy is to:

- continue development and pursue regulatory approval for EVK-001;

- seek partnerships to accelerate and maximize the potential for EVK-001;
- explore building in-house capabilities to potentially commercialize EVK-001 in the United States;
- explore regulatory approval of EVK-001 outside the United States; and
- evaluate the development and/or commercialization of other therapies for GI motility disorders.

Risks Related to Our Business

Our ability to implement our business strategy is subject to numerous risks, as more fully described in the section entitled "Risk Factors" immediately following this prospectus summary. These risks include, among others:

- Our business is entirely dependent on the success of a single product candidate, EVK-001, which has not yet entered a Phase 3 clinical trial; and we cannot be certain that we will be able to obtain regulatory approval for, or successfully commercialize, EVK-001.
- The results observed in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in our Phase 2b clinical trial of EVK-001 may not be predictive of the safety and efficacy results in our planned Phase 3 clinical trial.
- We will require substantial additional funding and may be unable to raise capital when needed, which would force us to suspend our planned Phase 3 clinical trial and otherwise delay, reduce or eliminate our development program for EVK-001.
- We have no approved products and no product revenue to date, and we may never become profitable. Our recurring losses from operations have raised substantial doubt regarding our ability to continue as a going concern.
- We face significant competition from other pharmaceutical companies, and we anticipate that EVK-001, if approved, would compete directly with metoclopramide, erythromycin and domperidone. Each of these products is available under various trade names sold by several major pharmaceutical companies, including generic manufacturers.
- It is difficult and costly to protect our intellectual property rights, and we cannot ensure the protection of these rights; any impairment of our intellectual property rights would materially affect our business.
- We currently have only two full-time employees, and therefore rely and will continue to rely on outsourcing arrangements for many of our activities, including clinical development and supply of EVK-001.

Corporate Information

Our principal executive offices are located at 308 N. Sierra Ave., Solana Beach, CA 92075, and our telephone number is (760) 487-1255. Our website address is *www.evokepharma.com*. The information contained in, or accessible through, our website does not constitute part of this prospectus.

Implications of being an Emerging Growth Company

As a company with less than $1.0 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act, or JOBS Act, enacted in April 2012. An "emerging growth company" may take advantage of reduced reporting requirements that are otherwise applicable to public companies. These provisions include, but are not limited to:

- being permitted to present only two years of audited financial statements and only two years of related Management's Discussion & Analysis of Financial Condition and Results of Operations in this prospectus;

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We may take advantage of these provisions until the last day of our fiscal year following the fifth anniversary of the date of the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act of 1933, as amended, or the Securities Act, which such fifth anniversary will occur in 2018. However, if certain events occur prior to the end of such five-year period, including if we become a “large accelerated filer,” our annual gross revenues exceed $1.0 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to the end of such five-year period.

We have elected to take advantage of certain of the reduced disclosure obligations and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

The Offering

Common stock offered by us	shares
Common stock to be outstanding after this offering	shares
Over-allotment option	The underwriters have an option for a period of 30 days to purchase up to additional shares of our common stock to cover over-allotments.
Use of proceeds	We intend to use the net proceeds of this offering for research and development activities for EVK-001, including our planned Phase 3 clinical trial of EVK-001, and for working capital and other general corporate purposes. See “Use of Proceeds” on page 33.
Risk factors	You should read the “Risk Factors” section starting on page 9 of this prospectus for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.
Proposed NASDAQ Capital Market Symbol	EVOK

The number of shares of our common stock to be outstanding after this offering is based on 18,408,818 shares of our common stock outstanding as of December 31, 2012 and excludes:

- 616,250 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2012, at a weighted-average exercise price of $0.079 per share;
- shares of our common stock reserved for future issuance under our 2013 equity incentive plan, or the 2013 plan, which will become effective immediately prior to the closing of this offering;
- shares of common stock reserved for future issuance under our 2013 employee stock purchase plan, or ESPP, which will become effective upon the closing of this offering;
- 70,000 shares of common stock issuable upon exercise of warrants outstanding as of December 31, 2012, at a weighted-average exercise price of $1.50 per share; and
- shares of common stock issuable upon exercise of a warrant to be issued to the representative in connection with this offering, at an exercise price per share equal to 175% of the public offering price.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- the filing of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws, which will occur immediately prior to the closing of this offering;
- the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 12,195,068 shares of our common stock immediately prior to the closing of the offering;
- the adjustment of outstanding warrants to purchase shares of our Series A convertible preferred stock into warrants to purchase 70,000 shares of common stock upon the closing of this offering;

- a one-for- reverse stock split of our common stock to be effected before the completion of this offering;
- no exercise of the outstanding options or warrants described above; and
- no exercise by the underwriters of their option to purchase additional shares of our common stock to cover over-allotments, if any.

Summary Financial Data

The following tables set forth a summary of our historical financial data as of, and for the period ended on, the dates indicated. We have derived the statements of operations data for the years ended December 31, 2011 and 2012 and the period from January 29, 2007 (Inception) to December 31, 2012 and the balance sheet data as of December 31, 2012 from our audited financial statements appearing elsewhere in this prospectus. You should read this data together with our audited financial statements and related notes appearing elsewhere in this prospectus and the sections in this prospectus entitled "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our historical results for any prior period are not necessarily indicative of our future results.

	Years Ended December 31,		Period From January 29, 2007 (Inception) to December 31, 2012
	2011	2012	
Statement of Operations Data:			
Operating expenses:			
Research and development	$ 1,844,044	$ 1,165,645	$ 15,991,529
General and administrative	570,524	836,781	3,304,533
Purchase of in-process research and development	—	—	650,000
Total operating expenses	2,414,568	2,002,426	19,946,062
Loss from operations	(2,414,568)	(2,002,426)	(19,946,062)
Total other income (expense)	13,324	(15,102)	91,059
Net loss and comprehensive loss	$(2,401,244)	$ (2,017,528)	$ (19,855,003)
Net loss per common share, basic and diluted[(1)]	$ (0.44)	$ (0.36)	
Weighted-average shares used to compute basic and diluted net loss per share[(1)]	5,513,125	5,620,000	
Pro forma net loss per common share, basic and diluted (unaudited)[(1)]		$ (0.11)	
Weighted-average shares used to compute pro forma net loss per common share, basic and diluted (unaudited)[(1)]		17,815,068	

(1) See Note 2 to our to our audited financial statements included elsewhere in this prospectus for an explanation of the method used to calculate the historical and pro forma net loss per share, basic and diluted, and the number of shares used in the computation of the per share amounts.

	As of December 31, 2012		
	Actual	Pro Forma[1]	Pro Forma As Adjusted[1][2]
Balance Sheet Data:			
Cash and cash equivalents	$ 116,013	$ 116,013	$
Working capital (deficit)	(454,396)	(454,396)	
Total assets	116,013	116,013	
Current liabilities (including warrant liability)	570,409	514,409	
Long-term debt, net of debt discount	979,792	979,792	
Convertible preferred stock	18,225,166	—	
Accumulated deficit	(19,855,003)	(19,855,003)	
Total stockholders' deficit	(19,659,354)	(1,378,188)	

(1) Gives effect to the automatic conversion of all of our outstanding shares of convertible preferred stock as of December 31, 2012 into an aggregate of 12,195,068 shares of common stock, and the adjustment of our outstanding warrants to purchase Series A convertible preferred stock into warrants to purchase 70,000 shares of our common stock immediately prior to the closing of this offering, and the resultant reclassification of our convertible preferred stock and convertible preferred stock warrant liability to additional paid-in capital, a component of stockholders' deficit.

(2) Gives further effect to the issuance and sale of shares of common stock in this offering at the assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) by approximately $, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price would increase (decrease) each of cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) by approximately $. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below, as well as the other information in this prospectus, including our financial statements and the related notes and "Management's Discussion and Analysis of Results of Operations and Financial Condition," before deciding whether to invest in our common stock. The occurrence of any of the events or developments described below could harm our business, financial condition, results of operations and growth prospects. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may impair our business operations.

Risks Related to our Business, including the Development, Regulatory Approval and Potential Commercialization of our Product Candidate, EVK-001

Our business is entirely dependent on the success of a single product candidate, EVK-001, which has not yet entered a Phase 3 clinical trial. We cannot be certain that we will be able to obtain regulatory approval for, or successfully commercialize, EVK-001.

We have only one product candidate: EVK-001, a metoclopramide nasal spray to treat female patients with symptoms associated with acute and recurrent diabetic gastroparesis. We are entirely dependent on successful continued development and regulatory approval of this product candidate for our future business success. We have invested, and will continue to invest, a significant portion of our time and financial resources in the development of EVK-001. We will need to raise sufficient funds for, and successfully enroll and complete, our planned Phase 3 clinical trial of EVK-001, which we intend to commence in the second half of 2013. The future regulatory and commercial success of this product candidate is subject to a number of risks, including the following:

- we may not have sufficient financial and other resources to complete the Phase 3 clinical trial;
- we may not be able to provide acceptable evidence of safety and efficacy for EVK-001;
- the results of our planned clinical trials may not confirm the positive results of earlier clinical trials, particularly because we will utilize a modified patient report outcomes, or PRO, instrument for our planned Phase 3 clinical trial compared to our Phase 2b clinical trial;
- variability in patients, adjustments to clinical trial procedures and inclusion of additional clinical trial sites;
- the results of our clinical trial may not meet the level of statistical or clinical significance required by the U.S. Food and Drug Administration, or FDA, for marketing approval;
- we may be required to undertake additional clinical trials and other studies of EVK-001 before we can submit a new drug application, or NDA, to the FDA or receive approval of the NDA;
- patients in our clinical trials may die or suffer other adverse effects for reasons that may or may not be related to EVK-001;
- if approved, EVK-001 will compete with well-established products already approved for marketing by the FDA, including oral and intravenous forms of metoclopramide, the same active ingredient in the nasal spray for EVK-001;
- we may not be able to obtain, maintain and enforce our patents and other intellectual property rights; and
- we may not be able to obtain and maintain commercial manufacturing arrangements with third-party manufacturers or establish commercial-scale manufacturing capabilities.

Of the large number of drugs in development in this industry, only a small percentage result in the submission of an NDA to the FDA and even fewer are approved for commercialization. Furthermore, even if we do receive regulatory approval to market EVK-001, any such approval may be subject to limitations on the indicated uses for which we may market the product.

We will require substantial additional funding and may be unable to raise capital when needed, which would force us to suspend our Phase 3 clinical trial and otherwise delay, reduce or eliminate our development program for EVK-001.

Our operations have consumed substantial amounts of cash since inception. To date, our operations have been primarily financed through the proceeds from the sale of our common and preferred stock, and borrowings under our loan and financing agreements with Silicon Valley Bank and a prior lender. We believe, based on our current operating plan, that the net proceeds from this offering and our existing cash and cash equivalents, together with interest thereon, will be sufficient to fund our operations for approximately 12 months after the date of this prospectus, although there can be no assurance in that regard. Because we expect our planned Phase 3 clinical trial of EVK-001 to commence in the second half of 2013 with an approximately 12 month enrollment period, we will need to obtain additional funds to complete this trial as well as finance any additional development requirements requested by the FDA.

Our estimates of the amount of cash necessary to fund our activities may prove to be wrong, and we could spend our available financial resources much faster than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the rate of progress and cost of our Phase 3 clinical trial and any other clinical requirements for EVK-001;
- the timing of regulatory approval, if granted, of EVK-001 or any other product candidates;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with EVK-001;
- the costs and timing of completion of outsourced commercial manufacturing supply arrangements for EVK-001;
- costs associated with any other product candidates that we may develop, in-license or acquire;
- the effect of competing technological and market developments; and
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish.

The results observed in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in our Phase 2b clinical trial of EVK-001 may not be predictive of the safety and efficacy results in our planned Phase 3 clinical trial.

A number of companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in late-stage clinical trials even after achieving promising results in earlier-stage development. We currently plan to commence one Phase 3 clinical trial in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in the second half of 2013. Our Phase 2b clinical trial of EVK-001 for the treatment of diabetic gastroparesis showed statistically significant improvement in clinically meaningful endpoints in female patients. This was a pre-specified analyses of the primary efficacy endpoint performed on a gender subgroup of the intent to treat, or ITT population. Due to a large placebo response in male patients, EVK-001 did not achieve the primary endpoint in the ITT population for all subjects in this Phase 2b clinical trial.

This risk may be particularly significant for us because the primary endpoint in our planned Phase 3 clinical trial is not identical to the primary endpoint used in our Phase 2b trial. In our Phase 2b clinical trial, the primary

endpoint was the Gastroparesis Cardinal Symptom Index Daily Diary, or GCSI-DD, a PRO instrument. The GCSI-DD is a composite of clinically relevant diabetic gastroparesis symptoms which patients rate according to severity. Based on our discussions with the FDA, the primary endpoint for our Phase 3 trial will be the Gastroparesis Symptom Assessment, or GSA, which is a PRO instrument derived from the GCSI-DD. We have analyzed our Phase 2b data utilizing the GSA's methodology. Although we observed statistically significant and nearly identical statistical improvement in the GSA compared to the GCSI-DD in females in our Phase 2b trial, we cannot assure you that our Phase 3 trials will achieve positive results.

A number of factors could contribute to a lack of favorable safety and efficacy results in our planned Phase 3 trial. For example:

- a multicenter trial could result in increased variability due to varying site characteristics, such as local standards of care;
- a multicenter trial could result in increased variability due to varying patient characteristics including demographic factors, health status, underlying reason for disease state and concomitant medications; and
- diagnosis of diabetic gastroparesis by physicians, including use of gastric emptying tests, could select for a patient population that differs from those patients included within previous clinical trials.

If we are not able to obtain regulatory approval for EVK-001, we will not be able to commercialize this product candidate and our ability to generate revenue will be limited.

We have not submitted an NDA or received regulatory approval to market any product candidates in any jurisdiction. We are not permitted to market EVK-001 in the United States until we receive approval of an NDA for the product candidate in a particular indication from the FDA. To date, we have completed one Phase 2 clinical trial for EVK-001 in diabetic subjects with gastroparesis and acquired the results from a separate Phase 2 clinical trial in diabetic patients with gastroparesis. In the Phase 2 clinical trial that we performed ourselves, which concluded in 2011, EVK-001 failed to meet the primary endpoint for the trial. Although an overall improvement in symptoms was observed in EVK-001-treated patients with diabetic gastroparesis compared to placebo in this second Phase 2 clinical trial, the difference was not statistically significant due to a high placebo response among male subjects. The earlier Phase 2 clinical trial performed by Questcor Pharmaceuticals, Inc., or Questcor, was a multicenter, randomized, open-label, parallel design study. This head-to-head study compared the efficacy and safety of two doses of metoclopramide nasal spray, 10 mg and 20 mg, with the FDA-approved 10 mg metoclopramide tablet. Although data from the earlier Phase 2 clinical trial will be referenced in the EVK-001 NDA, the open-label study design limits the importance of the efficacy results in the NDA.

We currently plan to commence one Phase 3 clinical trial in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in the second half of 2013. There is no guarantee that this Phase 3 clinical trial or any other future trials will be successful or that regulators will agree with our assessment of the clinical trials for EVK-001 conducted to date. In addition, we have only limited experience in filing the applications necessary to gain regulatory approvals and expect to rely on consultants and third party contract research organizations to assist us in this process. The FDA and other regulators have substantial discretion in the approval process and may refuse to accept any application or may decide that our data is insufficient for approval and require additional clinical trials, or preclinical or other studies.

Varying interpretation of the data obtained from preclinical and clinical testing could delay, limit or prevent regulatory approval of a product candidate. Furthermore, we have acquired our rights to EVK-001 from Questcor who acquired its rights from a predecessor. Thus, much of the preclinical and a portion of the clinical data relating to EVK-001 that we would expect to submit in an NDA for EVK-001 was obtained from studies conducted before we owned the rights to the product candidate and, accordingly, was prepared and managed by others. These predecessors may not have applied the same resources and given the same attention to this development program as we would have if we had been in control from inception.

EVK-001 and the activities associated with its development and potential commercialization, including its testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and by comparable authorities in other countries. Failure to obtain regulatory marketing approval for EVK-001 will prevent us from commercializing the product candidate, and our ability to generate revenue will be materially impaired.

The FDA may impose requirements on our clinical trials that are difficult to comply with, which could harm our business.

The requirements that the FDA may impose on clinical trials for EVK-001 are uncertain. We currently plan to conduct one Phase 3 trial in adult female subjects with diabetic gastroparesis, which we believe will be sufficient for NDA submission. We plan to initiate the four-week, multicenter, randomized, double-blind, placebo-controlled, parallel Phase 3 clinical trial to evaluate the efficacy, safety and population pharmacokinetics of EVK-001 in adult female subjects with diabetic gastroparesis in the second half of 2013. Although we believe successful results from this single Phase 3 clinical trial will be sufficient to allow us to submit an NDA for EVK-001, it is possible the FDA will require additional clinical testing before submission or approval of the NDA. In addition, based on discussions with the FDA, we also plan to conduct a similar and concurrent companion study for safety and efficacy in adult male subjects with diabetic gastroparesis. If we are unable to comply with the FDA's requirements, we will not be able to obtain approval for EVK-001 and our business will suffer.

Any termination or suspension of, or delays in the commencement or completion of, our planned Phase 3 clinical trial could result in increased costs to us, delay or limit our ability to generate revenue and adversely affect our commercial prospects.

Delays in the commencement or completion of our planned Phase 3 clinical trial for EVK-001 could significantly affect our product development costs. We do not know whether our planned trial will begin on time or be completed on schedule, if at all. The commencement and completion of clinical trials can be delayed for a number of reasons, including delays related to:

- the FDA failing to grant permission to proceed and placing the clinical trial on hold;
- subjects failing to enroll or remain in our trial at the rate we expect;
- subjects choosing an alternative treatment for the indication for which we are developing EVK-001, or participating in competing clinical trials;
- subjects experiencing severe or unexpected drug-related adverse effects;
- a facility manufacturing EVK-001 or any of its components being ordered by the FDA or other government or regulatory authorities to temporarily or permanently shut down due to violations of current Good Manufacturing Practices, or cGMP, or other applicable requirements, or infections or cross-contaminations of product candidate in the manufacturing process;
- any changes to our manufacturing process that may be necessary or desired;
- third-party clinical investigators losing their license or permits necessary to perform our clinical trials, not performing our clinical trials on our anticipated schedule or consistent with the clinical trial protocol, Good Clinical Practice and regulatory requirements, or other third parties not performing data collection and analysis in a timely or accurate manner;
- inspections of clinical trial sites by the FDA or the finding of regulatory violations by the FDA or an institutional review board, or IRB, that require us to undertake corrective action, result in suspension or termination of one or more sites or the imposition of a clinical hold on the entire trial, or that prohibit us from using some or all of the data in support of our marketing applications;

- third-party contractors becoming debarred or suspended or otherwise penalized by the FDA or other government or regulatory authorities for violations of regulatory requirements, in which case we may need to find a substitute contractor, and we may not be able to use some or any of the data produced by such contractors in support of our marketing applications; or
- one or more IRBs refusing to approve, suspending or terminating the trial at an investigational site, precluding enrollment of additional subjects, or withdrawing its approval of the trial.

Product development costs will increase if we have delays in testing or approval of EVK-001 or if we need to perform more or larger clinical trials than planned. Additionally, changes in regulatory requirements and policies may occur and we may need to amend clinical trial protocols to reflect these changes. Amendments may require us to resubmit our clinical trial protocols to IRBs for reexamination, which may impact the costs, timing or successful completion of a clinical trial. If we experience delays in completion of or if we, the FDA or other regulatory authorities, the IRB, or other reviewing entities, or any of our clinical trial sites suspend or terminate any of our clinical trials, the commercial prospects for our product candidate may be harmed and our ability to generate product revenues will be delayed. In addition, many of the factors that cause, or lead to, termination or suspension of, or a delay in the commencement or completion of, clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. Also if one or more clinical trials are delayed, our competitors may be able to bring products to market before we do, and the commercial viability of EVK-001 could be significantly reduced.

Final marketing approval for EVK-001 by the FDA or other regulatory authorities for commercial use may be delayed, limited, or denied, any of which would adversely affect our ability to generate operating revenues.

After the completion of our Phase 3 clinical trial and, assuming the results of the trial are successful, the submission of an NDA, we cannot predict whether or when we will obtain regulatory approval to commercialize EVK-001 and we cannot, therefore, predict the timing of any future revenue. Because EVK-001 is our only product candidate this risk is particularly significant for us. We cannot commercialize EVK-001 until the appropriate regulatory authorities have reviewed and approved the applications for this product candidate. We cannot assure you that the regulatory agencies will complete their review processes in a timely manner or that we will obtain regulatory approval for EVK-001. In addition, we may experience delays or rejections based upon additional government regulation from future legislation or administrative action or changes in FDA policy during the period of product development, clinical trials and FDA regulatory review. If marketing approval for EVK-001 is delayed, limited or denied, our ability to market the product candidate, and our ability to generate product sales, would be adversely affected.

Even if we obtain marketing approval for EVK-001, it could be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with our product candidate, when and if EVK-001 is approved.

Even if U.S. regulatory approval is obtained, the FDA may still impose significant restrictions on EVK-001's indicated uses or marketing or impose ongoing requirements for potentially costly and time consuming post-approval studies, post-market surveillance or clinical trials. EVK-001 will also be subject to ongoing FDA requirements governing the labeling, packaging, storage, distribution, safety surveillance, advertising, promotion, recordkeeping and reporting of safety and other post-market information. In addition, manufacturers of drug products and their facilities are subject to continual review and periodic inspections by the FDA and other regulatory authorities for compliance with cGMP requirements relating to quality control, quality assurance and corresponding maintenance of records and documents. If we or a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions on that product, the manufacturing facility or us, including requesting recall or withdrawal of the product from the market or suspension of manufacturing.

If we or the manufacturing facilities for EVK-001 fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters or untitled letters;

- seek an injunction or impose civil or criminal penalties or monetary fines;
- suspend or withdraw regulatory approval;
- suspend any ongoing clinical trials;
- refuse to approve pending applications or supplements or applications filed by us;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products, refuse to permit the import or export of product, or request us to initiate a product recall.

The occurrence of any event or penalty described above may inhibit our ability to commercialize our products and generate revenue.

The FDA has the authority to require a risk evaluation and mitigation strategy plan as part of an NDA or after approval, which may impose further requirements or restrictions on the distribution or use of an approved drug, such as limiting prescribing to certain physicians or medical centers that have undergone specialized training, limiting treatment to patients who meet certain safe-use criteria and requiring treated patients to enroll in a registry. In March 2009, the FDA informed drug manufacturers that it will require a REMS for metoclopramide drug products. The FDA's authority to take this action is based on risk management and post market safety provisions within the FDAAA. The REMS consists of a Medication Guide, elements to assure safe use (including an education program for prescribers and materials for prescribers to educate patients), and a timetable for submission of assessments of at least six months, 12 months, and annually after the REMS is approved. We intend to submit a REMS at the time of the NDA submission for EVK-001.

In addition, if EVK-001 is approved, our product labeling, advertising and promotion would be subject to regulatory requirements and continuing regulatory review. The FDA strictly regulates the promotional claims that may be made about prescription products. In particular, a product may not be promoted for uses that are not approved by the FDA as reflected in the product's approved labeling. If we receive marketing approval for EVK-001, physicians may nevertheless prescribe it to their patients in a manner that is inconsistent with the approved label. If we are found to have promoted such off-label uses, we may become subject to significant liability. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant sanctions. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

Even if we receive regulatory approval for EVK-001, we still may not be able to successfully commercialize it and the revenue that we generate from its sales, if any, will be limited.

EVK-001's commercial success will depend upon the acceptance of the product candidate by the medical community, including physicians, patients and health care payors. The degree of market acceptance of our product candidate will depend on a number of factors, including:

- demonstration of clinical efficacy and safety compared to other more-established products;
- the limitation of our targeted patient population to women-only;
- limitations or warnings contained in any FDA-approved labeling, including the potential boxed warning on all metoclopramide product labels concerning the chance of tardive dyskinesia, or TD, for patients taking these products;

- acceptance of a new formulation by health care providers and their patients;
- the prevalence and severity of any adverse effects;
- new procedures or methods of treatment that may be more effective in treating or may reduce the incidences of diabetic gastroparesis;
- pricing and cost-effectiveness;
- the effectiveness of our or any future collaborators' sales and marketing strategies;
- our ability to obtain and maintain sufficient third-party coverage or reimbursement from government health care programs, including Medicare and Medicaid, private health insurers and other third-party payors; and
- the willingness of patients to pay out-of-pocket in the absence of third-party coverage.

If EVK-001 is approved, but does not achieve an adequate level of acceptance by physicians, health care payors and patients, we may not generate sufficient revenue, and we may not be able to achieve or sustain profitability. Our efforts to educate the medical community and third-party payors on the benefits of EVK-001 may require significant resources and may never be successful. In addition, our ability to successfully commercialize our product candidate will depend on our ability to manufacture our products, differentiate our products from competing products and defend the intellectual property of our products.

It will be difficult for us to profitably sell EVK-001 if reimbursement is limited.

Market acceptance and sales of our product candidate will depend on reimbursement policies and may be affected by healthcare reform measures. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels. A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and these third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications. Increasingly, third-party payors have been challenging the prices charged for products. They may also refuse to provide any coverage of uses of approved products for medical indications other than those for which the FDA has granted marketing approval. This trend may impact the reimbursement for treatments for GI disorders especially, including EVK-001, as physicians typically focus on symptoms rather than underlying conditions when treating patients with these disorders and drugs are often prescribed for uses outside of their approved indications. In instances where alternative products are available, it may be required that those alternative treatment options are tried before reimbursement is available for EVK-001. Although EVK-001 is a novel nasal spray formulation of metoclopramide, this is the same active ingredient that is already available in other treatments for gastroparesis that are already widely available at generic prices. We cannot be sure that reimbursement will be available for our EVK-001 and, if reimbursement is available, the level of reimbursement. Reimbursement may impact the demand for, or the price of, this product candidate. In addition, in certain foreign countries, particularly the countries of the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. If reimbursement is not available or is available only to limited levels, we may not be able to successfully commercialize our product candidate.

We rely and will continue to rely on outsourcing arrangements for many of our activities, including clinical development and supply of EVK-001.

We have only two full-time employees and, as a result, we rely on outsourcing arrangements for a significant portion of our activities, including clinical research, data collection and analysis and manufacturing as well as function as a public company. We may have limited control over these third parties and we cannot guarantee that they will perform their obligations in an effective and timely manner.

We expect to retain a contract research organization, or CRO, to conduct our planned Phase 3 clinical trial of EVK-001. We will be required to reach agreement on acceptable terms with prospective CROs as well as clinical

trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites. We will need assistance from our CRO in obtaining IRB approval at each clinical trial site and will rely on our CRO to recruiting suitable patients to participate the proposed trial.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. We do not own or operate manufacturing facilities for the production of any component of EVK-001, including metoclopramide, the nasal spray device or associated bottle, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently depend on third-party contract manufacturers for all of our required raw materials, drug substance and drug product for our clinical trials. For EVK-001, we are currently using, and relying on, single suppliers and single manufacturers for starting materials, the final drug substance and nasal spray delivery device. Although potential alternative suppliers and manufacturers for some components have been identified, we have not qualified these vendors to date. If we were required to change vendors, it could result in a failure to meet regulatory requirements or projected timelines and necessary quality standards for successful manufacturing of the various required lots of material for our development and commercialization efforts.

We do not have any current contractual relationships for the manufacture of commercial supplies of EVK-001. If EVK-001 is approved for sale by any regulatory agency, we intend to enter into agreements with third-party contract manufacturers for commercial production. The number of third-party manufacturers with the expertise, required regulatory approvals and facilities to manufacture bulk drug substance on a commercial scale is limited. We have identified one manufacturer for potentially providing commercial supplies of EVK-001; however no alternative providers have been identified to date. If we are unable to come to terms on commercial supplier with this manufacturer, we would have to find replacements, which could delay the commercialization of our product candidate.

In addition, our reliance on third party CROs and contract manufacturing organizations, or CMOs, entails further risks including:

- non-compliance by third parties with regulatory and quality control standards;
- breach by third parties of our agreements with them;
- termination or non-renewal of an agreement with third parties; and
- sanctions imposed by regulatory authorities if compounds supplied or manufactured by a third party supplier or manufacturer fail to comply with applicable regulatory standards.

We face substantial competition, which may result in others selling their products more effectively than we do, and in others discovering, developing or commercializing product candidates before, or more successfully, than we do.

Our future success depends on our ability to demonstrate and maintain a competitive advantage with respect to the design, development and commercialization of EVK-001. We anticipate that EVK-001, if approved, would compete directly with metoclopramide, erythromycin and domperidone, each of which is available under various trade names sold by several major pharmaceutical companies, including generic manufacturers. Metoclopramide is the only molecule currently approved in the United States to treat gastroparesis. Metoclopramide is generically-available and indicated for the relief of symptoms associated with acute and recurrent diabetic gastroparesis, without the limitation of use in women only.

Many of our potential competitors have substantially greater financial, technical and personnel resources than we have. In addition, many of these competitors have significantly greater commercial infrastructures than we have. We will not be able to compete successfully unless we successfully:

- assure health care providers, patients and health care payors that EVK-001 is beneficial compared to other products in the market;

- obtain patent and/or other proprietary protection for EVK-001;
- obtain and maintain required regulatory approvals for the product candidate; and
- collaborate with others to effectively market, sell and distribute EVK-001.

Established competitors may invest heavily to quickly discover and develop novel compounds that could make our product candidate obsolete. In addition to our EVK-001 product candidate, we are aware of other development candidates in clinical development. Any of these product candidates could advance through clinical development faster than EVK-001 and, if approved, could attain faster and greater market acceptance than our product candidate. If we are not able to compete effectively against our current and future competitors, our business will not grow and our financial condition and operations will suffer.

We have no sales, marketing or distribution capabilities currently and we will have to invest significant resources to develop these capabilities.

Currently, we have no internal sales, marketing or distribution capabilities. If EVK-001 ultimately receives regulatory approval, we may not be able to effectively market and distribute the product candidate. We will have to invest significant amounts of financial and management resources to develop internal sales, distribution and marketing capabilities, some of which will be committed prior to any confirmation that EVK-001 will be approved. We may not be able to hire consultants or external service providers to assist us in sales, marketing and distribution functions on acceptable financial terms or at all. Even if we determine to perform sales, marketing and distribution functions ourselves, we could face a number of additional related risks, including:

- inability to attract and build an effective marketing department or sales force;
- the cost of establishing a marketing department or sales force may exceed our available financial resources and the revenues generated by EVK-001 or any other product candidates that we may develop, in-license or acquire; and
- our direct sales and marketing efforts may not be successful.

If we fail to attract and retain senior management and key commercial personnel, we may be unable to successfully complete the development of EVK-001 and commercialize this product candidate.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management, clinical and commercial personnel. We are highly dependent upon our senior management team composed of two individuals: David Gonyer, our President and Chief Executive Officer, and Matt D'Onofrio, our Executive Vice President and Chief Business Officer. The loss of services of either of these individuals could delay or prevent the successful development of EVK-001 or the commercialization of this product candidate, if approved.

We will need to hire and retain qualified personnel. We could experience problems in the future attracting and retaining qualified employees. For example, competition for qualified personnel in the biotechnology and pharmaceuticals field is intense, particularly in the San Diego, California area where we are headquartered. We may not be able to attract and retain quality personnel on acceptable terms who have the expertise we need to sustain and grow our business.

We may encounter difficulties in managing our growth and expanding our operations successfully.

Because we currently have only two full-time employees, we will need to grow our organization substantially to continue the development and pursue the potential commercialization of EVK-001 as well as function as a public company. As we seek to advance EVK-001, we will need to expand our development, regulatory, manufacturing, marketing and sales capabilities or contract with third parties to provide these capabilities for us. As our operations expand, we expect that we will need to manage additional relationships with various strategic partners, suppliers and other third parties. Future growth will impose significant added responsibilities on

members of management and require us to retain additional internal capabilities. Our future financial performance and our ability to commercialize EVK-001 and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to manage our development efforts and clinical trials effectively and hire, train and integrate additional management, clinical and regulatory, financial, administrative and sales and marketing personnel. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company.

Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize EVK-001 and affect the prices we may obtain.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval for EVK-001, restrict or regulate post-approval activities and affect our ability to profitably sell our product candidate, assuming we obtain marketing approval.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We are not sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of EVK-001, if any, may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing testing and other requirements.

In the United States, the Medicare Modernization Act, or MMA, changed the way Medicare covers and pays for pharmaceutical products. The legislation expanded Medicare coverage for drug purchases by the elderly and introduced a new reimbursement methodology based on average sales prices for drugs. In addition, this legislation authorized Medicare Part D prescription drug plans to use formularies where they can limit the number of drugs that will be covered in any therapeutic class. As a result of this legislation and the expansion of federal coverage of drug products, we expect that there will be additional pressure to contain and reduce costs. These cost reduction initiatives and other provisions of this legislation could decrease the coverage and price that we receive for any approved products and could seriously harm our business. While the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own reimbursement rates, and any reduction in reimbursement that results from the MMA may result in a similar reduction in payments from private payors.

In early 2010, President Obama signed into law the Health Care Reform Law, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. Effective October 1, 2010, the Health Care Reform Law revised the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates to states. Further, beginning in 2011, the new law imposes a significant annual fee on companies that manufacture or import branded prescription drug products. Substantial new provisions affecting compliance have also been enacted, which may require us to modify our business practices with healthcare practitioners. We will not know the full effects of the Health Care Reform Law until applicable federal and state agencies issue regulations or guidance under the new law. Although it is too early to determine the effect of the Health Care Reform Law, the new law appears likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

If we market products in a manner that violates healthcare fraud and abuse laws, or if we violate government price reporting laws, we may be subject to civil or criminal penalties.

In addition to FDA restrictions on marketing of pharmaceutical products, several other types of state and federal healthcare fraud and abuse laws have been applied in recent years to restrict certain marketing practices in the pharmaceutical industry. These laws include false claims statutes and anti-kickback statutes. Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of these laws.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement to get a false claim paid. The federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for, purchasing, leasing, ordering or arranging for the purchase, lease or order of any healthcare item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers and formulary managers on the other. Although there are several statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing or recommending may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability.

Over the past few years, several pharmaceutical and other healthcare companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities, such as: allegedly providing free trips, free goods, sham consulting fees and grants and other monetary benefits to prescribers; reporting to pricing services inflated average wholesale prices that were then used by federal programs to set reimbursement rates; engaging in off-label promotion that caused claims to be submitted to Medicaid for non-covered, off-label uses; and submitting inflated best price information to the Medicaid Rebate Program to reduce liability for Medicaid rebates. Most states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer’s products from reimbursement under government programs, criminal fines and imprisonment.

Federal legislation and actions by state and local governments may permit re-importation of drugs from foreign countries into the United States, including foreign countries where the drugs are sold at lower prices than in the United States, which could materially adversely affect our operating results and our overall financial condition.

We may face competition in the United States for EVK-001, if approved, from lower priced products from foreign countries that have placed price controls on pharmaceutical products. This risk may be particularly applicable to drugs such as EVK-001. The U.S. Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or the MMA, contains provisions that may change U.S. importation laws and expand pharmacists’ and wholesalers’ ability to import lower priced versions of an approved drug and competing products from Canada, where there are government price controls. These changes to U.S. importation laws will not take effect unless and until the Secretary of Health and Human Services certifies that the changes will pose no additional risk to the public’s health and safety and will result in a significant reduction in the cost of products to consumers. The Secretary of Health and Human Services has not yet announced any plans to make this required certification.

A number of federal legislative proposals have been made to implement the changes to the U.S. importation laws without any certification, and to broaden permissible imports in other ways. Even if the changes do not take effect, and other changes are not enacted, imports from Canada and elsewhere may continue to increase due to market and political forces, and the limited enforcement resources of the FDA, U.S. Customs and Border Protection and other government agencies. For example, Pub. L. No. 111-83, which was signed into law in October 2009 and provides appropriations for the Department of Homeland Security for the 2010 fiscal year, expressly prohibits U.S. Customs and Border Protection from using funds to prevent individuals from importing from Canada less than a 90-day supply of a prescription drug for personal use, when the drug otherwise complies with the Federal Food, Drug, and Cosmetic Act, or FDCA. Further, several states and local governments have implemented importation schemes for their citizens and, in the absence of federal action to curtail such activities, we expect other states and local governments to launch importation efforts.

The importation of foreign products that compete with EVK-001 could negatively impact our revenue and profitability, possibly materially.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of EVK-001.

We face an inherent risk of product liability as a result of the clinical testing of EVK-001 and will face an even greater risk if we commercialize the product candidate. For example, we may be sued if EVK-001 allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product candidate, negligence, strict liability and a breach of warranties. Claims could also be asserted under state consumer protection acts.

In particular, products containing metoclopramide have been reported to cause side effects, including TD. It is possible that a patient taking EVK-001 will be found to experience a variety of side effects. In 2009, the FDA required a boxed warning on all metoclopramide product labels concerning the chance of TD for patients taking these products. We expect that the label for EVK-001, if approved, will likely contain a similar warning regarding TD. Several manufactures of metoclopramide products have been sued by patients regarding TD.

If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidate. Even successful defense would require significant financial and management resources. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for EVK-001;
- injury to our reputation;
- withdrawal of clinical trial participants;
- costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- the inability to commercialize EVK-001; and
- a decline in our stock price.

We may form strategic alliances in the future, and we may not realize the benefits of such alliances.

We may form strategic alliances, create joint ventures or collaborations or enter into licensing arrangements with third parties that we believe will complement or augment our existing business, including for the continued development or commercialization of EVK-001. These relationships or those like them may require us to incur non-recurring and other charges, increase our near- and long-term expenditures, issue securities that dilute our existing stockholders or disrupt our management and business. In addition, we face significant competition in seeking appropriate strategic partners and the negotiation process is time-consuming and complex. Moreover, we may not be successful in our efforts to establish a strategic partnership or other alternative arrangements for EVK-001 because third parties may view the risk of success in our planned Phase 3 clinical trial as too significant or the commercial opportunity for our product candidate as too limited. We cannot be certain that, following a strategic transaction or license, we will achieve the revenues or specific net income that justifies such transaction.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our current and any future CROs and other contractors and consultants and collaborators are vulnerable to damage from

computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we have not experienced any such material system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development program for EVK-001 and our business operations. For example, the loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Likewise, we rely on third parties to manufacture EVK-001 and conduct clinical trials, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development and commercialization of our product candidate could be delayed.

Business disruptions could seriously harm our future revenues and financial condition and increase our costs and expenses.

Our operations could be subject to earthquakes, power shortages, telecommunications failures, water shortages, floods, hurricanes, typhoons, fires, extreme weather conditions, medical epidemics and other natural or manmade disasters or business interruptions, for which we are predominantly self-insured. The occurrence of any of these business disruptions could seriously harm our operations and financial condition and increase our costs and expenses. We rely on third-party manufacturers to produce our EVK-001. Our ability to obtain clinical supplies of EVK-001 could be disrupted, if the operations of these suppliers are affected by a man-made or natural disaster or other business interruption. Our operations are located in San Diego, California near major earthquake faults and fire zones. The ultimate impact on us, our significant suppliers and our general infrastructure of being located near major earthquake faults and fire zones and being consolidated in certain geographical areas is unknown, but our operations and financial condition could suffer in the event of a major earthquake, fire or other natural disaster.

If we fail to develop and commercialize other product candidates, we may be unable to grow our business.

As part of our growth strategy, we plan to evaluate the development and/or commercialization of other therapies for GI motility disorders. Similar to our initial focus on gastroparesis, we will evaluate opportunities to in-license or acquire other product candidates as well as commercial products to treat patients suffering from predominantly GI disorders, seeking to identify areas of high unmet medical needs with limited treatment options. These other product candidates will require additional, time-consuming development efforts prior to commercial sale, including preclinical studies, extensive clinical trials and approval by the FDA and applicable foreign regulatory authorities. All product candidates are prone to the risks of failure that are inherent in pharmaceutical product development, including the possibility that the drug candidate will not be shown to be sufficiently safe and/or effective for approval by regulatory authorities. In addition, we cannot assure you that any such products that are approved will be manufactured or produced economically, successfully commercialized or widely accepted in the marketplace or be more effective than other commercially available alternatives.

If we engage in an acquisition, reorganization or business combination, we will incur a variety of risks that could adversely affect our business operations or our stockholders.

From time to time we have considered, and we will continue to consider in the future, strategic business initiatives intended to further the development of our business. These initiatives may include acquiring businesses, technologies or products or entering into a business combination with another company. If we do pursue such a strategy, we could, among other things:

- issue equity securities that would dilute our current stockholders' percentage ownership;
- incur substantial debt that may place strains on our operations;
- spend substantial operational, financial and management resources in integrating new businesses, technologies and products; and
- assume substantial actual or contingent liabilities.

We may be unable to maintain sufficient product liability insurance.

Our inability to obtain and retain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the commercialization of products we develop. We currently carry product liability insurance covering our clinical studies. Although we maintain such insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. If we determine that it is prudent to increase our product liability coverage due to the commercial launch of any product, we may be unable to obtain such increased coverage on acceptable terms or at all. Our insurance policies also have various exclusions, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts.

Risks Relating to Our Intellectual Property

It is difficult and costly to protect our intellectual property rights, and we cannot ensure the protection of these rights. Any impairment of our intellectual property rights would materially affect our business.

We place considerable importance on obtaining patent protection for new technologies, products and processes because our commercial success will depend, in large part, on obtaining patent protection for new technologies, products and processes, successfully defending these patents against third-party challenges and successfully enforcing our patents against third party competitors. To that end, we have acquired and will file applications for patents covering formulations containing or uses of EVK-001 or our proprietary processes as well as other intellectual property important to our business. One of our patents related to EVK-001 was acquired from Questcor. This method of use patent was not written by us or our attorneys, and we did not have control over the drafting and prosecution of these patents. Further, Questcor and other predecessors might not have given the same attention to the drafting and prosecution of these patents and applications as we would have if we had been the owners of the patent and application and had control over the drafting and prosecution.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain and involves complex legal and factual questions for which legal principles remain unresolved. In recent years patent rights have been the subject of significant litigation. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we or our predecessors were the first to make the inventions claimed in our owned and licensed patents or pending patent applications, or that we or our predecessors were the first to file for patent protection of such inventions One or more of these factors could possibly result in findings of invalidity or unenforceability of one or more of the patents we own.

The patent rights we own covering EVK-001 are limited to specific methods of use and formulations of metoclopramide. As a result, our ability to market EVK-001 may be limited by the lack of patent protection for the active ingredient itself and other metoclopramide formulations may be developed by competitors. The active ingredient in EVK-001 is metoclopramide. No patent protection is available for metoclopramide itself. As a result, competitors who develop and receive required regulatory approval for competing products using the same active ingredient as EVK-001 may market their competing products so long as they do not infringe any of the method or formulation patents owned by us.

Others have filed, and in the future are likely to file, patent applications covering products and technologies that are similar, identical or competitive to ours, or important to our business. We cannot be certain that any patent application owned by a third party will not have priority over patent applications filed or in-licensed by us, or that we will not be involved in interference, opposition or invalidity proceedings before U.S. or foreign patent offices.

We have focused our intellectual property efforts on the United States. To the extent that our patent portfolio differs from country to country outside the United States, this may make protecting EVK-001 as a product outside the United States even more difficult and unpredictable. Various countries maintain their own standards and interpretation of intellectual property law, potentially creating additional patent risk beyond even that experienced within the United States.

We also rely on trade secrets to protect technology in cases when we believe patent protection is not appropriate or obtainable. However, trade secrets are difficult to protect. While we require employees, consultants and other contractors to enter into confidentiality agreements, we may not be able to adequately protect our trade secrets or other proprietary information. Our research collaborators and scientific advisors may have rights to publish data and information in which we have rights. If we cannot maintain the confidentiality of our technology and other confidential information in connection with our collaborators and advisors, our ability to receive patent protection or protect our proprietary information may be imperiled.

Claims by third parties that we infringe their proprietary rights may result in liability for damages or prevent or delay our developmental and commercialization efforts.

The biotechnology industry has been characterized by frequent litigation regarding patent and other intellectual property rights. Because patent applications are maintained in secrecy until the application is published, we may be unaware of third party patents that may be infringed by commercialization of EVK-001. In addition, identification of third party patent rights that may be relevant to our technology is difficult because patent searching is imperfect due to differences in terminology among patents, incomplete databases and the difficulty in assessing the meaning of patent claims. Any claims of patent infringement asserted by third parties would be time consuming and could likely:

- result in costly litigation;
- divert the time and attention of our technical personnel and management;
- cause development delays;
- prevent us from commercializing EVK-001 until the asserted patent expires or is held finally invalid or not infringed in a court of law;
- require us to develop non-infringing technology; or
- require us to enter into royalty or licensing agreements.

Although no third party has asserted a claim of infringement against us, others may hold proprietary rights that could prevent EVK-001 from being marketed. Any patent-related legal action against us claiming damages or seeking to enjoin commercial activities relating to our product candidate or processes could subject us to potential liability for damages and could require us to obtain a license to continue to manufacture or market EVK-001, or, if no such license were available on commercially viable terms, could require us to cease manufacturing and marketing of EVK-001. We cannot predict whether we would prevail in any such actions or that any license required under any of these patents would be made available on commercially acceptable terms, if at all. In addition, we cannot be sure that we could redesign our product candidate or processes to avoid infringement, if necessary. Accordingly, an adverse determination in a judicial or administrative proceeding, or the failure to obtain necessary licenses, could prevent us from developing and commercializing EVK-001, which could harm our business, financial condition and operating results. Whatever the outcome, any patent litigation would be costly and time consuming, could be distracting to our management, and could have a material adverse effect on our business.

We may be subject to claims that we have wrongfully hired an employee from a competitor or that we or our employees have wrongfully used or disclosed alleged confidential information or trade secrets of their former employers.

As is commonplace in our industry, we employ and consult with individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject in the future to claims that our employees or consultants are subject to a continuing obligation to their former employers or clients (such as non-competition or non-solicitation obligations) or claims that our employees, our consultants or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers or clients. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to Our Financial Position and Need for Capital

Our recurring losses from operations have raised substantial doubt regarding our ability to continue as a going concern.

Our recurring losses from operations raise substantial doubt about our ability to continue as a going concern, and as a result, our independent registered public accounting firm included an explanatory paragraph in its report on our consolidated financial statements as of and for the year ended December 31, 2012 with respect to this uncertainty. This going concern opinion could materially limit our ability to raise additional funds through the issuance of new debt or equity securities or otherwise. Future reports on our financial statements may include an explanatory paragraph with respect to our ability to continue as a going concern. We have incurred significant losses since our inception and have never been profitable, and it is possible we will never achieve profitability. We have devoted our resources to developing our product candidate, but it cannot be marketed until regulatory approvals have been obtained. If we successfully complete this offering, based upon our currently expected level of operating expenditures, we expect to be able to fund our operations for approximately the next year. This period could be shortened if there are any significant increases in planned spending on our EVK-001 development program or more rapid progress of our planned Phase 3 clinical trial than anticipated. There is no assurance that other financing will be available when needed to allow us to continue as a going concern. The perception that we may not be able to continue as a going concern may cause others to choose not to deal with us due to concerns about our ability to meet our contractual obligations.

We have incurred significant operating losses since inception, and we expect to incur losses for the foreseeable future. We may never become profitable or, if achieved, be able to sustain profitability.

We have incurred significant operating losses since we were founded in 2007 and expect to incur significant losses for the next several years as we begin our Phase 3 clinical trial for EVK-001. Net loss for the year ended December 31, 2012 was $2.0 million. As of December 31, 2012, we had an accumulated deficit of $19.9 million. Losses have resulted principally from costs incurred in our clinical trials, research and development programs and from our general and administrative expenses. In the future, we intend to continue to conduct research and development, clinical testing, regulatory compliance activities and, if EVK-001 is approved, sales and marketing activities that, together with anticipated general and administrative expenses, will likely result in our incurring further significant losses for the next several years.

We currently generate no revenue from sales, and we may never be able to commercialize EVK-001 or other marketable drugs. As a result, there can be no assurance that we will ever generate revenues or achieve profitability, which could impair our ability to sustain operations or obtain any required additional funding. If we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods.

If we fail to obtain the capital necessary to fund our operations, we will be unable to successfully develop and commercialize EVK-001.

We will require substantial future capital in order to complete the remaining clinical development for EVK-001 and to potentially commercialize this product candidate. The amount and timing of any expenditure needed to implement our development and commercialization programs will depend on numerous factors, including:

- the initiation, progress, costs, results of and timing of our clinical development program for EVK-001, including our planned Phase 3 clinical trial;
- the need for, and the progress, costs and results of, any additional clinical trials of EVK-001 we may initiate based on the results of our planned clinical trials or discussions with the FDA, including any additional trials the FDA or other regulatory agencies may require evaluating the safety of EVK-001;
- the outcome, costs and timing of seeking and obtaining regulatory approvals from the FDA, and any similar regulatory agencies;
- the timing and costs associated with manufacturing EVK-001 for clinical trials and other studies and, if approved, for commercial sale;
- our need and ability to hire additional management, development and scientific personnel;
- the cost to maintain, expand and defend the scope of our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with licensing, filing, prosecution, defense and enforcement of any patents or other intellectual property rights;
- the timing and costs associated with establishing sales and marketing capabilities;
- market acceptance of EVK-001;
- the extent to which we are required to pay milestone or other payments under our Questcor asset purchase agreement and the timing of such payments;
- the costs of acquiring, licensing or investing in additional businesses, products, product candidates and technologies; and
- our need to implement additional internal systems and infrastructure, including financial and reporting systems.

Some of these factors are outside of our control. We do not expect our existing capital resources together with the net proceeds from this offering to be sufficient to enable us to fund the completion of our Phase 3 clinical trial and remaining development program through commercial introduction. We expect that we will need to raise additional funds in the near future.

We may seek additional funding through collaboration agreements and public or private financings. Additional funding may not be available to us on acceptable terms or at all. In addition, the terms of any financing may adversely affect the holdings or the rights of our stockholders. In addition, the issuance of additional shares by us, or the possibility of such issuance, may cause the market price of our shares to decline.

If we are unable to obtain funding on a timely basis, we will be unable to complete the planned Phase 3 clinical trial for EVK-001 and may be required to significantly curtail all of our activities. We also could be required to seek funds through arrangements with collaborative partners or otherwise that may require us to relinquish rights to our product candidate or some of our technologies or otherwise agree to terms unfavorable to us.

The terms of our secured debt facility require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

We have a $3.0 million loan and security agreement with Silicon Valley Bank that is secured by a lien covering substantially all of our assets, excluding intellectual property. As of December 31, 2012, the outstanding principal balance of the Silicon Valley Bank loan was $1.0 million. The loan agreement contains customary affirmative and negative covenants and events of default. The affirmative covenants include, among others, covenants requiring us to maintain our legal existence and governmental approvals, deliver certain financial reports and maintain insurance coverage. The negative covenants include, among others, restrictions on transferring collateral, changing our business, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments and creating other liens on our assets, in each case

subject to customary exceptions. If we default under the loan agreement, the lender may accelerate all of our repayment obligations and take control of our pledged assets, potentially requiring us to renegotiate our agreement on terms less favorable to us or to immediately cease operations. Further, if we are liquidated, the lender's right to repayment would be senior to the rights of the holders of our common stock to receive any proceeds from the liquidation. The lenders could declare a default upon the occurrence of any event that they interpret as a material adverse change as defined under the loan agreement, thereby requiring us to repay the loan immediately or to attempt to reverse the declaration of default through negotiation or litigation. Any declaration by the lender of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline. If we raise any additional debt financing, the terms of such additional debt could further restrict our operating and financial flexibility.

Our ability to use net operating loss and tax credit carryforwards and certain built-in losses to reduce future tax payments is limited by provisions of the Internal Revenue Code, and may be subject to further limitation as a result of the transactions contemplated by this offering.

Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change" (generally defined as a greater than 50% change (by value) in its equity ownership over a three year period), the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. As a result of this offering, our most recent private placement and other transactions that have occurred over the past three years, we may have experienced, or may upon completion of this offering experience, an "ownership change." We may also experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As of December 31, 2012, we had federal and state net operating loss carryforwards of approximately $18.6 million and $18.2 million, respectively, and federal research and development credits of $0.5 million which could be limited if we experience an "ownership change."

Risks Related to Our Common Stock and this Offering

An active trading market for our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. Although we anticipate that our common stock will be approved for listing on The NASDAQ Capital Market, an active trading market for our shares may never develop or be sustained following this offering. If the market does not develop or is not sustained, it may be difficult for you to sell your shares of common stock at a price that is attractive to you or at all. In addition, an inactive market may impair our ability to raise capital by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration, which, in turn, could materially adversely affect our business.

The trading price of the shares of our common stock could be highly volatile, and purchasers of our common stock could incur substantial losses.

Our stock price is likely to be volatile. The stock market in general and the market for biotechnology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their common stock at or above the initial public offering price. The market price for our common stock may be influenced by many factors, including:

- our ability to enroll patients in our planned Phase 3 clinical trial;
- results of the clinical trial, and the results of trials of our competitors or those of other companies in our market sector;
- regulatory developments in the United States and foreign countries;
- variations in our financial results or those of companies that are perceived to be similar to us;

- changes in the structure of healthcare payment systems, especially in light of current reforms to the U.S. healthcare system;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- market conditions in the pharmaceutical and biotechnology sectors and issuance of securities analysts' reports or recommendations;
- sales of our stock by insiders and 5% stockholders;
- trading volume of our common stock;
- general economic, industry and market conditions other events or factors, many of which are beyond our control;
- additions or departures of key personnel; and
- intellectual property, product liability or other litigation against us.

In addition, in the past, stockholders have initiated class action lawsuits against biotechnology and pharmaceutical companies following periods of volatility in the market prices of these companies' stock. Such litigation, if instituted against us, could cause us to incur substantial costs and divert management's attention and resources, which could have a material adverse effect on our business, financial condition and results of operations.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our net loss and other operating results will be affected by numerous factors, including:

- variations in the level of expenses related to our EVK-001 development program;
- addition or termination of clinical trials;
- any intellectual property infringement lawsuit in which we may become involved;
- regulatory developments affecting EVK-001; and
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements.

If our quarterly operating results fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially.

We may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

Our management will have broad discretion in the application of the net proceeds from this offering, including for any of the purposes described in the section entitled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment. We expect to use the net proceeds from this offering for research and development activities for EVK-001, including our planned Phase 3 clinical trial of EVK-001,

and for working capital and other general corporate purposes. The failure by our management to apply these funds effectively could harm our business. Pending their use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our stockholders. If we do not invest or apply the net proceeds from this offering and the concurrent private placement in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

You will suffer immediate and substantial dilution in the net tangible book value of the common stock you purchase.

The initial public offering price of our common stock is substantially higher than the net tangible book value per share of our outstanding common stock immediately after the completion of this offering. Purchasers of common stock in this offering will experience immediate dilution of approximately $ per share in net tangible book value of the common stock. In the past, we issued options and warrants to acquire common stock at prices significantly below the initial public offering price. To the extent these outstanding options and warrants are ultimately exercised, investors purchasing common stock in this offering will sustain further dilution. For a further description of the dilution that you will experience immediately after this offering, see "Dilution."

Because a small number of our existing stockholders own a majority of our voting stock, your ability to influence corporate matters will be limited.

Following the completion of this offering, our executive officers, directors and greater than 5% stockholders, in the aggregate, will own approximately % of our outstanding common stock. As a result, such persons, acting together, will have the ability to control our management and affairs and substantially all matters submitted to our stockholders for approval, including the election and removal of directors and approval of any significant transaction. These persons will also have the ability to control our management and business affairs. This concentration of ownership may have the effect of delaying, deferring or preventing a change in control, impeding a merger, consolidation, takeover or other business combination involving us, or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of our business, even if such a transaction would benefit other stockholders.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our amended and restated certificate of incorporation and amended and restated bylaws may delay or prevent an acquisition of us or a change in our management. These provisions include:

- authorizing the issuance of "blank check" preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- limiting the removal of directors by the stockholders;
- creating a staggered board of directors;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders;
- permitting our board of directors to accelerate the vesting of outstanding option grants upon certain transactions that result in a change of control; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders owning in excess of 15% of our outstanding voting stock to merge or combine with us. Although we believe these provisions collectively provide for an opportunity to obtain greater value for stockholders by requiring potential acquirors to negotiate with our board of directors, they would apply even if an offer rejected by our board were considered beneficial by some stockholders. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

We do not intend to pay dividends on our common stock and, consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividend on our common stock and do not currently intend to do so for the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. In addition, our loan and security agreement with Silicon Valley Bank currently prohibits us from paying dividends on our equity securities, and any future debt financing arrangement may contain terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. Any return to stockholders will therefore be limited to the appreciation of their stock. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in their value. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

Sales of a substantial number of shares of our common stock by our existing stockholders in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market or the perception that these sales might occur, could significantly reduce the market price of our common stock and impair our ability to raise adequate capital through the sale of additional equity securities.

Based on shares of common stock outstanding as of December 31, 2012, upon the closing of this offering, we will have outstanding a total of shares of common stock, assuming no exercise of the underwriters' overallotment option and no exercise of outstanding options and warrants. Of these shares, only the shares of common stock sold in this offering by us, plus any shares sold upon exercise of the underwriters' overallotment option, will be freely tradable without restriction in the public market immediately following this offering. Aegis Capital Corp. however, may, in its sole discretion, permit our officers, directors and other stockholders who are subject to these lock-up agreements to sell shares prior to the expiration of the lock-up agreements.

We expect that the lock-up agreements pertaining to this offering will expire 180 days from the date of this prospectus. After the lock-up agreements expire, up to an additional shares of common stock will be eligible for sale in the public market of which shares are held by directors, executive officers and other affiliates and will be subject to volume limitations under Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, assuming an initial public offering price of $ per share (the midpoint of the price range set forth on the cover page of this prospectus). In addition, shares of common stock that are either subject to outstanding options or reserved for future issuance under our employee benefit plans will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules, the lock-up agreements and Rule 144 and Rule 701 under the Securities Act. If these additional shares of common stock are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline.

After this offering, the holders of shares of our common stock, or % of our total outstanding common stock as of December 31, 2012, will be entitled to rights with respect to the registration of their shares under the Securities Act, subject to the 180-day lock-up agreements described above and assuming an initial public offering price of $ per share (the midpoint of the price range set forth on the cover page of this prospectus). See "Description of Capital Stock—Registration Rights." Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by affiliates, as defined in Rule 144 under the Securities Act. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

We are an emerging growth company, and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements and exemptions from the requirements of holding nonbinding advisory votes on executive compensation and stockholder approval of any golden parachute payments not previously approved. We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier, including if the market value of our common stock held by non-affiliates exceeds $700.0 million as of any June 30 before that time or if we have total annual gross revenue of $1.0 billion or more during any fiscal year before that time, in which cases we would no longer be an emerging growth company as of the following December 31 or, if we issue more than $1.0 billion in non-convertible debt during any three year period before that time, we would cease to be an emerging growth company immediately. Even after we no longer qualify as an emerging growth company, we may still qualify as a “smaller reporting company” which would allow us to take advantage of many of the same exemptions from disclosure requirements including not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and reduced disclosure obligations regarding executive compensation in this prospectus and our periodic reports and proxy statements. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Under the JOBS Act, emerging growth companies can also delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in our business could significantly affect our financial position and results of operations.

We will incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. We will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, which will require, among other things, that we file with the Securities and Exchange Commission, or the SEC, annual, quarterly and current reports with respect to our business and financial condition. In addition, the Sarbanes-Oxley Act, as well as rules subsequently adopted by the SEC, and The NASDAQ Stock Market to implement provisions of the Sarbanes-Oxley Act, impose significant requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Further, in 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, was enacted. There are significant corporate governance and executive compensation related provisions in the Dodd-Frank Act that require the SEC to adopt additional rules and regulations in these areas such as “say on pay” and proxy access. Recent legislation permits smaller “emerging growth companies” to implement many of these requirements over a longer period and up to five years from the pricing of this offering. We intend to take advantage of this new legislation but cannot guarantee that we will not be required to implement these requirements sooner than budgeted or planned and thereby incur unexpected expenses. Stockholder activism, the current political environment and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact the manner in which we operate our business in ways we cannot currently anticipate.

We expect the rules and regulations applicable to public companies to substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly. If these requirements divert the attention of our management and personnel from other business concerns, they could have a material adverse effect on our business, financial condition and results of operations. The increased costs will decrease our net income or increase our consolidated net loss, and may require us to reduce costs in other areas of our business or increase the prices of our products or services. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur substantial costs to maintain the same or similar coverage. We cannot predict or estimate the amount or timing of additional costs we may incur to respond to these requirements. The impact of these requirements could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

If securities or industry analysts do not publish research or reports or publish unfavorable research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us, our business, our market or our competitors. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who covers us downgrades our stock, our stock price would likely decline. If one or more of these analysts ceases to cover us or fails to regularly publish reports on us, interest in our stock could decrease, which could cause our stock price or trading volume to decline.

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because pharmaceutical companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management’s attention and resources, which could harm our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations and financial position, business strategy, prospective products, product approvals, research and development costs, timing and likelihood of success, plans and objectives of management for future operations, and future results of current and anticipated products are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this prospectus are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties and assumptions described under the sections in this prospectus entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise. The forward-looking statements contained in this prospectus are excluded from the safe harbor protection provided by the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933, as amended.

This prospectus also contains estimates and other statistical data made by independent parties and by us relating to market size and growth and other data about our industry. This data involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. In addition, projections, assumptions and estimates of our future performance and the future performance of the markets in which we operate are necessarily subject to a high degree of uncertainty and risk.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of the common stock that we are offering will be approximately $ million (or $ million if the underwriters exercise their over-allotment option in full), assuming an initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of 1.0 million in the number of shares we are offering would increase (decrease) the net proceeds to us from this offering, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, by approximately $ million, assuming the assumed initial public offering price stays the same.

We intend to use $ of the net proceeds of this offering for research and development activities for EVK-001, including our planned Phase 3 clinical trial of EVK-001, and the remainder for working capital and other general corporate purposes. We may also use a portion of the net proceeds to in-license, acquire or invest in complementary businesses or products; however, we have no current commitments or obligations to do so. Pending use of the proceeds as described above, we intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities or certificates of deposit.

We believe that the net proceeds from this offering and our existing cash and cash equivalents, together with interest thereon, will be sufficient to fund our operations through approximately 12 months after the date of this prospectus, although there can be no assurance in that regard. In particular, we believe that the net proceeds from this offering will allow us to commence our planned Phase 3 clinical trial of EVK-001. Because we expect this clinical trial to commence in the second half of 2013 with an approximately 12 month enrollment period, we will need to obtain additional funds to complete this trial as well as finance any additional development requirements requested by the FDA.

The amounts and timing of our actual expenditures will depend on numerous factors, including the progress of our clinical trials and other development efforts for EVK-001, as well as the amount of cash used in our operations. We therefore cannot estimate the amount of net proceeds to be used for the purposes described above. We may find it necessary or advisable to use the net proceeds for other purposes, and we will have broad discretion in the application of the net proceeds. Pending the uses described above, we plan to invest the net proceeds from this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We intend to retain future earnings, if any, to finance the operation of our business and do not anticipate paying any cash dividends in the foreseeable future. In addition, unless waived, the terms of our loan and security agreement with Silicon Valley Bank limit our ability to pay cash dividends. Any future determination related to dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors the board of directors deems relevant, and subject to the restrictions contained in our current or future financing instruments.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of December 31, 2012 as follows:

- on an actual basis;
- on a pro forma basis to reflect (1) the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 12,195,068 shares of our common stock prior to the closing of this offering, (2) the adjustment of our outstanding warrants to purchase Series A convertible preferred stock into warrants to purchase 70,000 shares of our common stock immediately prior to the closing of this offering and the resultant reclassification of our convertible preferred stock warrant liability to additional paid-in capital, a component of stockholders' equity (deficit), and (3) the filing of our amended and restated certificate of incorporation immediately prior to the closing of this offering; and
- on a pro forma as adjusted basis to give further effect to our issuance and sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma and pro forma as adjusted information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this information in conjunction with our financial statements and the related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section and other financial information contained in this prospectus.

	As of December 31, 2012		
	Actual	Pro Forma	Pro Forma As Adjusted[1]
Cash and cash equivalents	$ 116,013	$ 116,013	$
Capitalization:			
Warrant liability	$ 56,000	$ —	
Long-term debt, net of debt discount	979,792	979,792	
Series A convertible preferred stock, $0.0001 par value per share; 12,305,068 shares authorized, 12,195,068 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro form and pro forma as adjusted	18,225,166	—	
Common stock, $0.0001 par value per share; 20,000,000 shares authorized, 6,213,750 shares issued and outstanding, actual; 200,000,000 shares authorized, pro forma and pro forma as adjusted; 18,408,818 shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted	621	1,841	
Preferred stock, $0.0001 par value per share; no shares authorized, issued and outstanding, actual; 10,000,000 shares authorized, no shares issued or outstanding, pro forma and pro forma as adjusted	—	—	—
Additional paid-in capital	195,028	18,474,974	
Deficit accumulated during the development stage	(19,855,003)	(19,855,003)	
Total stockholders' equity (deficit)	(19,659,354)	(1,378,188)	
Total capitalization	$ 398,396	$ 398,396	$

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization by approximately $, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price per share, the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization by approximately $.

The number of shares in the table above excludes, as of December 31, 2012:

- 616,250 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2012, at a weighted-average exercise price of $0.079 per share;
- shares of our common stock reserved for future issuance under our 2013 equity incentive plan, or the 2013 plan, which will become effective immediately prior to the closing of this offering;
- shares of common stock reserved for future issuance under our 2013 employee stock purchase plan, or ESPP, which will become effective upon the closing of this offering;
- 70,000 shares of common stock issuable upon exercise of warrants outstanding as of December 31, 2012, at a weighted-average exercise price of $1.50 per share; and
- shares of common stock issuable upon exercise of a warrant to be issued to the representative in connection with this offering, at an exercise price per share equal to 175% of the public offering price.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share and the pro forma as adjusted net tangible book value per share of our common stock after this offering.

As of December 31, 2012, we had a historical net tangible book value (deficit) of $(19,659,354), or $(3.16) per share of common stock, based on 6,213,750 shares of common stock outstanding at December 31, 2012. Our historical net tangible book value represents total tangible assets less total liabilities at December 31, 2012.

On a pro forma basis, after giving effect to the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 12,195,068 shares of our common stock immediately prior to the closing of this offering and the reclassification of our convertible preferred stock warrant liability to additional paid-in capital, a component of stockholders' equity (deficit), our pro forma net tangible book value (deficit) as of December 31, 2012 would have been approximately $(1,378,188), or approximately $(0.07) per share of our common stock.

After giving further effect to the sale of shares of common stock that we are offering at an assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of December 31, 2012 would have been approximately $ million, or approximately $ per share. This amount represents an immediate increase in pro forma net tangible book value of $ per share to our existing stockholders and an immediate dilution in pro forma net tangible book value of approximately $ per share to new investors purchasing shares of common stock in this offering.

Dilution per share to new investors is determined by subtracting pro forma as adjusted net tangible book value per share after this offering from the initial public offering price per share paid by new investors. The following table illustrates this dilution:

Assumed initial public offering price per share		$
Historical net tangible book value (deficit) per share as of December 31, 2012	$(3.16)	
Pro forma increase in historical net tangible book value (deficit) per share attributable to the pro forma transactions described in preceding paragraphs	3.09	
Pro forma net tangible book value (deficit) per share as of December 31, 2012	(0.07)	
Increase in pro forma net tangible book value per share attributable to this offering		
Pro forma as adjusted net tangible book value per share after this offering		$
Dilution per share to new investors		$

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after this offering by approximately $, and dilution in pro forma net tangible book value per share to new investors by approximately $, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us. Each increase (decrease) of 1.0 million shares in the number of shares offered by us would increase (decrease) our pro forma as adjusted net tangible book value per share after this offering by approximately $ per share and decrease (increase) the dilution to investors participating in this offering by approximately $ per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option to purchase additional shares of our common stock in full in this offering, the pro forma as adjusted net tangible book value after the offering would be $ per share, the increase in pro forma net tangible book value per share to existing stockholders would be $ per share and the dilution per share to new investors would be $ per share, in each case assuming an initial public offering price of $ per share, the midpoint of the price range listed on the cover page of this prospectus.

The following table summarizes on the pro forma as adjusted basis described above, as of December 31, 2012, the differences between the number of shares purchased from us, the total consideration paid to us in cash and the average price per share that existing stockholders and new investors paid. The calculation below is based on the assumed initial public offering price of $ per share, the midpoint of the price range listed on the cover page of the prospectus, before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%	$	%	$
New investors					
Total		100%	$	100%	

The foregoing tables and calculations exclude:

- 616,250 shares of common stock issuable upon exercise of stock options outstanding as of December 31, 2012, at a weighted-average exercise price of $0.079 per share;
- shares of our common stock reserved for future issuance under our 2013 equity incentive plan, or the 2013 plan, which will become effective immediately prior to the closing of this offering;
- shares of common stock reserved for future issuance under our 2013 employee stock purchase plan, or ESPP, which will become effective upon the closing of this offering;
- 70,000 shares of common stock issuable upon exercise of warrants outstanding as of December 31, 2012, at a weighted-average exercise price of $1.50 per share; and
- shares of common stock issuable upon exercise of a warrant to be issued to the representative in connection with this offering, at an exercise price per share equal to 175% of the public offering price.

To the extent any of these outstanding options or warrants is exercised, there will be further dilution to new investors. If all of such outstanding options and warrants had been exercised as of December 31, 2012, the pro forma as adjusted net tangible book value per share after this offering would be $, and total dilution per share to new investors would be $.

If the underwriters exercise their over-allotment option to purchase additional shares of our common stock in full in this offering:

- the percentage of shares of common stock held by existing stockholders will decrease to approximately % of the total number of shares of our common stock outstanding after this offering; and
- the number of shares held by new investors will increase to , or approximately % of the total number of shares of our common stock outstanding after this offering.

SELECTED FINANCIAL DATA

You should read the following selected financial data in conjunction with our audited financial statements and the related notes thereto appearing elsewhere in this prospectus and in the section of this prospectus entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations". We have derived the statements of operations data for the years ended December 31, 2011 and 2012 and the period from January 29, 2007 (Inception) to December 31, 2012 and the balance sheet data as of December 31, 2011 and 2012 from our audited financial statements appearing elsewhere in this prospectus. Our historical results for any prior period are not necessarily indicative of the results to be expected in any future period.

	Years Ended December 31,		Period From January 29, 2007 (Inception) to December 31, 2012
	2011	2012	
Statement of Operations Data:			
Operating expenses:			
Research and development	$ 1,844,044	$ 1,165,645	$ 15,991,529
General and administrative	570,524	836,781	3,304,533
Purchase of in-process research and development	—	—	650,000
Total operating expenses	2,414,568	2,002,426	19,946,062
Loss from operations	(2,414,568)	(2,002,426)	(19,946,062)
Total other income (expense)	13,324	(15,102)	91,059
Net loss and comprehensive loss	$(2,401,244)	$ (2,017,528)	$(19,855,003)
Net loss per common share, basic and diluted[(1)]	$ (0.44)	$ (0.36)	
Weighted-average shares used to compute basic and diluted net loss per share[(1)]	5,513,125	5,620,000	
Pro forma net loss per common share, basic and diluted (unaudited)[(1)]		$ (0.11)	
Weighted-average shares used to compute pro forma net loss per common share, basic and diluted (unaudited)[(1)]		17,815,068	

(1) See Note 2 to our to our audited financial statements included elsewhere in this prospectus for an explanation of the method used to calculate the historical and pro forma net loss per share, basic and diluted, and the number of shares used in the computation of the per share amounts.

	As of December 31,	
	2011	2012
Balance Sheet Data:		
Cash and cash equivalents	$ 865,876	$ 116,013
Working capital (deficit)	570,835	(454,396)
Total assets	905,335	116,013
Current liabilities (including warrant liability)	334,500	570,409
Long-term debt, net of debt discount	—	979,792
Convertible preferred stock	18,225,166	18,225,166
Accumulated deficit	(17,837,475)	(19,855,003)
Total stockholders' deficit	(17,654,331)	(19,659,354)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause our actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

We are a specialty pharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. We are developing EVK-001, a metoclopramide nasal spray for the relief of symptoms associated with acute and recurrent diabetic gastroparesis in women with diabetes mellitus. Diabetic gastroparesis is a GI disorder afflicting millions of sufferers worldwide, in which the stomach takes too long to empty its contents resulting in serious digestive system symptoms. Metoclopramide is the only product currently approved in the United States to treat gastroparesis, and is currently available only in oral and intravenous forms. EVK-001 is a novel formulation of this drug, designed to provide systemic delivery of metoclopramide through intranasal administration.

We have evaluated EVK-001 in a multicenter, randomized, double-blind, placebo-controlled parallel group, dose-ranging Phase 2b clinical trial in 287 patients with diabetic gastroparesis where EVK-001 was observed to be effective in improving the most prevalent and clinically relevant symptoms associated with gastroparesis in women while exhibiting a favorable safety profile. We plan to initiate a Phase 3 trial of EVK-001 in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in the second half of 2013.

We have no products approved for sale, and we have not generated any revenue from product sales or other arrangements. We have primarily funded our operations through the sale of our convertible preferred stock and borrowings under our loan and security agreements. We have incurred losses in each year since our inception. Our net losses were $2.4 million and $2.0 million for the years ended December 31, 2011 and 2012, respectively. As of December 31, 2012, we had an accumulated deficit of $19.9 million. Substantially all of our operating losses resulted from expenses incurred in connection with advancing EVK-001 through development activities and general and administrative costs associated with our operations. We expect to continue to incur significant expenses and increasing operating losses for at least the next several years.

Our recurring losses from operations, negative cash flows and insufficient working capital raise substantial doubt about our ability to continue as a going concern. In its report on our financial statements for the year ended December 31, 2012, our independent registered public accounting firm included an explanatory paragraph. We may never become profitable, or if we do, we may not be able to sustain profitability on a recurring basis.

Questcor Asset Purchase Agreement

We acquired all worldwide rights, data, patents and other related assets associated with EVK-001 from Questcor Pharmaceuticals in June 2007. We paid to Questcor $650,000 in the form of an upfront payment, and will be required to make additional milestone payments totaling up to $52.0 million if EVK-001 achieves specified development and commercial milestones. In addition, we will be required to pay to Questcor a low single digit royalty on net sales of EVK-001.

Financial Operations Overview

Research and Development Expenses

We expense all research and development expenses as they are incurred. Research and development expenses primarily include:

- clinical trial and regulatory-related costs;
- expenses incurred under agreements with contract research organizations, or CROs, investigative sites and consultants that conduct our clinical trials;
- manufacturing and stability testing costs and related supplies and materials;
- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense;

All of our research and development expenses to date have been incurred in connection with EVK-001. We expect our research and development expenses to increase for the foreseeable future as we advance EVK-001 through clinical development, including the conduct of our planned Phase 3 clinical trial. The process of conducting clinical trials necessary to obtain regulatory approval is costly and time consuming. However, we are unable to estimate with any certainty the costs we will incur in the continued development of EVK-001. Clinical development timelines, the probability of success and development costs can differ materially from expectations. We may never succeed in achieving marketing approval for our product candidate.

The costs of clinical trials may vary significantly over the life of a project owing to, but not limited to, the following:

- per patient trial costs;
- the number of sites included in the trials;
- the countries in which the trials are conducted;
- the length of time required to enroll eligible patients;
- the number of patients that participate in the trials;
- the number of doses that patients receive;
- the cost of comparative agents used in trials;
- the drop-out or discontinuation rates of patients;
- potential additional safety monitoring or other studies requested by regulatory agencies;
- the duration of patient follow-up; and
- the efficacy and safety profile of the product candidate.

We do not expect EVK-001 to be commercially available, if at all, for the next few years.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related benefits, including stock-based compensation. Our general and administrative expenses consisted of payroll expenses for our two full-time employees during the two-year period ended December 31, 2012. Other general and administrative expenses include professional fees for auditing, tax, patent costs and legal services.

We expect that general and administrative expenses will increase in the future as we expand our operating activities and incur additional costs associated with being a publicly-traded company and maintaining compliance with exchange listing and Securities and Exchange Commission requirements. These increases will likely include higher consulting costs, legal fees, accounting fees, directors' and officers' liability insurance premiums and fees associated with investor relations.

Total Other Income (Expense)

Total other income (expense) consists primarily of interest income we earn on interest-bearing accounts and money market funds for cash and cash equivalents, interest expense incurred on our outstanding debt and changes in the fair value of our warrant liability and preferred stock purchase right liability.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States (GAAP). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as the reported revenues and expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our actual results may differ materially from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our financial statements appearing elsewhere in this prospectus, we believe that the following accounting policies are the most critical for fully understanding and evaluating our financial condition and results of operations.

Accrued Research and Development Expenses

As part of the process of preparing financial statements, we are required to estimate and accrue expenses, the largest of which are research and development expenses. This process involves the following:

- communicating with our applicable personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for the service when we have not yet been invoiced or otherwise notified of actual cost;
- estimating and accruing expenses in our financial statements as of each balance sheet date based on facts and circumstances known to us at the time; and
- periodically confirming the accuracy of our estimates with selected service providers and making adjustments, if necessary.

Examples of estimated research and development expenses that we accrue include:

- fees paid to CROs in connection with toxicology studies and clinical studies;
- fees paid to investigative sites in connection with clinical studies;
- fees paid to contract manufacturing organizations in connection with the production of clinical study materials; and
- professional service fees for consulting and related services.

We base our expense accruals related to clinical studies on our estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and CROs that conduct and manage clinical studies on our behalf. The financial terms of these agreements vary from contract to contract and may result in uneven payment flows. Payments under some of these contracts depend on factors, such as the successful enrollment of patients, site initiation and the completion of clinical study milestones. Our service providers invoice us monthly in arrears for services performed. In accruing service fees, we estimate the time period over which services will be performed and the level of effort to be expended in each period. If we do not identify costs that we have begun to incur or if we underestimate or overestimate the level of services performed or the costs of these services, our actual expenses could differ from our estimates. To date, we have not experienced significant changes in our estimates of accrued research and development expenses after a reporting period. However, due to the nature of estimates, we cannot assure you that we will not make changes to our estimates in the future as we become aware of additional information about the status or conduct of our clinical studies and other research activities.

Estimated Fair value of Convertible Preferred Stock Warrants

Freestanding warrants for the purchase of convertible preferred stock that is either subject to a put right or redeemable are classified as liabilities on the balance sheet at their estimated fair value. At the end of each reporting period, changes in estimated fair value during the period are recorded as a component of other income (expense). We will continue to adjust the carrying value of these warrants until the earlier of the exercise of the warrants or the completion of a liquidity event, including the completion of an initial public offering, or IPO, at which time the liabilities will be reclassified to stockholders' deficit. We estimate the fair values of the convertible preferred stock warrants using the Black-Scholes option pricing model based on inputs as of the valuation measurement dates for the estimated fair value of the underlying convertible preferred stock, the remaining contractual terms of the warrants, risk-free interest rates, expected dividend rates and the estimated volatility of the price of the convertible preferred stock. The consummation of this offering will result in the conversion of our Series A convertible preferred stock into common stock. Upon such conversion, the preferred stock warrants will be classified as a component of stockholders' equity (deficit) and will no longer be subject to remeasurement.

Other Accounting Policies

Although our stock-based compensation expense may be significant in future periods, we have not issued any stock awards since February 2011 and have not recorded a significant amount of stock-based compensation expense during the periods presented. See Note 2—Summary of Significant Accounting Policies—Stock-Based Compensation Expense to our audited financial statements included elsewhere in this prospectus.

Other Information

Net Operating Loss Carryforwards

As of December 31, 2012, we had federal and California tax net operating loss carryforwards of approximately $18.6 million and $18.2 million, respectively. The federal and California net loss carryforwards will begin to expire in 2028 and 2018, respectively, unless previously utilized. As of December 31, 2012, we also had federal and California research and development tax credit carryforwards of $525,000 and $428,000, respectively. The federal research and development tax credit carryforwards will begin to expire in 2028. The California research and development tax credit carryforwards are available indefinitely.

Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change" (generally defined as a greater than 50% change (by value) in its equity ownership over a three year period), the corporation's ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. We have not completed our analysis to determine what, if any, impact any prior ownership change has had on our ability to utilize our net operating loss carryforwards.

JOBS Act

On April 5, 2012, the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, was enacted. Section 107 of the JOBS Act provides that an "emerging growth company" can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended, or the Securities Act, for complying with new or revised accounting standards. In other words, an "emerging growth company" can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this extended transition period and, as a result, we will adopt new or revised accounting standards on the relevant dates on which adoption of such standards is required for other public companies.

We are in the process of evaluating the benefits of relying on other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, as an "emerging growth company," we intend to rely on certain of these exemptions, including without limitation, (i) providing an auditor's attestation report on our system of internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and (ii) complying with any requirement that may be adopted by the Public Company Accounting Oversight Board (PCAOB) regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will remain an "emerging growth company" until the earliest of (a) the last day of the fiscal year in which we have total annual gross revenues of $1 billion or more, (b) the last day of our fiscal year following the fifth anniversary of the date of the completion of this offering, (c) the date on which we have issued more than $1 billion in nonconvertible debt during the previous three years or (d) the date on which we are deemed to be a large accelerated filer under the rules of the Securities and Exchange Commission.

Results of Operations

Comparison of Fiscal Years Ended December 31, 2011 and 2012

The following table summarizes the results of our operations for the fiscal years ended December 31, 2011 and 2012:

	Years Ended December 31,		Increase/ (Decrease)
	2011	2012	
Research and development	$1,844,044	$1,165,645	$(678,399)
General and administrative	570,524	836,781	266,257
Other income (expense):			
Interest income	10,696	1,690	(9,006)
Interest expense	(2,872)	(24,042)	(21,170)
Change in fair value of warrant liability	5,500	7,250	1,750
Total other income (expense)	13,324	(15,102)	(28,426)

Research and Development Expenses. Research and development expenses were $1.8 million for the year ended December 31, 2011, compared to $1.2 million for the year ended December 31, 2012. The decrease of $0.7 million is primarily related to the decrease in development-related costs as we finalized the Phase 2 clinical trial for EVK-001 and engaged with the FDA for Phase 3 planning.

General and Administrative Expenses. General and administrative expenses were $0.6 million for the year ended December 31, 2011, compared to $0.8 million for the year ended December 31, 2012. The increase of $0.3 million is primarily related to an increase in accruals for bonus payments to our officers in 2012.

Other Income (Expense). Other income (expense) was $13,000 for the year ended December 31, 2011 and primarily consisted of interest income. Other income (expense) was $(15,000) for the year ended December 31, 2012 and primarily consisted of $24,000 of interest expense related to advances under our loan and security agreement, offset by $2,000 of interest income and $7,000 of other income related to the decrease in fair value of our outstanding warrant liability.

Liquidity and Capital Resources

We have funded our operations primarily from the sale of convertible equity securities and borrowings under our loan and security agreements. Through December 31, 2012, we have received $17.7 million in net proceeds from the sale of our Series A convertible preferred stock and net proceeds of $1.0 million under our current loan and security agreement. We have incurred losses since inception and negative cash flows from operating activities. As of December 31, 2012, we had approximately $0.1 million in cash and cash equivalents, a working capital (deficit) of $0.5 million and an accumulated deficit of $19.9 million. In January 2013, we drew down the remaining $2.0 million under our $3.0 million loan and security agreement.

In June 2012, we entered into a $3.0 million loan and security agreement with Silicon Valley Bank which is collateralized by our personal property. Interest on advances under the agreement is at a fixed interest rate equal to 4.50%. The loan and security agreement contains only non-financial covenants. Advances under the loan and security agreement have an interest-only period through December 31, 2013 and a 24-month payback period commences in January 2014. As of January 31, 2013, we had drawn down the entire $3.0 million available under the agreement and have no credit available for future borrowings.

We expect to continue to incur significant expenses and increasing operating losses for at least the next several years. In the near-term, we anticipate that our expenses will increase substantially as we:

- initiate significant clinical trials associated with EVK-001, including our planned Phase 3 clinical trial;

- hire additional staff, including clinical, scientific, operational, financial and management personnel; and
- to maintain, expand and protect our intellectual property portfolio.

To fund further operations we will need to raise additional capital. The expected net proceeds from this offering will not be sufficient for us to complete our planned Phase 3 clinical trial of EVK-001 or any additional development requirements requested by the FDA, or, if applicable, to prepare for commercialization of EVK-01 should we receive product approval. Accordingly, we will continue to require substantial additional capital beyond the expected proceeds from this offering to continue our clinical development and potential commercialization activities. The amount and timing of our future funding requirements will depend on many factors, including the pace and results of our clinical development efforts. We anticipate that we will seek to fund our operations through public or private equity or debt financings or other sources, such as potential collaboration arrangements. Our failure to raise capital as and when needed would have a negative impact on our financial condition and our ability to pursue our business strategies.

The following table summarizes of our cash flows for the years ended December 31, 2011 and 2012:

	Years Ended December 31,	
	2011	2012
Net cash used in operating activities	$(2,893,108)	$(1,749,863)
Net cash provided by (used in) financing activities	(277,779)	1,000,000
Net (decrease) increase in cash and cash equivalents	$(3,170,887)	$ (749,863)

Operating Activities. Net cash used in operating activities was $2.9 million for the year ended December 31, 2011, compared to net cash used in operating activities of $1.8 million for the year ended December 31, 2012. In both periods the primary use of cash was to fund our net loss.

Financing Activities. Net cash used in financing activities was $0.3 million for the year ended December 31, 2011 compared to net cash provided by financing activities of $1.0 million for the year ended December 31, 2012. In 2011 we paid down our outstanding balances under our original loan and security agreement while we took advances on our current loan and security agreement in 2012.

The report of our independent registered public accounting firm on our audited consolidated financial statements for the year ended December 31, 2012 includes an explanatory paragraph stating that our recurring losses from operations and working capital deficit raise doubt about our ability to continue as a going concern. If we are unable to obtain additional financing on commercially reasonable terms, our business, financial condition and results of operations will be materially adversely affected and we may be unable to continue as a going concern. If we are unable to continue as a going concern, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our financial statements.

We believe that our existing cash and cash equivalents as of December 31, 2012, together with interest thereon, and the estimated net proceeds from this offering, will be sufficient to meet our anticipated cash requirements for approximately 12 months after the date of this prospectus. However, our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement that involves risks and uncertainties, and actual results could vary materially.

The amount and timing of our future funding requirements will depend on many factors, including but not limited to:

- the initiation, progress, costs, results of and timing of our clinical development program for EVK-001, including our planned Phase 3 clinical trial;
- the need for, and the progress, costs and results of, any additional clinical trials of EVK-001 we may initiate based on the results of our planned clinical trials or discussions with the FDA, including any additional trials the FDA or other regulatory agencies may require evaluating the safety of EVK-001;
- the outcome, costs and timing of seeking and obtaining regulatory approvals from the FDA, and any similar regulatory agencies;
- the timing and costs associated with manufacturing EVK-001 for clinical trials and other studies and, if approved, for commercial sale;
- our need and ability to hire additional management, development and scientific personnel;
- the cost to maintain, expand and defend the scope of our intellectual property portfolio, including the amount and timing of any payments we may be required to make, or that we may receive, in connection with licensing, filing, prosecution, defense and enforcement of any patents or other intellectual property rights;
- the timing and costs associated with establishing sales and marketing capabilities;
- market acceptance of EVK-001;
- the extent to which we are required to pay milestone or other payments under our Questcor asset purchase agreement and the timing of such payments;
- the costs of acquiring, licensing or investing in additional businesses, products, product candidates and technologies; and
- our need to implement additional internal systems and infrastructure, including financial and reporting systems.

Off-Balance Sheet Arrangements

Through December 31, 2012, we have not entered into and did not have any relationships with unconsolidated entities or financial collaborations, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purpose.

Contractual Obligations

Our most significant clinical trial expenditures are to CROs. The contracts with CROs generally are cancellable, with notice, at our option and do not have any cancellation penalties.

Our long-term debt obligation consists of amounts we are obligated to repay under our loan and security agreement with Silicon Valley Bank, of which we have drawn the full amount of $3.0 million as of January 31, 2013. Unless principal is paid in advance, we are required to make an aggregate of $135,000 of interest-only payments in 2013. In January 2014 we are required to begin making the first of 24 monthly principal and interest payments of $131,024, such that the loan balance will be fully repaid in December 2015. We will incur a total of $144,570 of interest charges in 2014 and 2015.

As of December 31, 2012, we had no operating lease commitments.

Quantitative and Qualitative Disclosure about Market Risk

Interest Rate Fluctuation Risk

Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. However, because of the short-term nature of our cash and cash equivalents, a sudden change in market interest rates would not be expected to have a material impact on our financial condition and/or results of operations.

Our long-term debt bears interest at a fixed rate and therefore has minimal exposure to changes in interest rates.

Foreign Currency Exchange Risk

To date, all of our contractual obligations have been denominated in U.S. dollars. In the future, we may contract with organizations to manufacture drug product, active pharmaceutical ingredient, container closure system materials as well as CROs and investigational sites in foreign countries. We may therefore become subject to fluctuations in foreign currency rates in connection with these agreements.

Inflation Risk

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We do not believe that inflation has had a material effect on our business, financial condition or results of operations during the years ended December 31, 2011 and 2012.

BUSINESS

Overview

We are a specialty pharmaceutical company focused primarily on the development of drugs to treat gastrointestinal, or GI, disorders and diseases. We are developing EVK-001, a metoclopramide nasal spray for the relief of symptoms associated with acute and recurrent diabetic gastroparesis in women with diabetes mellitus. Diabetic gastroparesis is a GI disorder afflicting millions of sufferers worldwide, in which the stomach takes too long to empty its contents resulting in serious digestive system symptoms. Metoclopramide is the only product currently approved in the United States to treat gastroparesis, and is currently available only in oral and intravenous forms. EVK-001 is a novel formulation of this drug, designed to provide systemic delivery of metoclopramide through intranasal administration.

Gastroparesis is a condition of delayed gastric emptying in the absence of mechanical obstruction. Gastroparesis results in food remaining in the stomach for a longer time than normal, yielding a variety of symptoms. Gastroparesis is a common problem in individuals with diabetes, but also is observed in patients with prior gastric surgery, a preceding infectious illness, pseudo-obstruction, collagen vascular disorders and anorexia nervosa. According to the American Motility Society Task Force on Gastroparesis, the prevalence of gastroparesis is as high as 4% to 6% of the United States population. Symptoms of gastroparesis include nausea, vomiting, abdominal pain, bloating, early satiety, lack of appetite, and weight loss. The disorder can lead to considerable pain and discomfort, poor nutrition, impaired glycemic control and diminished quality of life. According to a 2008 study published in the *American Journal of Gastroenterology*, it is estimated that hospitalization costs associated with gastroparesis exceed $3.5 billion annually.

We believe intranasal administration has the potential to offer our target gastroparesis patients a preferred treatment option because, unlike oral metoclopramide, EVK-001 is designed to effectively bypass the digestive system and allow for more predictable drug administration of our proprietary nasal spray formulation across the thin mucosa in the nasal cavity. Intranasal drug delivery effectively bypasses the gut, unlike oral formulations which might be delayed in absorption due to gastroparesis itself. For patients suffering from nausea and vomiting, EVK-001 is designed to allow for rapid and predictable drug administration.

We have evaluated EVK-001 in a multicenter, randomized, double-blind, placebo-controlled parallel group, dose-ranging Phase 2b clinical trial in 287 patients with diabetic gastroparesis where EVK-001 was observed to be effective in improving the most prevalent and clinically relevant symptoms associated with gastroparesis in women while exhibiting a favorable safety profile. We plan to initiate a Phase 3 trial of EVK-001 in female patients with symptoms associated with acute and recurrent diabetic gastroparesis in the second half of 2013.

Business Strategy

Our objective is to develop and bring to market products to treat acute and chronic GI motility disorders that are not satisfactorily treated with current therapies and that represent significant market opportunities. Our business strategy is to:

- *Continue development and pursue regulatory approval for EVK-001.* We are currently preparing to initiate a Phase 3 trial of EVK-001 in female patients suffering from diabetic gastroparesis in the second half of 2013.
- *Seek partnerships to accelerate and maximize the potential for EVK-001.* As we continue to generate data on EVK-001, we will seek development and commercialization licensing opportunities with strategic partners.

- *Explore building in-house capabilities to potentially commercialize EVK-001 in the United States.* As EVK-001 progresses through its Phase 3 clinical program, in addition to partnering opportunities, we intend to evaluate the development of our own specialty sales force and marketing capabilities to allow us to directly market EVK-001 in the United States, if approved by the U.S. Food and Drug Administration, or FDA.
- *Explore regulatory approval of EVK-001 outside the United States*. We will initially seek approval of EVK-001 in the United States and evaluate the market opportunity in other countries.
- *Evaluate the development and/or commercialization of other therapies for GI motility disorders*. Similar to our initial focus on gastroparesis, we will evaluate opportunities to in-license or acquire other product candidates as well as commercial products to treat patients suffering from predominantly GI disorders, seeking to identify areas of high unmet medical needs with limited treatment options.

The Gastrointestinal Market

The health of the GI system has a major effect on an individual's daily activities and quality of life. A retrospective review published by the National Institute of Diabetes and Digestive and Kidney Diseases estimated that in 2004 there were more than 72 million ambulatory care visits with a diagnosis of a GI disorder in the United States alone. The annual cost of these GI disorders in 2004, not including digestive cancers and viral diseases, was estimated to be greater than $114 billion in direct and indirect expenditures, including hospital, physician and nursing services as well as over-the-counter and prescription drugs.

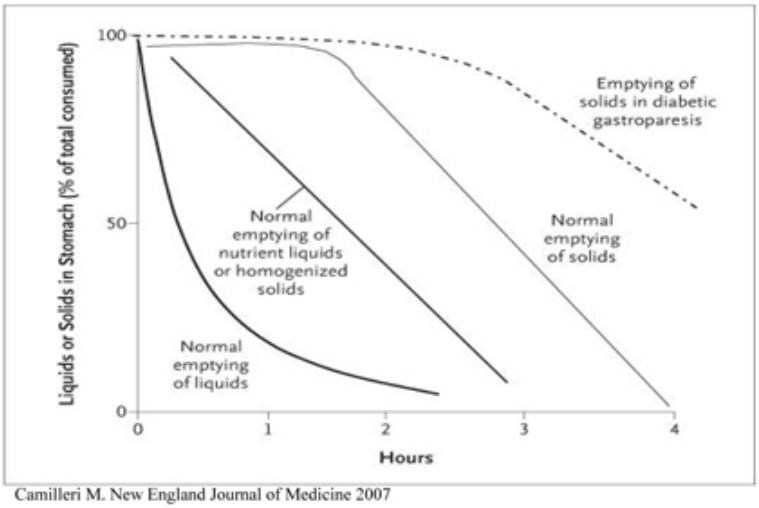
In 2004, the total cost of prescription drugs in the United States was $12.3 billion over half of this cost ($7.7 billion) was associated with drugs prescribed for Gastroesophageal Reflux Disease, or GERD. Peptic Ulcer disease, hepatitis C, IBS and IBD were major contributors to the remaining drug cost. Historically GI product development efforts have focused on indications with the largest patient populations such as GERD, constipation, peptic ulcers and irritable bowel syndrome, or IBS. As a result, limited innovation has occurred in other segments of the GI market, such as upper GI motility disorders, even though these disorders affect several million patients worldwide. Consequently, due to the limited treatment options available for upper GI motility disorders, we believe there is a substantial market opportunity for us to address significant unmet medical needs, initially for diabetic gastroparesis.

GI Motility Disorders

Motility disorders are one of the most common GI disorders. Motility disorders affect the orderly contractions or relaxation of the GI tract which move contents forward and prevent backwards egress. This is important in the normal movement of food through the GI tract. Motility disorders are sometimes referred to as functional GI disorders to highlight that many abnormalities in gut function can occur even when anatomic structures appear normal. Functional GI disorders affect the upper and lower GI tract and include gastroparesis, GERD, functional dyspepsia, constipation and IBS. It has been estimated by the International Foundation for Functional Gastrointestinal Disorders that one in four people in the United States suffer from functional GI disorders, having symptoms such as abdominal pain, nausea, vomiting, constipation, diarrhea, bloating, decreased appetite, early satiety, swallowing difficulties, heartburn and/or incontinence.

Gastroparesis

Gastroparesis is a debilitating, chronic condition that has a significant impact on patients' lives. It is characterized by slow or delayed gastric emptying and evidence of gastric retention in the absence of mechanical obstruction. Muscular contractions in the stomach, which move food into the intestine, may be too slow, out of rhythm or cease altogether. The following graph depicts the timing associated the emptying of solids in patients with diabetic gastroparesis compared to normal individuals:



Camilleri M. New England Journal of Medicine 2007

The stomach is a muscular sac between the esophagus and the small intestine where the digestion of food begins. The stomach makes acids and enzymes referred to as gastric juices which are mixed with food by the churning action of the stomach muscles. Peristalsis is the contraction and relaxation of the stomach muscles to physically breakdown food and propel it forward. The crushed and mixed food is liquefied to form chyme and is pushed through the pyloric canal into the small intestine in a controlled and regulated manner.

In gastroparesis, the stomach does not perform these functions normally causing characteristic symptoms that include nausea, vomiting, early satiety, bloating, and abdominal pain. As a result of these symptoms, patients may limit their food and liquid intake leading to poor nutrition and dehydration with the patient ultimately requiring hospitalization. If left untreated or not adequately treated, gastroparesis causes significant acute and chronic medical problems, including additional diabetic complications resulting from poor glucose control.

Gastroparesis in the Hospital Setting

When patients experience a flare of their gastroparesis symptoms that cannot be adequately managed by oral medications, they may be hospitalized for hydration, parenteral nutrition, and correction of abnormal blood glucose electrolyte levels. In this setting, intravenous metoclopramide is the first line of treatment. Typically, these diabetic patients with severe gastroparesis symptoms remain in the hospital until they are stabilized and able to be effectively treated with oral metoclopramide. These hospitalizations are costly and expose patients to increased risks, including hospital-acquired infections.

Physicians report that between 5% and 15% of their patients with gastroparesis require hospitalization due to their disease and that the number is growing, according to a study published in the American Journal of Gastroenterology in 2008. Additionally, the study reported, from 1995 to 2004, total hospitalizations with a primary diagnosis of gastroparesis increased 158%. Hospital admissions for patients with gastroparesis as the secondary diagnosis increased 136%. The average length of stay for a patient is between seven to eight days at an estimated cost of approximately $22,000. Compared to the other four most common upper GI admission diagnoses (GERD, gastric ulcer, gastritis or nonspecific nausea/vomiting), gastroparesis had the longest length of stay and one of the highest total charges per stay. Additionally, the study estimates that costs associated with gastroparesis as the primary or secondary diagnosis for admission exceeded $3.5 billion in 2004.

A study of patients in clinics at the University of Pittsburgh Medical Center between January 2004 and December 2008 published in the Journal of Gastroenterology and Hepatology, showed that patients with diabetic or post-surgical gastroparesis had significantly more emergency room visits than other gastroparesis groups. The study

reinforced the view that gastroparesis constitutes a significant burden for patients and the healthcare system, with more than one-third of patients requiring hospitalization. The number of emergency room visits and annual days of inpatient treatment were comparable to patients with Crohn's disease. The study indicated that patients received an average of 6.7 prescriptions on admission. Eighty percent of the patients identified in the University of Pittsburgh study were women.

Etiology

Gastroparesis can be a manifestation of many systemic illnesses, arise as a complication of select surgical procedures, or develop due to unknown causes. Any disease inducing neuromuscular dysfunction of the GI tract can result in gastroparesis, with diabetes being one of the leading known causes. In a 2007 study published in Current Gastroenterology Reports, 29% of gastroparesis cases were found in association with diabetes, 13% developed as a complication of surgery and 36% were due to unknown causes. According to the American Motility Society Task Force on Gastroparesis, 4% to 6% of the U.S. population experiences symptomatic manifestations of gastroparesis. As the incidence of diabetes rises worldwide, the prevalence of gastroparesis is expected to rise correspondingly.

The most common identified cause of gastroparesis is diabetes mellitus typically have long-standing and often poorly controlled diabetes. The underlying mechanism of diabetic gastroparesis is unknown; although, it is thought to be related in part to neuropathic changes in the vagus nerve and/or the myenteric plexus. Prolonged elevated serum glucose levels are also associated with vagus nerve damage. The vagus nerve controls the movement of food through the digestive tract and when it is damaged, forward movement of food through the GI tract is delayed. The prevalence of diabetes in the United States is rapidly rising with the Centers for Disease Control estimating that one in ten adults currently suffer from the disease. Sedentary lifestyles, poor dietary habits and a consequent rising prevalence of obesity are expected to cause this number to grow substantially.

According to a study published in the Journal of Gastrointestinal and Liver Diseases in July 2010, between 25% and 55% of Type 1 and 15% and 30% of Type 2 diabetics suffer from symptoms associated with the condition and diabetics are 29% of the total gastroparesis population. A 2007 study published in Current Gastroenterology Reports states that approximately 36% of gastroparesis patients suffer from idiopathic gastroparesis. The development of idiopathic gastroparesis is thought to be related to loss of myenteric ganglion cells in the distal large bowel (myenteric hypoganglionosis) and reduction in the interstitial cells of Cajal, which help control contraction of the smooth muscle in the GI tract. Post-surgical gastroparesis is a smaller subset of the total patient pool and accounts for approximately 13% of all cases of the disease, according to a 2007 study published in Current Gastroenterology Reports. Post-surgical gastroparesis is often associated with peptic ulcer surgery, bariatric procedures or esophageal procedures and is thought to result from damage/desensitization of the vagus nerve.

Prevalence

In 2011, the American Diabetes Association estimated that diabetes affects approximately 26 million people of all ages in the United States, equating to about 8.3% of the U.S. population. Based on prevalence data, the potential gastroparesis patient pool in the United States is approximately 12 to 16 million adults with women making up 82% of this population, according to a 2007 study published in Current Gastroenterology Reports. Less than 1.3 million gastroparesis patients in the United States are currently being treated by a health care professional, based on market research commissioned by Evoke in 2012. When patients do receive treatment for gastroparesis, multiple medications are frequently used to address the individual symptoms of gastroparesis. For example, patients may receive anti-emetics for nausea and vomiting and opioids for abdominal pain, which can exacerbate delayed gastric emptying in patients with gastroparesis.

Unmet Needs in Gastroparesis Treatment

Market research and physician interviews demonstrate that existing treatment options for diabetic gastroparesis are inadequate and there is a high level of interest in effective outpatient options for managing patients with gastroparesis symptoms. The market is currently served by oral and intravenous metoclopramide, and the oral disintegrating tablet, or ODT, formulation of metoclopramide (Metozolv® ODT). Due to the limited availability of

FDA-approved treatments for gastroparesis, physicians resort to using medications “off-label” in an attempt to address individual symptoms experienced by patients. Off-label therapies are pharmaceuticals prescribed by physicians for an unapproved indication or in an unapproved age group, unapproved dose or unapproved form of administration. Examples of drugs used without FDA approval in gastroparesis include; erythromycin, domperidone, and Botox® injected via endoscopic procedure directly into the lower gastric sphincter. Previously-approved drugs, such as cisapride and tegaserod, are no longer commercially available in the United States because of safety concerns.

EVK-001 is a non-oral, promotility and anti-emetic treatment that we believe has the potential to significantly improve the standard of care for female gastroparesis patients. If metoclopramide nasal spray is approved for diabetic gastroparesis in women, patients and physicians will have access to an outpatient therapy that could be administered and absorbed even when patients are experiencing nausea and vomiting.

Our Solution: EVK-001 (Metoclopramide Nasal Spray)

We are developing EVK-001, a dopamine antagonist / mixed 5-HT3 antagonist / 5-HT4 agonist with promotility and anti-emetic effects, for the relief of symptoms associated with acute and recurrent diabetic gastroparesis in women with diabetes mellitus. Since its approval in 1980, oral and intravenous metoclopramide have been the only products approved in the United States to treat gastroparesis. EVK-001 is a novel formulation of metoclopramide offering systemic delivery by intranasal administration.

We are developing the intranasal formulation of metoclopramide to provide our targeted patients with acute or recurrent symptoms of diabetic gastroparesis with a product that can be systemically delivered as an alternative to the oral or intravenous routes of administration. Intranasal delivery is possible because the mucosa of the nasal cavity is single epithelial cell layer which is well vascularized and allows metoclopramide molecules to be transferred directly to the systemic circulation. There is no first pass liver metabolism required prior to onset of action. Since gastroparesis is a disease that blocks or slows the movement of the contents of the stomach to the small intestine, oral drug administration is often compromised. Unlike the oral tablet formulation of metoclopramide, we believe that EVK-001 may be tolerated even when patients are experiencing nausea and vomiting. The intranasal formulation may also provide a predictable and consistent means of delivering metoclopramide in patients with delayed gastric emptying and/or frequent vomiting.

We believe that if approved EVK-001 could also offer an alternative route of administration for female patients with severe symptoms of diabetic gastroparesis, who typically receive the intravenous formulation of metoclopramide. A nasal spray formulation of metoclopramide could offer an alternative route of administration for female patients with severe symptoms of diabetic gastroparesis receiving the parenteral formulation of metoclopramide. Following hospitalization for intravenous metoclopramide, a nasal spray formulation would also provide a non-oral option for the transition to an outpatient treatment.

Phase 2b Clinical Trial

We have evaluated EVK-001 in a multicenter, randomized, double-blind, placebo-controlled parallel group, dose-ranging Phase 2b clinical trial in 287 subjects (79% female) with diabetic gastroparesis. Subjects in the trial were between the ages of 18 and 75, with a history of diabetes (type I and type II) and diabetic gastroparesis, who had a baseline modified Gastroparesis Cardinal Symptom Index Daily Diary, or mGCSI-DD, of ³ 2 and £ 4 for the seven days prior to randomization on the drug or placebo.

In this trial, EVK-001 demonstrated effectiveness in reducing the most common and clinically relevant symptoms associated with gastroparesis in women, while exhibiting a favorable safety profile. EVK-001 was shown to provide a statistically significant clinical benefit as defined by a reduction in the symptoms of gastroparesis as measured by the mGCSI-DD in women ($p<0.025$). Male subjects treated with EVK-001 showed some improvement in gastroparesis symptoms, but did not show a statistically significant difference compared to placebo. Due to these results in men, the primary objective of statistical significance in the overall population was not achieved ($p=0.15$).

We believe this Phase 2b trial is the largest ever conducted in a diabetic gastroparesis population for any approved metoclopramide dosage forms (oral tablet, orally disintegrating tablet and intravenous). Previous metoclopramide studies enrolled small numbers of subjects and did not evaluate gender. Fewer than 150 subjects were enrolled across all studies included in the new drug application, or NDA, for Reglan. While the EVK-001 Phase 2b trial is the first report of a gender-based difference in response to metoclopramide among subjects with diabetic gastroparesis, gender effects have been reported in drug studies for other GI disorders, such as irritable bowel syndrome, or IBS. For example, products such as Lotronex® (alosetron), Zelnorm® (tegaserod) and Amitiza® (lubiprostone) were approved by FDA based on effectiveness in women, but not in men.

Phase 2b Trial Design

The Phase 2b clinical trial consisted of up to a 23-day screening period and a seven-day washout period, followed by 28 days of treatment with study drug. We evaluated two dosage strengths of EVK-001: 10 mg and 14 mg; as well as placebo. The study drug was administered for the 28-day treatment period as a single intranasal spray four times daily, 30 minutes before meals and at bedtime. Subjects recorded the severity of their gastroparesis symptoms in a telephonic diary using an interactive voice response system once each day. The symptoms were analyzed using a patient reported outcomes instrument, the Gastroparesis Cardinal Symptom Index Daily Diary, or GCSI-DD, developed for collecting and analyzing data to evaluate the effectiveness of treatments for gastroparesis.

The GCSI-DD contains nine symptoms (nausea, retching, vomiting, stomach fullness, not able to finish a normal sized meal, feeling excessively full after meal, loss of appetite, bloating, and stomach or belly visibly larger) grouped in three subscales. The daily score is calculated as a mean of three subscale means. Additional symptoms collected in the daily diary included; abdominal pain, abdominal discomfort, number of hours of nausea, number of episodes of vomiting, and overall severity of gastroparesis symptoms. In close collaboration with FDA and its Study Endpoint and Labeling Division, these additional symptom data were used to further refine the patient reported outcome instrument. The result is a mGCSI-DD comprised of four symptoms (nausea, early satiety, bloating, and upper abdominal pain) rated from zero (none) to five (very severe). The instrument has been optimized to detect symptom variability on a severity continuum from nausea to vomiting.

Phase 2b Efficacy Results

Two patient reported outcome endpoints (mGCSI-DD and GCSI-DD) were examined in the intention-to-treat population based the protocol design and FDA communications:

- The primary efficacy endpoint was the change from seven-day baseline to Week 4 of the treatment period in the mGCSI-DD total score (mean of four symptoms).
- The second efficacy endpoint analyzed was the change from seven-day baseline to Week 4 of the treatment period in the GCSI-DD total score (mean of three subset means with a total of nine symptoms).

Although an overall improvement in symptoms was observed in EVK-001-treated patients with diabetic gastroparesis compared to placebo, the difference was not statistically significant due to a high placebo response among male subjects. However, statistically significant improvement in gastroparesis symptoms was observed in female subjects with diabetic gastroparesis as measured by the mGCSI-DD and GCSI-DD total scores for both doses of EVK-001 compared to the placebo. The beneficial effect of treatment in females appears to be uniform. The results are consistent across the overall endpoints, the individual components, and the two dose groups.

The observed differences in efficacy were based on gender and were not due to severity of baseline disease, or other demographic characteristics. No statistically significant differences were observed in efficacy between the 10 mg and 14 mg EVK-001 doses; thus the 10 mg dose was considered the lowest effective dose in this study. The table below summarizes the *p*-values observed for both doses of EVK-001 compared to placebo in the Phase 2b clinical trial across all subjects and for male and female patients separately.

EVK-001 Phase 2b Clinical Trial
Gastroparesis Study Endpoint Points *P*-Value Summary
(EVK-001 vs. Placebo: Change from Baseline to Week 4)

	EVK-001 10 mg *p*-values	EVK-001 14 mg *p*-values
mGCSI-DD Total Score (per FDA guidance)[1]		
All Subjects	0.1504	0.3005
Females	**0.0247**	**0.0215**
Males	0.4497	0.2174
GCSI-DD Total Score (per trial protocol)[2]		
All Subjects	0.2277	0.5266
Females	**0.0485**	**0.0437**
Males	0.4054	0.0972

P-values for pairwise comparisons are obtained from an ANCOVA model with effects for treatment group and Baseline value as a covariate.

(1) The mGCSI-DD was comprised of 4 symptoms collected on a severity rating scale of 0 to 5. Baseline was 7 days prior to treatment or qualifying days during washout and Week 4 was days 21 to 27 of treatment.

(2) The GCSI-DD was comprised of 9 symptoms collected on a severity rating scale of 0 to 5. Baseline was 7 days prior to treatment or qualifying days during washout and Week 4 was days 21 to 27 of treatment.

The table below summarizes the key data from the trial across all subjects and for female and male payments separately:

EVK-001 Phase 2b Clinical Trial
Primary Endpoint: Mean mGCSI-DD Total Score Change
from Baseline to Week 4 by All Subjects and Gender
(intent-to-treat, last observation carried forward on treatment)

Time Point	Placebo (N=95)	Metoclopramide 10 mg IN (N=96)	Metoclopramide 14 mg IN (N=96)
ALL SUBJECTS			
Baseline[1]			
N	95	96	96
Mean (SD)	2.8 (0.57)	2.9 (0.60)	2.8 (0.62)
Week 4			
N	95	96	96
Mean (SD)	1.8 (1.00)	1.6 (1.06)	1.7 (0.90)
Change from Baseline to Week 4			
N	95	96	96
Mean (SD)	-1.0 (0.89)	-1.2 (1.18)	-1.2 (0.94)
Difference of Least Square Means (95% CI)		-0.20 (-0.47, 0.07)	-0.14 (-0.42, 0.13)
Pairwise *p*-value vs. Placebo[2]		0.1504	0.3005
Difference of Least Square Means (95% CI)			0.06 (-0.22, 0.33)
Pairwise *p*-value vs. Metoclopramide 10 mg[2]			0.6830
FEMALES			
Baseline[1]			
N	68	65	70
Mean (SD)	2.7 (0.54)	2.9 (0.62)	2.9 (0.62)
Week 4			
N	68	65	70
Mean (SD)	1.9 (1.02)	1.6 (1.08)	1.7 (0.94)
Change from Baseline to Week 4			
N	68	65	70
Mean (SD)	-0.8 (0.79)	-1.2 (1.18)	-1.3 (0.98)
Difference of Least Square Means (95% CI)		-0.38 (-0.71, -0.05)	-0.38 (-0.71, -0.06)
Pairwise *p*-value vs. Placebo[2]		**0.0247**	**0.0215**
Difference of Least Square Means (95% CI)			-0.00 (-0.33, 0.32)
Pairwise *p*-value vs. Metoclopramide 10 mg[2]			0.9864
MALES			
Baseline[1]			
N	27	31	26
Mean (SD)	2.9 (0.63)	2.8 (0.54)	2.5 (0.56)
Week 4			
N	27	31	26
Mean (SD)	1.4 (0.84)	1.6 (1.05)	1.7 (0.79)
Change from Baseline to Week 4			
N	27	31	26
Mean (SD)	-1.4 (0.98)	-1.2 (1.21)	-0.9 (0.78)
Difference of Least Square Means (95% CI)		0.18 (-0.30, 0.66)	0.32 (-0.19, 0.83)
Pairwise *p*-value vs. Placebo[2]		0.4497	0.2174
Difference of Least Square Means (95% CI)			0.14 (-0.35, 0.63)
Pairwise *p*-value vs. Metoclopramide 10 mg[2]			0.5805

(1) Baseline is defined as the mean mGCSI-DD total score during the washout period

(2) *p*-values for pairwise comparisons are obtained from an analysis of covariance, or ANCOVA, model with effects for treatment group and baseline value as a covariate

Phase 2b Safety Observations

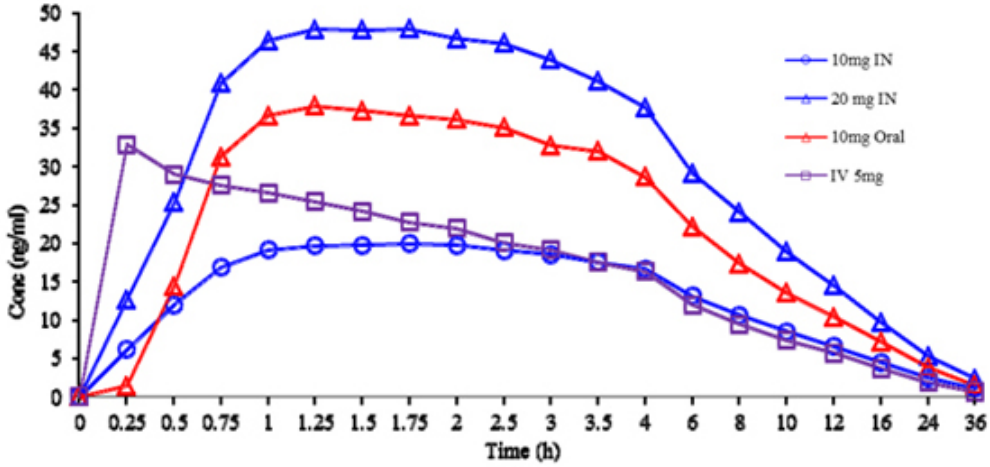
In the Phase 2b clinical trial, EVK-001 10 mg and 14 mg doses were well-tolerated and no differences in the safety profiles were observed between the two doses administered. No serious adverse events occurred related to study treatment. In addition, there were no clinically-meaningful differences observed in clinical laboratory parameters, physical examination findings, or electrocardiogram recordings. Adverse events that occurred more commonly in both EVK-001 10 mg and 14 mg doses compared to placebo (³2% difference between treated compared to placebo groups) were dysgeusia, headache, nasal discomfort, rhinorrhea, throat irritation, fatigue, hypoglycemia, and hyperglycemia.

Phase 1 Comparative Bioavailability Bridging Study

Our Phase 1 clinical trial of EVK-001 was an open-label, four-treatment, four-period, four-sequence crossover study conducted at a single study center. Forty healthy volunteers were enrolled and randomly assigned to one of four treatment sequences. After an overnight fast, subjects received a single dose of each of the metoclopramide treatments (10 mg EVK-001, 20 mg EVK-001, 10 mg oral tablet, and 5 mg/mL injection) in random sequence with a seven-day washout period between doses. Thirty nine subjects received at least one dose of metoclopramide. The pharmacokinetic analysis population consisted of 37 subjects who received all four treatments and two subjects who received three of the four treatments.

After intranasal administration of the 10 mg and 20 mg doses of EVK-001, mean plasma metoclopramide concentrations increased in a dose-related manner, as did mean values for C_{max} and $AUC_{(inf)}$. The absolute bioavailability of EVK-001 after intranasal administration was comparable for the 10 mg (47.4%) and 20 mg (52.5%) doses as were the bioavailabilities relative to the oral tablet (60.1% and 66.5%, respectively). The graphs below illustrate the mean plasma concentrations of the active ingredient in the two doses of EVK-001 as well as the oral and injection forms.

EVK-001 Phase 1 Clinical Trial
Mean Plasma Concentrations of Metoclopramide
(15 minute intervals 0-2h)



Prior Development

From 1985 to present, we or our predecessors have conducted 24 clinical studies to evaluate the safety and pharmacokinetic profile of nasal spray formulations of metoclopramide in healthy volunteers and the safety, efficacy, pharmacokinetic and pharmacodynamic profile of metoclopramide nasal spray in patients. A total of 1,045 patients have been dosed in these studies with intranasal formulations of metoclopramide at doses ranging from 10 mg to 80 mg. Metoclopramide nasal spray was initially developed by Nastech Pharmaceutical Company, Inc. in precursor formulations to EVK-001 and subsequently acquired and developed by Questcor Pharmaceuticals, Inc. or Questcor.

We acquired rights to this product candidate from Questcor in 2007. We then optimized the acquired formulation of metoclopramide nasal spray to improve stability and remove inactive ingredients to improve the palatability and tolerability of EVK-001 for patients. We also developed the current formulation with excipients that are at or below the levels listed in the FDA's Inactive Ingredient Database for intranasal products. We evaluated the current formulation of EVK-001 in 229 patients in our completed Phase 1 and Phase 2 clinical trials and intend to evaluate the same formulation in our proposed Phase 3 clinical trial. Similarly, the nasal spray pump used in our completed Phase 1 and Phase 2 clinical trials was identical and will also be used in our proposed Phase 3 clinical trial.

The primary container closure system for EVK-001 is comprised of an amber glass vial directly attached to a pre-assembled spray pump unit with a protection cap. Each multi dose sprayer system comes preassembled and capable of delivering a 30 day supply (120 doses at 4 doses per day.) The sprayer is a standardized metered sprayer technology utilized in other nasal spray products as well as the amber vial.

Our Planned Four-Week Phase 3 Clinical Trial in Female Subjects with Diabetic Gastroparesis

Based on discussions with the FDA, we plan to conduct one Phase 3 trial in women, which we believe will be sufficient for NDA submission. We plan to initiate the four-week, multicenter, randomized, double-blind,

placebo-controlled, parallel Phase 3 clinical trial to evaluate the efficacy, safety and population pharmacokinetics of EVK-001 in adult female subjects with diabetic gastroparesis in the second half of 2013. We plan to enroll approximately 200 patients at approximately 60 sites across the United States. The trial population will consist of female diabetic patients with gastroparesis, identified by the presence of relevant symptoms and delayed gastric emptying. Female subjects with diabetic gastroparesis meeting the protocol-specified entry criteria will be studied in a parallel-group design with randomization in a 1:1 ratio to EVK-001 10 mg or placebo administered as a single intranasal spray four times daily; 30 minutes before meals and at bedtime.

Based on our discussions with the FDA, we plan to use specific symptoms from a composite score, the Gastroparesis Symptom Assessment, or GSA, as a patient-reported outcomes instrument to assess efficacy in this patient population. The primary efficacy endpoint for this Phase 3 clinical trial will be based upon a change from baseline in total composite score of the specific symptoms included in the GSA. Also based on discussions with FDA, and to assess safety in men, we plan to conduct a similar and concurrent companion study for safety and efficacy in diabetic men with gastroparesis. The trial design will include an early stop for futility. The FDA has agreed that completion of the male companion study is not required for submission of the NDA seeking approval of EVK-001 for use in women. Whether the male study stops early for futility or continues to enroll, safety data from the male companion study will be included in the NDA for an approval in women.

Intellectual Property and Proprietary Rights

Overview

We are building an intellectual property portfolio for EVK-001 in the United States and abroad. We seek patent protection in the United States and internationally for our product candidate, its methods of use, and processes for its manufacture, and for other technologies, where appropriate. Our policy is to actively seek to protect our proprietary position by, among other things, filing patent applications in the United States and abroad relating to proprietary technologies that are important to the development of our business. We also rely on trade secrets, know-how, continuing technological innovation and in-licensing opportunities to develop and maintain our proprietary position. We cannot be sure that patents will be granted with respect to any of our pending patent applications or with respect to any patent applications filed by us in the future, nor can we be sure that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for the technologies we consider important to our business, defend our patents, preserve the confidentiality of our trade secrets and operate our business without infringing the patents and proprietary rights of third parties.

Patent Portfolio

Our patent portfolio currently includes the following patents and applications:

- U.S. Patent 6,770,262—Nasal Administration of Agents for the Treatment of Gastroparesis. This patent expires in 2021.
- U.S. Patent 5,760,086—Nasal Administration for the Treatment of Delayed Onset Emesis. This patent expires in 2016.
- U.S. Patent 8,334,281—Nasal Formulations of Metoclopramide. This patent expires in 2030.
- Non-Provisional Patent Application No. PCT/US2012/052096—Treatment of Symptoms of Associated with Female Gastroparesis. If granted, this patent would expire in 2032.

We have also been granted patents in the European Union for the method of use of metoclopramide via nasal delivery for gastroparesis. These patents provide protection through 2021. We have also received patents in the European Union covering the intranasal use of metoclopramide for delayed onset emesis. These patents offer protection through 2016.

The United States patent system permits the filing of provisional and non-provisional patent applications. A non-provisional patent application is examined by the U.S. Patent and Trademark Office, or USPTO, and can mature into a patent once the USPTO determines that the claimed invention meets the standards for patentability. A provisional patent application is not examined for patentability, and automatically expires 12 months after its filing date. As a result, a provisional patent application cannot mature into a patent. The requirements for filing a provisional patent application are not as strict as those for filing a non-provisional patent application. Provisional applications are often used, among other things, to establish an earlier filing date for a subsequent non-provisional patent application. The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a non-provisional patent application. In the United States, a patent's term may be lengthened by patent term adjustment or PTA, which compensates a patentee for administrative delays by the USPTO in granting a patent. In view of a recent court decision, the USPTO is under greater scrutiny regarding its calculations where the USPTO erred in calculating the patent term adjustment for the patents in question denying the patentee a portion of the patent term to which it was entitled. Alternatively, a patent's term may be shortened if a patent is terminally disclaimed over another patent.

The effective filing date of a non-provisional patent application is used by the USPTO to determine what information is prior art when it considers the patentability of a claimed invention. If certain requirements are satisfied, a non-provisional patent application can claim the benefit of the filing date of an earlier filed provisional patent application. As a result, the filing date accorded by the provisional patent application may supersede information that otherwise could preclude the patentability of an invention.

Other Intellectual Property Rights

We currently have a registered trademark for EVOKE PHARMA in the United States.

Confidential Information and Inventions Assignment Agreements

We require our employees and consultants to execute confidentiality agreements upon the commencement of employment, consulting or collaborative relationships with us. These agreements provide that all confidential information developed or made known during the course of the relationship with us be kept confidential and not disclosed to third parties except in specific circumstances.

In the case of employees, the agreements provide that all inventions resulting from work performed for us, utilizing our property or relating to our business and conceived or completed by the individual during employment shall be our exclusive property to the extent permitted by applicable law. Our consulting agreements also provide for assignment to us of any intellectual property resulting from services performed for us.

Sales and Marketing

We are initially seeking to develop and commercialize EVK-001 in the United States alone, or with partners. Our strategy for EVK-001, if approved, will be to establish EVK-001 as the prescription product of choice for diabetic gastroparesis in women. If the product candidate is approved, our expectation is that EVK-001 would initially be sold to gastrointestinal and internal medicine specialists, primary care physicians, and select health care providers. We would also plan to utilize strategic partners or contract sales forces to assist in the commercialization of EVK-001, and with such partners, would seek to build awareness in the approved patient population that the symptoms associated with gastroparesis can dramatically impact sufferers' quality of life.

Manufacturing

We do not own or operate manufacturing facilities for the production of EVK-001, nor do we have plans to develop our own manufacturing operations in the foreseeable future. We currently depend on third-party contract manufacturers for all of our required raw materials, drug substance and finished product for our preclinical research and clinical trials. We do not have any current contractual relationships for the manufacture of commercial supplies of EVK-001. If EVK-001 is approved by any regulatory agency, we intend to enter into agreements with third-party contract manufacturers for the commercial production at that time. We currently utilize third-party consultants to manage our manufacturing contractors.

Competition

The pharmaceutical industry is characterized by intense competition and rapid innovation. Our potential competitors include large pharmaceutical and biotechnology companies, specialty pharmaceutical and generic drug companies, academic institutions, government agencies and research institutions. We believe the key competitive factors that will affect the development and commercial success of our product candidates are efficacy, safety and tolerability profile, reliability, convenience of dosing, price and reimbursement.

Many of our potential competitors have substantially greater financial, technical and human resources than we do and significantly greater experience in the discovery and development of product candidates, obtaining FDA and other regulatory approvals of products and the commercialization of those products. Accordingly, our competitors may be more successful than we may be in obtaining FDA approval for drugs and achieving widespread market acceptance. Our competitors' drugs may be more effective, or more effectively marketed and sold, than any drug we may commercialize and may render our product candidates obsolete or non-competitive before we can recover the expenses of developing and commercializing any of our product candidates. We anticipate that we will face intense and increasing competition as new drugs enter the market and advanced technologies become available. Finally, the development of new treatment methods for the diseases we are targeting could render our drugs non-competitive or obsolete.

We expect that, if approved, EVK-001 will compete directly with metoclopramide oral, erythromycin and domperidone as a treatment for gastroparesis. Metoclopramide is the only product currently approved in the United States to treat gastroparesis. Metoclopramide is available from a number of generic pharmaceutical manufacturers as well in branded form in the United States under the tradename Reglan® from Ani Pharmaceuticals.

Previously, Propulsid® (cisapride) and Zelnorm® (tegaserod) were prescribed off-label by physicians to treat gastroparesis. Propulsid® (cisapride) was approved for use in the treatment of dyspepsia and GERD. Zelnorm® (tegaserod) was approved for use in IBS and idiopathic chronic constipation. Both of these products have been withdrawn from the market because of cardiac safety issues.

Salix Pharmaceuticals launched an orally dissolving tablet formulation of metoclopramide in 2009. Other programs in the gastroparesis pipeline include new chemical entities in earlier-stage clinical trials. In addition to our EVK-001 product candidate, we are aware of three other development candidates. All are in Phase 2 clinical development.

Gastroparesis Treatment Development Pipeline				
Product	**Class**	**Route**	**Company**	**Status**
EVK-001	dopamine antagonist /mixed 5-HT3 antagonist 5-HT4 agonist	intranasal	Evoke Pharma	Phase 3 Ready
RM-131	ghrelin agonist	sub-cutaneous	Rhythm Pharmaceuticals	Phase 2a
GSK962040	motilin agonist	oral	GlaxoSmithKline	Phase 2a
TD-5108	5-HT4 receptor agonist	oral	Theravance	Phase 2a

RM-131 is a small-peptide analog of ghrelin, a hormone produced in the stomach that stimulates gastrointestinal activity. The compound is being developed for GI motility disorders and has shown efficacy in surgical and opiate-induced ileus in animal models due to a direct prokinetic effect. RM-131 reverses body weight loss in cachexia models.

Two other ghrelin analogs that were previously being developed by Tranzyme Pharma, an intravenous ghrelin agonist, ulimorelin, in post-operative ileus and a different oral ghrelin agent, TZP-102, in diabetic gastroparesis. Development of both product candidates has been discontinued after ulimorelin was unsuccessful in two Phase 3 studies and TZP-102 was unsuccessful in two Phase 2b trials.

GSK962040 is a selective non-peptide motilin receptor agonist under development for the treatment of conditions associated with slow rates of gastric emptying. Motilin is an endogenous peptide, produced mainly in the duodenum, whose physiological action is mediated by motilin receptors located on enteric neurons, peripheral terminals of the vagus, and on the smooth muscle of the gut. Motilin and non-peptide agonists of motilin receptors increase gastric emptying and may offer a new approach to the treatment of delayed gastric emptying conditions.

Erythromycin, is a motilin receptor agonist and is frequently used off-label in the treatment of gastroparesis. Erythromycin is well known to induce nausea and vomiting across all indications and is particularly associated with exacerbated nausea when used in gastroparesis. Repeated administration of macrolides is also linked to desensitization of the motilin receptor and tachyphylaxis. Extended dosing with antibiotics can lead to the development of resistant organisms as well as pathologic changes in intestinal flora.

TD-5108, also called Velusetrag, is a 5-HT4 receptor agonist compound under development for the treatment of gastroparesis by Theravance in collaboration with Alfa Wassermann S.p.A. Previously, TD-5108 was under development for chronic constipation.

Tegaserod, another 5-HT4 agonist, was approved in the United States and other countries for treatment of chronic idiopathic constipation and IBS-C. In 2007, Tegaserod was removed from the market in the United States by the FDA for cardiac safety concerns.

One additional medication, Motilium (domperidone), a dopamine receptor modulator, is not FDA-approved, but is available in the United States through various compounding pharmacies under a specific FDA restricted-access program. The safety and efficacy of Motilium as a promotility agent is not fully established.

Questcor Acquisition Agreement

We acquired all worldwide rights, data, patents and other related assets associated with EVK-001 from Questcor in June 2007. We paid to Questcor $650,000 in the form of an upfront payment, and will be required to make additional milestone payments totaling up to $52.0 million if EVK-001 achieves specified development and commercial milestones. In addition, we will be required to pay to Questcor a low single digit royalty on net sales of EVK-001.

Government Regulation

FDA Approval Process

In the United States, pharmaceutical products are subject to extensive regulation by the FDA. The FFDCA and other federal and state statutes and regulations, govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, approval, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling, and import and export of pharmaceutical products. Failure to comply with applicable FDA or other requirements may subject a company to a variety of administrative or judicial sanctions, such as the FDA's refusal to approve pending applications, a clinical hold, warning letters, recall or seizure of products, partial or total suspension of production, withdrawal of the product from the market, injunctions, fines, civil penalties or criminal prosecution.

FDA approval is required before any new unapproved drug or dosage form, including a new use of a previously approved drug, can be marketed in the United States. The process required by the FDA before a drug may be marketed in the United States generally involves:

- completion of pre-clinical laboratory and animal testing and formulation studies in compliance with the FDA's good laboratory practice, or GLP, regulations;
- submission to the FDA of an IND for human clinical testing which must become effective before human clinical trials may begin in the United States;
- approval by an independent institutional review board, or IRB, at each clinical trial site before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with good clinical practices, or GCP, to establish the safety and efficacy of the proposed drug product for each intended use;
- satisfactory completion of an FDA pre-approval inspection of the facility or facilities at which the product is manufactured to assess compliance with the FDA's cGMP regulations, and for devices and device components, the QSR, and to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity;
- submission to the FDA of a new drug application, or NDA;
- satisfactory completion of an FDA advisory committee review, if applicable; and
- FDA review and approval of the NDA.

The pre-clinical and clinical testing and approval process requires substantial time, effort and financial resources, and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all. Pre-clinical tests include laboratory evaluation of product chemistry, formulation, stability and toxicity, as well as animal studies to assess the characteristics and potential safety and efficacy of the product. The results of pre-clinical tests, together with manufacturing information, analytical data and a proposed clinical trial protocol and

other information, are submitted as part of an IND to the FDA. Some pre-clinical testing may continue even after the IND is submitted. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions relating to one or more proposed clinical trials and places the clinical trial on a clinical hold, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. As a result, our submission of an IND may not result in FDA authorization to commence a clinical trial. A separate submission to an existing IND must also be made for each successive clinical trial conducted during product development.

Further, an independent IRB, covering each site proposing to conduct the clinical trial must review and approve the plan for any clinical trial and informed consent information for subjects before the trial commences at that site and it must monitor the study until completed. The FDA, the IRB, or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk or for failure to comply with the IRB's requirements, or may impose other conditions.

Clinical trials involve the administration of the investigational new drug to human subjects under the supervision of qualified investigators in accordance with GCP requirements, which include the requirement that all research subjects provide their informed consent in writing for their participation in any clinical trial. Sponsors of clinical trials generally must register and report, at the NIH-maintained website ClinicalTrials.gov, key parameters of certain clinical trials. For purposes of an NDA submission and approval, human clinical trials are typically conducted in the following sequential phases, which may overlap or be combined:

- *Phase 1:* The drug is initially introduced into healthy human subjects or patients and tested for safety, dose tolerance, absorption, metabolism, distribution and excretion and, if possible, to gain an early indication of its effectiveness.
- *Phase 2:* The drug is administered to a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted indications and to determine dose tolerance and optimal dosage. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more extensive Phase 3 clinical trials.
- *Phase 3:* These are commonly referred to as pivotal studies. When Phase 2 evaluations demonstrate that a dose range of the product appears to be effective and has an acceptable safety profile, Phase 3 trials are undertaken in large patient populations to further evaluate dosage, to obtain additional evidence of clinical efficacy and safety in an expanded patient population at multiple, geographically-dispersed clinical trial sites, to establish the overall risk-benefit relationship of the drug and to provide adequate information for the labeling of the drug.
- *Phase 4:* In some cases, the FDA may condition approval of an NDA for a product candidate on the sponsor's agreement to conduct additional clinical trials to further assess the drug's safety and effectiveness after NDA approval. Such post-approval trials are typically referred to as Phase 4 studies.

The results of product development, pre-clinical studies and clinical trials are submitted to the FDA as part of an NDA. NDAs must also contain extensive information relating to the product's pharmacology, CMC and proposed labeling, among other things.

Under federal law, the submission of most NDAs is additionally subject to a substantial application user fee, and the manufacturer and/or sponsor under an approved NDA are also subject to annual product and establishment user fees. The FDA has 60 days from its receipt of an NDA to determine whether the application will be accepted for filing based on the agency's threshold determination that it is sufficiently complete to permit

substantive review. The FDA may request additional information rather than accept an NDA for filing. In this event, the NDA must be resubmitted with the additional information and is subject to payment of additional user fees. The resubmitted application is also subject to review before the FDA accepts it for filing.

Once the submission has been accepted for filing, the FDA begins an in-depth substantive review. Under the Prescription Drug User Fee Act, or PDUFA, the FDA agrees to specific performance goals for NDA review time through a two-tiered classification system, Standard Review and Priority Review. Standard Review NDAs have a goal of being completed within a ten-month timeframe. A Priority Review designation is given to drugs that offer major advances in treatment, or provide a treatment where no adequate therapy exists. The goal for completing a Priority Review is six months. However, the FDA does not always complete its review within these timelines and the Agency's review can take substantially longer.

It is likely that our product candidates will be granted a Standard Review. The review process may be extended by the FDA for three additional months to consider certain information or obtain clarification regarding information already provided in the submission. The FDA may refer applications for novel drug products or drug products which present difficult questions of safety or efficacy to an advisory committee for review, evaluation and recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendation of an advisory committee, but it considers such recommendations carefully when making decisions. In addition, for combination products, the FDA's review may include the participation of both the FDA's Center for Drug Evaluation and Research and the FDA's Center for Devices and Radiological Health, which may complicate or prolong the review.

Before approving an NDA, the FDA may inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP, and if applicable, QSR, requirements and are adequate to assure consistent production of the product within required specifications. Additionally, the FDA will typically inspect one or more clinical sites to assure compliance with GCP before approving an NDA.

After the FDA evaluates the NDA and, in some cases, the related manufacturing facilities, it may issue an approval letter or a Complete Response Letter, or CRL, to indicate that the review cycle for an application is complete and that the application is not ready for approval. CRLs generally outline the deficiencies in the submission and may require substantial additional testing or information in order for the FDA to reconsider the application. Even with submission of this additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval. If and when the deficiencies have been addressed to the FDA's satisfaction, the FDA will typically issue an approval letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications.

Once issued, the FDA may withdraw product approval if ongoing regulatory requirements are not met or if safety problems are identified after the product reaches the market. In addition, the FDA may require post-approval testing, including Phase 4 studies, and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs. Drugs may be marketed only for the approved indications and in accordance with the provisions of the approved label, and, even if the FDA approves a product, it may limit the approved indications for use for the product or impose other conditions, including labeling or distribution restrictions or other risk-management mechanisms. Further, if there are any modifications to the drug, including changes in indications, labeling, or manufacturing processes or facilities, we may be required to submit and obtain FDA approval of a new or supplemental NDA, which may require us to develop additional data or conduct additional pre-clinical studies and clinical trials.

Post-Approval Requirements

Once an NDA is approved, a product will be subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to drug/device listing, recordkeeping, periodic reporting, product sampling and distribution, advertising and promotion and reporting of adverse experiences with the product.

In addition, drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and state agencies, and are subject to periodic unannounced inspections by the FDA and these state agencies for compliance with cGMP requirements. Changes to the manufacturing process are strictly regulated and generally require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP and impose reporting and documentation requirements upon us and any third-party manufacturers that we may decide to use. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance.

Once an approval is granted, the FDA may suspend, restrict or withdraw the approval, require a product recall, or impose additional restrictions or limitations if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or holds on post-approval clinical trials;
- refusal of the FDA to approve pending applications or supplements to approved applications, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; or
- injunctions or the imposition of civil or criminal penalties.

The FDA may require post-approval studies and clinical trials if the FDA finds that scientific data, including information regarding related drugs, deem it appropriate. The purpose of such studies would be to assess a known serious risk or signals of serious risk related to the drug or to identify an unexpected serious risk when available data indicate the potential for a serious risk. The FDA may also require a labeling change if it becomes aware of new safety information that it believes should be included in the labeling of a drug.

The Food and Drug Administration Amendments Act of 2007 gave the FDA the authority to require a Risk Evaluation and Mitigation Strategy, or REMS, from manufacturers to ensure that the benefits of a drug or biological product outweigh its risks. In determining whether a REMS is necessary, FDA must consider the size of the population likely to use the drug, the seriousness of the disease or condition to be treated, the expected benefit of the drug, the duration of treatment, the seriousness of known or potential adverse events, and whether the drug is a new molecular entity. If the FDA determines a REMS is necessary, the drug sponsor must agree to the REMS plan at the time of approval. A REMS may be required to include various elements, such as a medication guide or patient package insert, a communication plan to educate health care providers of the drug’s risks, limitations on who may prescribe or dispense the drug, or other measures that the FDA deems necessary to assure the safe use of the drug. In addition, the REMS must include a timetable to assess the strategy at 18 months, three years, and seven years after the strategy’s approval. The FDA may also impose a REMS requirement on a drug already on the market if the FDA determines, based on new safety information, that a REMS is necessary to ensure that the drug’s benefits outweigh its risks.

In March 2009, the FDA informed drug manufacturers that it will require a REMS for metoclopramide drug products. The FDA’s authority to take this action is based on risk management and post market safety provisions within the FDAAA. The REMS consists of a Medication Guide, elements to assure safe use (including an education program for prescribers and materials for prescribers to educate patients), and a timetable for submission of assessments of at least six months, 12 months, and annually after the REMS is approved. We intend to submit a REMS at the time of the NDA submission for EVK-001.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market, and the FDA imposes a number of complex regulations on entities that advertise and promote pharmaceuticals, which include, among others, standards for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities, and promotional activities involving the internet. While physicians may prescribe for off-label uses, manufacturers may only promote for the approved indications and in accordance with the provisions of the approved label. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability. Indeed, the FDA has very broad enforcement authority under the FFDCA, and failure to abide by these regulations can result in penalties, including the issuance of a warning letter directing entities to correct deviations from FDA standards, a requirement that future advertising and promotional materials are pre-cleared by the FDA, and state and federal civil and criminal investigations and prosecutions.

The distribution of prescription pharmaceutical products is also subject to the Prescription Drug Marketing Act, or PDMA, which regulates the distribution of drugs and drug samples at the federal level, and sets minimum standards for the registration and regulation of drug distributors by the states. Both the PDMA and state laws limit the distribution of prescription pharmaceutical product samples and impose requirements to ensure accountability in distribution, including a drug pedigree which tracks the distribution of prescription drugs.

Section 505(b)(2) New Drug Applications

As an alternate path to FDA approval for modifications to formulations or uses of products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FFDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Amendments, and permits the filing of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. The applicant may rely upon published literature and the FDA's findings of safety and effectiveness based on certain pre-clinical or clinical studies conducted for an approved product. The FDA may also require companies to perform additional studies or measurements to support the change from the approved product. The FDA may then approve the new product candidate for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant.

To the extent that a Section 505(b)(2) NDA relies on studies conducted for a previously approved drug product, the applicant is required to certify to the FDA concerning any patents listed for the approved product in the Orange Book. Specifically, the applicant must certify for each listed patent that (1) the required patent information has not been filed; (2) the listed patent has expired; (3) the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or (4) the listed patent is invalid, unenforceable or will not be infringed by the new product. A certification that the new product will not infringe the already approved product's listed patent or that such patent is invalid is known as a Paragraph IV certification. If the applicant does not challenge the listed patents through a Paragraph IV certification, the Section 505(b)(2) NDA application will not be approved until all the listed patents claiming the referenced product have expired. The Section 505(b)(2) NDA application also will not be accepted or approved until any non-patent exclusivity, such as exclusivity for obtaining approval of a New Chemical Entity, listed in the Orange Book for the referenced product, has expired.

If the 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the referenced NDA and patent holders once the 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the Paragraph IV certification. Under the FFDCA, the filing of a patent infringement lawsuit within 45 days of their receipt of a Paragraph IV certification in most cases automatically prevents the FDA from approving the Section 505(b)(2) NDA for 30 months, or until a court decision or settlement finding that the patent is invalid, unenforceable or not infringed, whichever is earlier. The court also has the ability to shorten or lengthen the 30 month stay if either party is found not to be reasonably cooperating in expediting the litigation. Thus, the Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its product only to be subject to significant delay and patent litigation before its product may be commercialized.

The 505(b)(2) NDA applicant also may be eligible for its own regulatory exclusivity period, such as three-year exclusivity. The first approved 505(b)(2) applicant for a particular condition of approval, or change to a marketed product, such as a new extended release formulation for a previously approved product, may be granted three-year Hatch-Waxman exclusivity if one or more clinical studies, other than bioavailability or bioequivalence studies, was essential to the approval of the application and was conducted/sponsored by the applicant. Should this occur, the FDA would be precluded from making effective any other application for the same condition of use or for a change to the drug product that was granted exclusivity until after that three-year exclusivity period has run. Additional exclusivities may also apply.

Additionally, the 505(b)(2) NDA applicant may have relevant patents in the Orange Book, and if it does, can initiate patent infringement litigation against those applicants that challenge such patents, which could result in a thirty-month stay delaying those applicants.

Manufacturing Requirements

We and our third-party manufacturers must comply with applicable FDA regulations relating to FDA's cGMP regulations and, if applicable, QSR requirements. The cGMP regulations include requirements relating to, among other things, organization of personnel, buildings and facilities, equipment, control of components and drug product containers and closures, production and process controls, packaging and labeling controls, holding and distribution, laboratory controls, records and reports, and returned or salvaged products. The manufacturing facilities for our products must meet cGMP requirements to the satisfaction of the FDA pursuant to a pre-approval inspection before we can use them to manufacture our products. We and our third-party manufacturers are also subject to periodic unannounced inspections of facilities by the FDA and other authorities, including procedures and operations used in the testing and manufacture of our products to assess our compliance with applicable regulations. Failure to comply with statutory and regulatory requirements subjects a manufacturer to possible legal or regulatory action, including, among other things, warning letters, the seizure or recall of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations and civil and criminal penalties.

Other Regulatory Requirements

We are also subject to various laws and regulations regarding laboratory practices, the experimental use of animals, and the use and disposal of hazardous or potentially hazardous substances in connection with our research. In each of these areas, as above, the FDA has broad regulatory and enforcement powers, including, among other things, the ability to levy fines and civil penalties, suspend or delay issuance of approvals, seize or recall products, and withdraw approvals, any one or more of which could have a material adverse effect on us.

Employees

We currently have two full time employees and a number of consultants. We intend to increase our employee base upon the closing of this offering and the commencement of our Phase 3 clinical trial for EVK-001. We expect that a number of consultants previously engaged in development of EVK-001 will participate in the ongoing clinical and manufacturing development for the product candidate.

Facilities

We currently have no facilities.

Legal Proceedings

We are not currently a party to any legal proceedings.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age and position of each of our executive officers and directors as of April 1, 2013.

Name	Age	Position
Executive Officers		
David A. Gonyer, R.Ph.	49	President, Chief Executive Officer and Director
Matthew J. D'Onofrio	43	Executive Vice President, Chief Business Officer
Directors		
Cam L. Garner(1)(2)	65	Chairman of the Board of Directors
Todd C. Brady, M.D., Ph.D.(1)(2)	41	Director
Scott L. Glenn(3)	62	Director
Malcolm R. Hill, Pharm.D.(2)	56	Director
Kenneth J. Widder, M.D.(3)	60	Director

(1) Member of the compensation committee.
(2) Member of the nominating and corporate governance committee.
(3) Member of the audit committee.

Executive Officers

David A. Gonyer, R.Ph. is one of our co-founders and has served as our President and Chief Executive Officer and as a member of our board of directors since March 2007. From January 2004 to June 2007, Mr. Gonyer served as Vice President, Strategic and Product Development of Medgenex, Inc., a subsidiary of Victory Pharma, Inc. a biopharmaceutical company focused on acquiring, developing and marketing products to treat pain and related conditions. From April 2000 to December 2004, Mr. Gonyer was a founder and Vice President of Sales and Marketing at Xcel Pharmaceuticals, Inc., a specialty pharmaceutical focused on neurological disorders. From December 1996 to April 2000, Mr. Gonyer served as Director of Marketing at Elan/Dura Pharmaceuticals, Inc. From 1987 to 1996, Mr. Gonyer held a broad range of management positions in commercial operations, alliance/partnership management, and regional sales at Eli Lilly & Company. Mr. Gonyer serves as a member of the board of directors of Neurelis, Inc., a privately held neurological specialty pharmaceutical company. Mr. Gonyer is a Registered Pharmacist and holds a B.Sc. in Pharmacy from Ferris State University School of Pharmacy. As one of our co-founders and having served as our Chief Executive Officer since March 2007, Mr. Gonyer's extensive knowledge of our business, as well as over 25 years of experience in the pharmaceutical industry, including executive leadership in several pharmaceutical companies, contributed to our board of directors' conclusion that he should serve as a director of our company.

Matthew J. D'Onofrio is one of our co-founders and has served as our Executive Vice President, Chief Business Officer since 2010 and as our Executive Vice President, Corporate Development, Treasurer and Secretary since March 2007. Mr. D'Onofrio has over 20 years of experience in both large and small pharmaceutical firms. Prior to founding Evoke, Mr. D'Onofrio was Vice President, Business Development for Victory Pharma, a growing specialty pharma company based in San Diego. From 2002 to 2005, Mr. D'Onofrio led efforts to acquire marketed brands for the growing sales force. Earlier, Mr. D'Onofrio was previously Director and Head of West Coast Business Development at Vertex Pharmaceuticals, a biotechnology company, directing partnership efforts associated with the La Jolla research facility as well as other corporate assets. Mr. D'Onofrio also held various commercial roles of increasing responsibility over a decade at Eli Lilly & Company, including significant experience in worldwide corporate business development. During his licensing career, Mr. D'Onofrio has developed and executed license and investment relationships across a wide collection of disease states and technologies with potential value approaching US$1 billion. Mr. D'Onofrio earned a B.S. in Chemistry from San Diego State University and an M.B.A. (Finance) from the Marshall School of Business, University of Southern California.

Non-Employee Directors

Cam L. Garner is one of our co-founders and has served as chairman of our board of directors since June 2007. Mr. Garner co-founded specialty pharmaceutical companies Zogenix Pharmaceuticals, Cadence Pharmaceuticals, Inc., Somaxon Pharmaceuticals, Inc., Elevation Pharmaceuticals, Inc., DJ Pharma, Verus Pharmaceuticals, Inc., Xcel Pharmaceuticals, Inc. and Meritage Pharma, Inc. He has served as chairman of Zogenix, Cadence, Verus, Elevation and Meritage since August 2006, May 2004, November 2002, December 2007 and February 2008, respectively. Xcel was acquired in March 2005 by Valeant Pharmaceuticals International, DJ Pharma was sold to Biovail in 2000 and Elevation was acquired by Sunovion Pharmaceuticals Inc. in September 2012. He was Chief Executive Officer of Dura Pharmaceuticals, Inc. from 1989 to 1995 and its Chairman and Chief Executive Officer from 1995 to 2000 until it was sold to Elan in November 2000. Mr. Garner also serves on the board of directors of Aegis Therapeutics, Inc., Cadence Pharmaceuticals, Inc., Meritage Pharma, Inc., Neurelis, Inc., and Zogenix, Inc. Mr. Garner earned his B.A. in Biology from Virginia Wesleyan College and an M.B.A. from Baldwin-Wallace College. As one of our co-founders and having served as our chairman since June 2007, Mr. Garner's extensive knowledge of our business and history, experience as a board member of multiple publicly-traded and privately-held companies, and expertise in developing, financing and providing strong executive leadership to numerous biopharmaceutical companies contributed to our board of directors' conclusion that he should serve as a director of our company.

Todd C. Brady, M.D., Ph.D. has served as a member of our board of directors since June 2007. Dr. Brady is an Entrepreneur in Residence at Domain Associates, a leading healthcare venture capital firm, a position he has held since 2013. From 2004 to 2013, he was a Principal at Domain Associates. He is President and Chief Executive Officer of Aldexa Therapeutics and is a member of the Board of Directors of Novadigm Therapeutics, ParinGenix, Sebacia, Aldexa Therapeutics and Asmacure. Prior to joining Domain, Dr. Brady was co-founder and CEO of Phenome Sciences, a biotechnology firm he merged with Xanthus Pharmaceuticals (acquired by Antisoma), where he was later Executive Vice President of Strategic Development and Planning. Dr. Brady also worked as head of business development and medical director at Aderis Pharmaceuticals (acquired by Schwarz Pharma, now part of UCB). While at Xanthus and Aderis, Dr. Brady was a medical consultant on numerous pre-clinical programs and clinical programs in Phases I through IV. Earlier in his career, Dr. Brady was a senior associate at CB Health Ventures (now Excel Medical Ventures), a healthcare venture capital fund. Dr. Brady holds an M.D. from Duke University Medical School, a Ph.D. from Duke University Graduate School, and an A.B. from Dartmouth College. Dr. Brady's extensive knowledge of our business and history, experience as a board member of multiple companies and expertise in strategic development contributed to our board of directors' conclusion that he should serve as a director of our company.

Scott L. Glenn is one of our co-founders and has served as a member of our board of directors since June 2007. Mr. Glenn is the founder of and has been the Managing Partner of Windamere Venture Partners since its inception in 1999. Mr. Glenn is the past Chairman or founder of Prometheus Laboratories, Inc., Santarus Inc., DexCom, Cadence Pharmaceuticals, NovaCardia Inc., Somaxon Pharmaceuticals, Zogenix Pharmaceuticals, SpineWave, Verus Pharmaceuticals Conception Technologies, and currently serves on the board of directors of Planet Biopharmaceuticals. Prior to Mr. Glenn's involvement in venture capital, he was the President and CEO of Quidel Corporation and simultaneously was a founder of La Jolla Pharmaceuticals. Prior to Quidel, Mr. Glenn held various management positions including Division General Manager with Allergan. Mr. Glenn holds a Bachelor of Science degree in Finance and Accounting from California State University at Fullerton. As one of our co-founders and having served on our board since June 2007, Mr. Glenn's extensive knowledge of our business and history, experience as a board member of multiple publicly-traded and privately-held companies and expertise in developing, financing and providing strong executive leadership to numerous biopharmaceutical companies contributed to our board of directors' conclusion that he should serve as a director of our company.

Malcolm R. Hill, Pharm.D. has served as a member of our board of directors since June 2007. Dr. Hill has more than 20 years of academic and pharmaceutical industry experience in new product assessment and clinical trial

design and execution, with a special emphasis in pediatrics and drug delivery systems. Dr. Hill has been a Senior Vice President of Research and Development at Meritage Pharma since 2008 and was a member of the senior management team at Dura Pharmaceuticals, where he served as a vice president and corporate officer. At Dura, Dr. Hill was responsible for all clinical development activities related to the Spiros® dry powder inhaler, including numerous asthma programs. Dr. Hill's academic career includes his position at the National Jewish Medical and Research Center, and he has also served as an assistant professor in the Schools of Medicine and Pharmacy at the University of Colorado. Dr. Hill has published more than 80 articles on the topics of clinical pharmacology and pharmacokinetics, and the treatment of pediatric asthma and related conditions. Dr. Hill earned his Pharm.D. from the University of Southern California and completed a post-doctoral program at the Veterans Administration Medical Center, San Diego, as well as a research fellowship in the Schools of Medicine and Pharmacy at the University of Florida Health Sciences Center. Dr. Hill's experience as a founder of a private pharmaceutical firm, strong background in clinical and product development and substantial knowledge of the pharmaceutical industry contributed to our board of directors' conclusion that he should serve as a director of our company.

Kenneth J. Widder, M.D. has served as a member of our board of directors since June 2007. Dr. Widder has 32 years of experience working with biomedical companies. Dr. Widder has been a General Partner with Latterell Venture Partners since 2007 and serves on the boards of Meritage Pharma Inc., Naurex Inc., Vision of Children and the San Diego Museum of Art. Dr. Widder has founded seven companies and was Chairman/CEO of five of these companies. His last company, Sytera Inc. merged with Sirion Therapeutics, an ophthalmology specialty pharmaceutical company. Prior to Sytera, Dr. Widder co-founded and was the initial CEO of NovaCardia, a company acquired by Merck. Prior to NovaCardia, Dr. Widder founded and was Chairman/CEO of Santarus Inc., which developed and currently markets Zegerid, a rapid onset proton pump inhibitor for esophageal reflux disease. Additionally, Dr. Widder was Chairman and CEO of Converge Medical, a medical device company developing a suture less anastamosis system for vein grafts in coronary bypass surgery. Dr. Widder started his career as a founder, Chairman and CEO of Molecular Biosystems, where he was responsible for the development and approval of Albunex and Optison, the first two ultrasound contrast agents to be approved in the U.S. Dr. Widder is an inventor on over 30 patents and patent applications and has authored or co-authored over 25 publications. Dr. Widder holds an M.D. from Northwestern University and trained in pathology at Duke University. Dr. Widder's extensive knowledge of our business and history, experience as a board member of multiple publicly-traded and privately-held companies and expertise in developing and financing contributed to our board of directors' conclusion that he should serve as a director of our company.

Board Composition and Election of Directors

Director Independence

Our board of directors currently consists of six members. Our board of directors has determined that all of our directors, other than Mr. Gonyer, are independent directors in accordance with the listing requirements of The NASDAQ Capital Market. The NASDAQ independence definition includes a series of objective tests, including that the director is not, and has not been for at least three years, one of our employees and that neither the director nor any of his family members has engaged in various types of business dealings with us. In addition, as required by NASDAQ rules, our board of directors has made a subjective determination as to each independent director that no relationships exist, which, in the opinion of our board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities and relationships as they may relate to us and our management. There are no family relationships among any of our directors or executive officers.

Classified Board of Directors

In accordance with the terms of our amended and restated certificate of incorporation that will go into effect immediately prior to the closing of this offering, our board of directors will be divided into three classes with staggered, three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Effective upon the closing of this offering, our directors will be divided among the three classes as follows:

- the Class I directors will be and , and their terms will expire at our first annual meeting of stockholders following this offering;

- the Class II directors will be and , and their terms will expire at our second annual meeting of stockholders following this offering; and
- the Class III directors will be and , and their terms will expire at our third annual meeting of stockholders following this offering.

Our amended and restated certificate of incorporation that will go into effect immediately prior to the closing of this offering will provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control of our company. Our directors may be removed only for cause by the affirmative vote of the holders of at least 66 2/3% of our outstanding voting stock then entitled to vote in the election of directors.

Board Leadership Structure

Our board of directors is currently led by its chairman, Cam L. Garner. Our board of directors recognizes that it is important to determine an optimal board leadership structure to ensure the independent oversight of management as the company continues to grow. We separate the roles of chief executive officer and chairman of the board in recognition of the differences between the two roles. The chief executive officer is responsible for setting the strategic direction for the company and the day-to-day leadership and performance of the company, while the chairman of the board of directors provides guidance to the chief executive officer and presides over meetings of the full board of directors. We believe that this separation of responsibilities provides a balanced approach to managing the board of directors and overseeing the company.

Our board of directors has concluded that our current leadership structure is appropriate at this time. However, our board of directors will continue to periodically review our leadership structure and may make such changes in the future as it deems appropriate.

Role of Board in Risk Oversight Process

Our board of directors has responsibility for the oversight of the company’s risk management processes and, either as a whole or through its committees, regularly discusses with management our major risk exposures, their potential impact on our business and the steps we take to manage them. The risk oversight process includes receiving regular reports from board committees and members of senior management to enable our board to understand the company’s risk identification, risk management and risk mitigation strategies with respect to areas of potential material risk, including operations, finance, legal, regulatory, strategic and reputational risk.

The audit committee reviews information regarding liquidity and operations, and oversees our management of financial risks. Periodically, the audit committee reviews our policies with respect to risk assessment, risk management, loss prevention and regulatory compliance. Oversight by the audit committee includes direct communication with our external auditors, and discussions with management regarding significant risk exposures and the actions management has taken to limit, monitor or control such exposures. The compensation committee is responsible for assessing whether any of our compensation policies or programs has the potential to encourage excessive risk-taking. The nominating/corporate governance committee manages risks associated with the independence of the board, corporate disclosure practices, and potential conflicts of interest. While each committee is responsible for evaluating certain risks and overseeing the management of such risks, the entire board is regularly informed through committee reports about such risks. Matters of significant strategic risk are considered by our board as a whole.

Board Committees and Independence

Our board has established three standing committees—audit, compensation and nominating and corporate governance—each of which operates under a charter that has been approved by our board.

Our board has determined that all of the members of each of the board's three standing committees are independent as defined under the rules of The NASDAQ Capital Market. In addition, all members of the audit committee meet the independence requirements contemplated by Rule 10A-3 under the Securities Exchange Act of 1934, or the Exchange Act.

Audit Committee

The audit committee's main function is to oversee our accounting and financial reporting processes, internal systems of control, independent registered public accounting firm relationships and the audits of our financial statements. This committee's responsibilities include, among other things:

- selecting and engaging our independent registered public accounting firm;
- evaluating the qualifications, independence and performance of our independent registered public accounting firm;
- approving the audit and non-audit services to be performed by our independent registered public accounting firm;
- reviewing the design, implementation, adequacy and effectiveness of our internal controls and our critical accounting policies;
- discussing with management and the independent registered public accounting firm the results of our annual audit and the review of our quarterly unaudited financial statements;
- reviewing, overseeing and monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to financial statements or accounting matters;
- reviewing with management and our auditors any earnings announcements and other public announcements regarding our results of operations;
- preparing the report that the SEC requires in our annual proxy statement;
- reviewing and approving any related party transactions and reviewing and monitoring compliance with our code of conduct and ethics; and
- reviewing and evaluating, at least annually, the performance of the audit committee and its members including compliance of the audit committee with its charter.

The members of our audit committee are Mr. Glenn and Dr. Widder. Mr. Glenn serves as the chairperson of the committee. All members of our audit committee meet the requirements for financial literacy under the applicable rules and regulations of the SEC and The NASDAQ Capital Market. Our board of directors has determined that Mr. Glenn is an "audit committee financial expert" as defined by applicable SEC rules and has the requisite financial sophistication as defined under the applicable NASDAQ rules and regulations. Our board of directors has determined each of Mr. Glenn and Dr. Widder is independent under the applicable rules of the SEC and The NASDAQ Capital Market. Upon the listing of our common stock on The NASDAQ Capital Market, the audit committee will operate under a written charter that satisfies the applicable standards of the SEC and The NASDAQ Capital Market.

Compensation Committee

Our compensation committee reviews and recommends policies relating to compensation and benefits of our officers and employees. The compensation committee reviews and recommends corporate goals and objectives relevant to the compensation of our Chief Executive Officer and other executive officers, evaluates the performance of these officers in light of those goals and objectives and recommends to our board of directors the compensation of these officers based on such evaluations. The compensation committee also recommends to our board of directors the issuance of stock options and other awards under our equity plan. The compensation committee will review and evaluate, at least annually, the performance of the compensation committee and its members, including compliance by the compensation committee with its charter.

The members of our compensation committee are Mr. Garner and Dr. Brady. Mr. Garner serves as the chairperson of the committee. Our Board has determined that each of Mr. Garner and Dr. Brady is independent under the applicable rules and regulations of The NASDAQ Capital Market, is a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act and is an "outside director" as that term is defined in Section 162(m) of the U.S. Internal Revenue Code of 1986, as amended, or Section 162(m). Upon the listing of our common stock on The NASDAQ Capital Market, the compensation committee will operate under a written charter, which the compensation committee will review and evaluate at least annually.

Nominating and Corporate Governance Committee

The nominating and corporate governance committee is responsible for making recommendations to our board of directors regarding candidates for directorships and the size and composition of our board of directors. In addition, the nominating and corporate governance committee is responsible for overseeing our corporate governance policies and reporting and making recommendations to our board of directors concerning governance matters. The members of our nominating and corporate governance committee are Cam L. Garner, Todd C. Brady and Malcolm R. Hill serves as the chairman of the committee. Our board has determined that each of Messrs. Garner, Brady and Hill is independent under the applicable rules and regulations of The NASDAQ Capital Market relating to nominating and corporate governance committee independence. Upon the listing of our common stock on The NASDAQ Capital Market, the nominating and corporate governance committee will operate under a written charter, which the nominating and corporate governance committee will review and evaluate at least annually.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has ever been one of our officers or employees. None of our executive officers currently serves, or has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Board Diversity

Upon consummation of this offering, our nominating and corporate governance committee will be responsible for reviewing with the board of directors, on an annual basis, the appropriate characteristics, skills and experience required for the board of directors as a whole and its individual members. In evaluating the suitability of individual candidates (both new candidates and current members), the nominating and corporate governance committee, in recommending candidates for election, and the board of directors, in approving (and, in the case of vacancies, appointing) such candidates, will take into account many factors, including the following:

- personal and professional integrity, ethics and values;
- experience in corporate management, such as serving as an officer or former officer of a publicly-held company;
- development or commercialization experience in large pharmaceutical companies;
- experience as a board member or executive officer of another publicly-held company;
- strong finance experience;

- diversity of expertise and experience in substantive matters pertaining to our business relative to other board members;
- diversity of background and perspective, including with respect to age, gender, race, place of residence and specialized experience;
- conflicts of interest; and
- practical and mature business judgment.

Currently, our board of directors evaluates, and following the consummation of this offering will evaluate, each individual in the context of the board of directors as a whole, with the objective of assembling a group that can best maximize the success of the business and represent stockholder interests through the exercise of sound judgment using its diversity of experience in these various areas.

Code of Business Conduct and Ethics

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Upon completion of this offering, our code of business conduct and ethics will be available under the Investor Relations—Corporate Governance section of our website at www.evokepharma.com. In addition, we intend to post on our website all disclosures that are required by law or the listing standards of The NASDAQ Capital Market concerning any amendments to, or waivers from, any provision of the code. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

EXECUTIVE AND DIRECTOR COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "2012 Summary Compensation Table" below. In 2012, our named executive officers and their positions were as follows:

- David A. Gonyer, R.Ph., President and Chief Executive Officer
- Matthew J. D'Onofrio, Executive Vice President, Chief Business Officer

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the completion of this offering may differ materially from the currently planned programs summarized in this discussion.

2012 Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers during the fiscal year ended December 31, 2012:

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)
David A. Gonyer, R.Ph. President and Chief Executive Officer	2012	309,000	—	—	—	—	—	309,000
Matthew J. D'Onofrio Executive Vice President, Chief Business Officer	2012	268,000	—	—	—	—	—	268,000

Narrative Disclosure to Compensation Tables

Employment Agreements

In June 2007 we entered into employment agreements with each of Messrs. Gonyer and D'Onofrio, our named executive officers, which agreements were amended and restated in August 2008.

Pursuant to each of the employment agreements, if we terminate such officer's employment without cause (as defined below), such officer resigns for good reason (as defined below) or such officer's employment is terminated as a result of his death or following his permanent disability, the executive officer or his estate, as applicable, is entitled to the following payments and benefits: (1) his fully earned but unpaid base salary through the date of termination at the rate then in effect, plus all other amounts under any compensation plan or practice to which he is entitled; (2) a lump sum cash payment in an amount equal to 12 months of his base salary as in effect immediately prior to the date of termination; (3) a lump sum cash payment in an amount equal to his bonus (as defined below) for the year in which the termination of his employment occurs, prorated for the period of his service during such year, provided that the officer shall not be entitled to receive such amount in the event that his termination results from his discharge by us without cause prior to a change in control (as defined below); (4) a lump sum cash payment in an amount equal to the cost of the continuation of health benefits for a period of 12 months following the date of termination; (5) a lump sum cash payment in an amount equal to the cost of his life insurance premiums for a period of 12 months following the date of termination; (6) solely in the event of the officer's termination by us without cause or by the officer for good reason, a lump sum cash payment in an amount equal to $15,000 for outplacement services; and (7) the automatic acceleration of the vesting and exercisability of outstanding unvested stock awards as to the number of stock awards that would have vested over the 12-month period following termination had such executive officer remained continuously employed by us during such period.

For purposes of the employment agreements, "cause" generally means an executive officer's (1) commission of an act of fraud, embezzlement or dishonesty that has a material adverse impact on us or any successor or affiliate of ours; (2) conviction of, or entry into a plea of "guilty" or "no contest" to, a felony; (3)

unauthorized use or disclosure of our confidential information or trade secrets or any successor or affiliate of ours that has a material adverse impact on any such entity; (4) gross negligence, insubordination or material violation of any duty of loyalty, or any other material misconduct on the part of the executive officer; (5) ongoing and repeated failure or refusal to perform or neglect of his duties as required by his employment agreement, which failure, refusal or neglect continues for 15 days following his receipt of written notice from our board of directors stating with specificity the nature of such failure, refusal or neglect; or (6) breach of any material provision of his employment agreement.

For purposes of the employment agreements, "good reason" generally means (1) a change in the executive officer's status, position or responsibilities that, in the executive officer's reasonable judgment, represents a substantial and material reduction in the status, position or responsibilities as in effect immediately prior thereto; the assignment to the executive officer of any duties or responsibilities that, in the executive officer's reasonable judgment, are materially inconsistent with such status, position or responsibilities; or any removal of the executive officer from or failure to reappoint or reelect the executive officer to any of such positions, except in connection with the termination of the executive officer's employment for cause (as defined above), as a result of his permanent disability or death, or by the executive officer other than for good reason; (2) a material reduction in the executive officer's annual base salary, except in connection with a general reduction in the compensation of our or any successor's or affiliate's personnel with similar status and responsibilities; (3) our or any successor's or affiliate's requirement the executive officer (without the executive officer's consent) be based at any place outside a 50-mile radius of his placement of employment as of the effective date of the employment agreement, except for reasonably required travel for our or any successor's or affiliate's business that is not materially greater than such travel requirements prior to the effective date of the employment agreement; (5) any material breach by us or any successor or affiliate of obligations to the executive officer under the employment agreement; (6) any purported termination of the executive officer's employment or service relationship for cause (as defined above) by us or any successor or affiliate that is not in accordance with the definition of cause; or (7) a change in control (as defined below).

For purposes of the employment agreements, "bonus" generally means an amount equal to the greater of (1) the executive officer's target bonus for the fiscal year in which the date of termination occurs; or (2) the bonus awarded to the executive officer for the fiscal year prior to the date of termination (which bonus shall be annualized to the extent the executive officer was not employed for the entire fiscal year prior to the date of termination). If any portion of the bonus awarded to the executive officer consisted of securities or other property, the fair market value thereof shall be determined in good faith by our board of directors.

For purposes of the employment agreements, "change in control" has the same meaning as such term is given under the terms of our 2007 Equity Incentive Plan, as described below, except that for purposes of the employment agreements a change in control will not be triggered pursuant to a change in the composition of our board of directors, as more fully described below.

Annual Cash Performance Bonus

In addition to base salaries, the employment agreements described above provide that each of Messrs. Gonyer and D'Onofrio are eligible to earn an annual cash performance bonus determined on the basis of the executive officers' and/or our attainment of financial or other performance criteria. For 2012, the target bonus level for Mr. Gonyer was 50% of his base salary and the target bonus level for Mr. D'Onofrio was 40% of his base salary.

In order to conserve cash, our board of directors elected not to pay a cash performance bonus to either Mr. Gonyer or Mr. D'Onofrio for fiscal year 2012.

Retention Letters

In March 2012 we entered into retention agreements with each of Messrs. Gonyer and D'Onofrio, which agreements were amended in April 2013. Pursuant to such agreements, and notwithstanding anything contained in the employment agreements, provided that each of Messrs. Gonyer and D'Onofrio continues employment with us through the applicable payment dates, they will be entitled to receive $225,000 and $130,000, respectively, in connection with certain retention events. For purposes of the retention agreements, "retention event" generally

means (1) a change in control (as defined in the employment agreements described above) or (2) the consummation of a public or private equity financing in which investors purchase shares of our common or preferred stock. If we terminate the executive officer's employment for cause or the executive officer resigns for good reason (each as defined in the employment agreements described above, provided, however, that good reason shall not include clauses six and seven described above) prior to the date on which the executive officer receives the full retention amount, and without regard to whether a retention event has occurred prior to the date of termination, the executive officer will be entitled to receive any unpaid portion of the retention amount.

Equity Compensation

We offer stock options to our named executive officers as the long-term incentive component of our compensation program. Our stock options allow employees to purchase shares of our common stock at a price per share equal to the fair market value of our common stock on the date of grant and may or may not be intended to qualify as "incentive stock options" for U.S. federal income tax purposes. In the past, our board of directors has determined the fair market value of our common stock based upon inputs including valuation reports prepared by third-party valuation firms from time to time. Generally, the stock options we grant vest in equal monthly installments over 48 months, subject to the employee's continued employment with us on the vesting date. We also generally offer our employees the opportunity to "early exercise" their unvested stock options by purchasing shares underlying the unvested portion of an option subject to our right to repurchase any unvested shares for the lesser of the exercise price paid for the shares and the fair market value of the shares on the date of the holder's termination of service if the employee's service with us terminates prior to the date on which the options are fully vested.

Stock options granted to our named executive officers may be subject to accelerated vesting in certain circumstance. For additional discussion, please see "—Employment Agreements" above and "—Change in Control Benefits" below.

Neither of our named executive officers received stock option awards in 2012.

Prior to the effectiveness of this offering, we intend to adopt a 2013 Incentive Award Plan, referred to below as the 2013 Plan, in order to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of our company and certain of its affiliates and to enable our company and certain of its affiliates to obtain and retain services of these individuals, which is essential to our long-term success. For additional information about the 2013 Plan, please see the section titled "Incentive Award Plans" below.

Other Elements of Compensation

Retirement Plans

We currently maintain a 401(k) retirement savings plan that allows eligible employees to defer a portion of their compensation, within limits prescribed by the Internal Revenue Code, on a pre-tax basis through contributions to the plan. Our named executive officers are eligible to participate in the 401(k) plan. Currently, we match contributions made by participants in the 401(k) plan up to a specified percentage, and these matching contributions are fully vested as of the date on which the contribution is made. We believe that providing a vehicle for tax-deferred retirement savings through our 401(k) plan, and making fully vested matching contributions, adds to the overall desirability of our executive compensation package and further incentivizes our named executive officers in accordance with our compensation policies.

Employee Benefits and Perquisites

Our named executive officers are eligible to participate in our health and welfare plans. We do not provide our named executive officers with perquisites or other personal benefits.

No Tax Gross-Ups

We do not make gross-up payments to cover our named executive officers' personal income taxes that may pertain to any of the compensation paid or provided by our company.

Change in Control Benefits

Our named executive officers may become entitled to certain benefits or enhanced benefits in connection with a change in control of our company. Each of our named executive officers' employment agreements entitles them to accelerated vesting of all outstanding equity awards, as well as certain other benefits, upon a change in control of our company. For additional discussion, please see "—Employment Agreements" above.

Outstanding Equity Awards at 2012 Fiscal Year-End

The following table summarizes the number of shares of common stock underlying outstanding equity incentive plan awards for each named executive officer as of December 31, 2012.

	Option Awards						Stock Awards			
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable(1)	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)(2)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($)(2)
David A. Gonyer, R.Ph.	2/9/11	360,000	—	—	.08	2/8/21	—	—	—	—
	11/18/10	—	—	—	—	—	71,875(3)		—	—
	9/14/07	—	—	—	—	—	—	—	206,250(4)	
	8/3/07	200,000	—	—	0.058	8/2/17	—	—	—	—
Matthew J. D'Onofrio	2/9/11	230,000	—	—	.08	2/8/21	—	—	—	
	11/18/10	—	—	—	—	—	71,875(3)		—	—
	9/14/07	—	—	—	—	—	—	—	68,750(5)	
	8/3/07	100,000	—	—	0.058	8/2/17	—	—	—	—

(1) The options vest on a monthly basis over a four-year period of continuous service following the grant date. All options are immediately exercisable. Unvested options are subject to a right of repurchase within 90 days of termination of employment.

(2) Since we have not yet completed our initial public offering, the market values shown were computed using $ per share, which is the midpoint of the price range set forth on the cover of this prospectus

(3) The restricted stock vests and shall be released from our repurchase option on a monthly basis over a four-year period of continuous service following November 10, 2010. Unvested restricted stock is subject to a right of repurchase within 90 days of termination of employment.

(4) Such shares shall be released from our repurchase option upon the achievement, if ever, of certain milestones related to our nasal metoclopramide product candidate as follows: 93,750 shares upon pivotal trial initiation and 112,500 shares upon the New Drug Application submission, all subject to Mr. Gonyer's continued service with us on the date of such events.

(5) Such shares shall be released from our repurchase option upon the achievement, if ever, of certain milestones related to our nasal metoclopramide product candidate as follows: 31,250 shares upon pivotal trial initiation and 37,500 shares upon the New Drug Application submission, all subject to Mr. D'Onofrio's continued service with us on the date of such events.

Director Compensation

2012 Director Compensation Table

The following table sets forth information for the year ended December 31, 2012 regarding the compensation awarded to, earned by or paid to our non-employee directors who served on our board of directors during 2012. Employees of our company who also serve as directors do not receive additional compensation for their performance of services as directors.

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total ($)
Cam Garner	100,000		—	—	—	100,000
Todd C. Brady, M.D., Ph.D.	—		—	—	—	—
Scott Glenn	—		—	—	—	—
Malcolm R. Hill, PharmD.	—		—	—	—	—
Ken Widder, M.D.						

The table below shows the aggregate numbers of option awards (exercisable and unexercisable) held as of December 31, 2012 by each non-employee director who was serving as of December 31, 2012.

Name	Options Outstanding at Fiscal Year End	Unvested Restricted Shares Outstanding at Fiscal Year End
Cam Garner	—	137,500
Todd C. Brady, M.D., Ph.D.	—	26,250
Scott Glenn	—	26,250
Malcolm R. Hill, PharmD.	26,250	—
Ken Widder, M.D.	—	26,250

Following the effectiveness of this offering, we intend to approve and implement a compensation program for our non-employee directors that consists of annual retainer fees and/or long-term equity awards. We expect each non-employee director will initially receive a long-term equity award followed in later years by an annual cash retainer for his or her services. The non-employee directors will receive initial grants of options to purchase shares of our common stock, vesting over years, upon election to the board of directors or, for our current directors, the effectiveness of this offering, and thereafter annual grants of options to purchase shares of our common stock, vesting over years.

Incentive Award Plans

2013 Incentive Award Plan

Concurrently with this offering, we intend to establish the Evoke Pharma, Inc. 2013 Incentive Award Plan, or the 2013 Plan. We expect our board of directors to adopt, and our stockholders to approve, the 2013 Plan prior to the completion of this offering. The 2013 Plan will become effective on the day prior to the public trading date of our common stock. The material terms of the 2013 Plan, as it is currently contemplated, are summarized below. Our board of directors is still in the process of developing, approving and implementing the 2013 Plan and, accordingly, this summary is subject to change.

Authorized Shares. A total of shares of our common stock will initially be reserved for issuance under the 2013 Plan. In addition, the number of shares initially reserved under the 2013 Plan will be increased by (1) the number of shares that as of the closing of this offering, have been reserved but not issued pursuant to any awards granted under our 2007 Plan and are not subject to any awards granted thereunder, and (2) the number of shares subject to stock options or similar awards granted under our 2007 Plan that expire or otherwise terminate without having been exercised in full and unvested shares issued pursuant to awards granted under the 2007 Plan that are forfeited to or repurchased by us, with the maximum number of shares to be added to the 2013 Plan pursuant to clauses (1) and (2) above equal to shares. In addition, the number of shares available for issuance under the 2013 Plan will be annually increased on the first day of each of our fiscal years during the term of the 2013 Plan, beginning with the 2014 fiscal year, by an amount equal to the least of:

- shares;
- % of the outstanding shares of our common stock as of the last day of our immediately preceding fiscal year; or
- such other amount as our board of directors may determine.

The 2013 Plan will also provide for an aggregate limit of shares of common stock that may be issued under the 2013 Plan over the course of its ten-year term.

Shares issued pursuant to awards under the 2013 Plan that we repurchase or that are forfeited, as well as shares used to pay the exercise price of an award or to satisfy the tax withholding obligations related to an award, will become available for future grant under the 2013 Plan. In addition, to the extent that an award is paid out in cash rather than shares, such cash payment will not reduce the number of shares available for issuance under the 2013 Plan.

Plan Administration. The compensation committee of our board of directors will administer the 2013 Plan (except with respect to any award granted to "independent directors" (as defined in the 2013 Plan), which must be administered by our full board of directors). Following the completion of this offering, to administer the 2013 Plan, our compensation committee must consist solely of at least two members of our board of directors, each of whom is a "non-employee director" for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and, with respect to awards that are intended to constitute performance-based compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code, an "outside director" for purposes of Section 162(m). Subject to the terms and conditions of the 2013 Plan, our compensation committee has the authority to select the persons to whom awards are to be made, to determine the type or types of awards to be granted to each person, the number of awards to grant, the number of shares to be subject to such awards, and the terms and conditions of such awards, and to make all other determinations and decisions and to take all other actions necessary or advisable for the administration of the 2013 Plan. Our compensation committee is also authorized to establish, adopt, amend or revise rules relating to administration of the 2013 Plan. Our board of directors may at any time revest in itself the authority to administer the 2013 Plan.

Eligibility. Options, stock appreciation rights, or SARs, restricted stock and other awards under the 2013 Plan may be granted to individuals who are then our officers or employees or are the officers or employees of any of our subsidiaries. Such awards may also be granted to our non-employee directors and consultants but only employees may be granted incentive stock options, or ISOs. As of December 31, 2012, there were five non-employee directors and two employees who would have been eligible for awards under the 2013 Plan had it been in effect on such date. At such time after the completion of this offering when we are subject to the requirements of Section 162(m) of the Code, the maximum number of shares that may be subject to awards granted under the 2013 Plan to any individual in any calendar year cannot exceed and the maximum amount that may be paid to a participant in cash during any calendar year with respect to one or more cash based awards under the 2013 Plan is $.

Awards. The 2013 Plan provides that our compensation committee (or the board of directors, in the case of awards to non-employee directors) may grant or issue stock options, SARs, restricted stock, restricted stock units, dividend equivalents, stock payments and performance awards, or any combination thereof. Our compensation committee (or the board of directors, in the case of awards to non-employee directors) will consider each award

grant subjectively, considering factors such as the individual performance of the recipient and the anticipated contribution of the recipient to the attainment of our long-term goals. Each award will be set forth in a separate agreement with the person receiving the award and will indicate the type, terms and conditions of the award.

- Nonqualified stock options, or NQSOs, will provide for the right to purchase shares of our common stock at a specified price which may not be less than the fair market value of a share of common stock on the date of grant, and usually will become exercisable (at the discretion of our compensation committee or our board of directors, in the case of awards to non-employee directors) in one or more installments after the grant date, subject to the participant's continued employment or service with us and/or subject to the satisfaction of performance targets established by our compensation committee (or our board of directors, in the case of awards to non-employee directors). NQSOs may be granted for any term specified by our compensation committee (or our board of directors, in the case of awards to non-employee directors).
- ISOs will be designed to comply with the provisions of the Code and will be subject to specified restrictions contained in the Code. Among such restrictions, ISOs must have an exercise price of not less than the fair market value of a share of common stock on the date of grant, may only be granted to employees, must expire within a specified period of time following the optionee's termination of employment, and must be exercised within ten years after the date of grant. In the case of an ISO granted to an individual who owns (or is deemed to own) more than 10% of the total combined voting power of all classes of our capital stock, the 2013 Plan provides that the exercise price must be at least 110% of the fair market value of a share of common stock on the date of grant and the ISO must expire upon the fifth anniversary of the date of grant.
- Restricted stock may be granted to participants and made subject to such restrictions as may be determined by our compensation committee (or our board of directors, in the case of awards to non-employee directors). Typically, restricted stock may be forfeited for no consideration if the conditions or restrictions are not met, and it may not be sold or otherwise transferred to third parties until the restrictions are removed or expire. Recipients of restricted stock, unlike recipients of options, may have voting rights and may receive dividends, if any, prior to the time when the restrictions lapse.
- Restricted stock units may be awarded to participants, typically without payment of consideration or for a nominal purchase price, but subject to vesting conditions including continued employment or performance criteria established by our compensation committee (or our board of directors, in the case of awards to non-employee directors). Like restricted stock, restricted stock units may not be sold or otherwise transferred or hypothecated until vesting conditions are removed or expire. Unlike restricted stock, stock underlying restricted stock units will not be issued until the restricted stock units have vested, and recipients of restricted stock units generally will have no voting or dividend rights prior to the time when vesting conditions are satisfied.
- SARs granted under the 2013 Plan typically will provide for payments to the holder based upon increases in the price of our common stock over the exercise price of the SAR. Except as required by Section 162(m) of the Code with respect to SARs intended to qualify as performance-based compensation as described in Section 162(m) of the Code, there are no restrictions specified in the 2013 Plan on the exercise of SARs or the amount of gain realizable therefrom. Our compensation committee (or the board of directors, in the case of awards to non-employee directors) may elect to pay SARs in cash or in common stock or in a combination of both.
- Dividend equivalents represent the value of the dividends, if any, per share paid by us, calculated with reference to the number of shares covered by the stock options, SARs or other awards held by the participant.
- Performance awards may be granted by our compensation committee on an individual or group basis. Generally, these awards will be based upon the attainment of specific performance goals that are established by our compensation committee and relate to one or more performance criteria on a specified date or dates determined by our compensation committee. Any such cash bonus paid to a "covered employee" within the meaning of Section 162(m) of the Code may be, but need not be, qualified performance-based compensation as described below and will be paid in cash.
- Stock payments may be authorized by our compensation committee (or our board of directors, in the case of awards to non-employee directors) in the form of common stock or an option or other right to purchase common stock as part of a deferred compensation arrangement, made in lieu of all or any part of compensation, including bonuses, that would otherwise be payable to employees, consultants or members of our board of directors.

Transferability of Awards. Unless the administrator provides otherwise, our 2013 Plan generally does not allow for the transfer of awards and only the recipient of an option or SAR may exercise such an award during his or her lifetime.

Qualified Performance-Based Compensation. The compensation committee may designate employees as "covered employees" whose compensation for a given fiscal year may be subject to the limit on deductible compensation imposed by Section 162(m) of the Code. The compensation committee may grant to such covered employees restricted stock, dividend equivalents, stock payments, restricted stock units, cash bonuses and other stock-based awards that are paid, vest or become exercisable upon the attainment of company performance criteria which are related to one or more of the following performance criteria as applicable to our performance or the performance of a division, business unit or an individual: operating or other costs and expenses, improvements in expense levels, cash flow (including, but not limited to, operating cash flow and free cash flow), return on assets, return on capital, stockholders' equity, return on stockholders' equity, total stockholder return, return on sales, gross or net profit or operating margin, working capital, net earnings (either before or after interest, taxes, depreciation and amortization), gross or net sales or revenue, net income (either before or after taxes), adjusted net income, operating earnings, earnings per share of stock, adjusted earnings per share of stock, price per share of stock, regulatory body approval for commercialization of a product, capital raised in financing transactions or other financing milestones, market recognition (including but not limited to awards and analyst ratings), financial ratios, implementation or completion of critical projects, market share, economic value, comparisons with various stock market indices, and implementation, completion or attainment of objectively determinable objectives relating to research, development, regulatory, commercial or strategic milestones or development. These performance criteria may be measured in absolute terms or as compared to performance in an earlier period or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices.

The compensation committee may provide that one or more objectively determinable adjustments will be made to one or more of the performance goals established for any performance period. Such adjustments may include one or more of the following: items related to a change in accounting principle, items relating to financing activities, expenses for restructuring or productivity initiatives, other non-operating items, items related to acquisitions, items attributable to the business operations of any entity acquired by us during the performance period, items related to the disposal of a business or segment of a business, items related to discontinued operations that do not qualify as a segment of a business under applicable accounting standards, items attributable to any stock dividend, stock split, combination or exchange of shares occurring during the performance period, any other items of significant income or expense which are determined to be appropriate adjustments, items relating to unusual or extraordinary corporate transactions, events or developments, items related to amortization of acquired intangible assets, items that are outside the scope of our core, on-going business activities, items related to acquired in-process research and development, items relating to changes in tax laws, items relating to major licensing or partnership arrangements, items relating to asset impairment charges, items relating to gains and losses for litigation, arbitration or contractual settlements, or items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions.

Forfeiture, Recoupment and Clawback Provisions. Pursuant to its general authority to determine the terms and conditions applicable to awards under the 2013 Plan, the compensation committee has the right to provide, in an award agreement or otherwise, that an award shall be subject to the provisions of any recoupment or clawback policies implemented by us, including, without limitation, any recoupment or clawback policies adopted to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder.

Adjustments. If there is any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of our assets to stockholders, or any other

change affecting the shares of our common stock or the share price of our common stock other than an equity restructuring (as defined in the 2013 Plan), the plan administrator may make such equitable adjustments, if any, as the plan administrator in its discretion may deem appropriate to reflect such change with respect to (1) the aggregate number and type of shares that may be issued under the 2013 Plan (including, but not limited to, adjustments of the number of shares available under the 2013 Plan and the maximum number of shares which may be subject to one or more awards to a participant pursuant to the 2013 Plan during any calendar year), (2) the number and kind of shares, or other securities or property, subject to outstanding awards, (3) the number and kind of shares, or other securities or property, for which automatic grants are to be subsequently made to new and continuing non-employee directors, (4) the terms and conditions of any outstanding awards (including, without limitation, any applicable performance targets or criteria with respect thereto), and (5) the grant or exercise price per share for any outstanding awards under the 2013 Plan. If there is any equity restructuring, (1) the number and type of securities subject to each outstanding award and the grant or exercise price per share for each outstanding award, if applicable, will be proportionately adjusted, and (2) the plan administrator will make proportionate adjustments to reflect such equity restructuring with respect to the aggregate number and type of shares that may be issued under the 2013 Plan (including, but not limited to, adjustments of the number of shares available under the 2013 Plan and the maximum number of shares which may be subject to one or more awards to a participant pursuant to the 2013 Plan during any calendar year). Adjustments in the event of an equity restructuring will not be discretionary. Any adjustment affecting an award intended as "qualified performance-based compensation" will be made consistent with the requirements of Section 162(m) of the Code. The plan administrator also has the authority under the 2013 Plan to take certain other actions with respect to outstanding awards in the event of a corporate transaction, including provision for the cash-out, termination, assumption or substitution of such awards.

Corporate Transactions. In the event of a change in control where the acquirer does not assume awards granted under the 2013 Plan, awards issued under the 2013 Plan will be subject to accelerated vesting such that 100% of the awards will become vested and exercisable or payable, as applicable. Under the 2013 Plan, a change in control is generally defined as:

- a transaction or series of related transactions (other than an offering of our stock to the general public through a registration statement filed with the Securities and Exchange Commission, or SEC) whereby any person or entity or related group of persons or entities (other than us, our subsidiaries, an employee benefit plan maintained by us or any of our subsidiaries or a person or entity that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, us) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than 50% of the total combined voting power of our securities outstanding immediately after such acquisition;
- during any two-year period, individuals who, at the beginning of such period, constitute our board of directors together with any new director(s) whose election by our board of directors or nomination for election by our stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of our board of directors;
- our consummation (whether we are directly or indirectly involved through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) the sale or other disposition of all or substantially all of our assets in any single transaction or series of transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:
    - which results in our voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into our voting securities or the voting securities of the person that, as a result of the transaction, controls us, directly or indirectly, or owns, directly or indirectly, all or substantially all of our assets or otherwise succeeds to our business (we or such person being referred to as a successor entity)) directly or indirectly, at least a majority of the combined voting power of the successor entity's outstanding voting securities immediately after the transaction; and
    - after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the successor entity; provided, however, that no person or group is treated as beneficially owning 50% or more of combined voting power of the successor entity solely as a result of the voting power held in us prior to the consummation of the transaction; or
    - our stockholders approve a liquidation or dissolution of the company.

Amendment, Termination. Our board of directors has the authority to amend, suspend or terminate the 2013 Plan at any time. However, stockholder approval of any amendment to the 2013 Plan will be obtained to the extent necessary to comply with any applicable law, regulation or stock exchange rule. Additionally, stockholder approval is required within 12 months of an increase in the maximum number of shares issuable under the 2013 Plan or that may be issued to an individual in any calendar year. Except as necessary to comply with Section 409A of the Code, no amendment, suspension or termination of the 2013 Plan will impair the rights or obligations of a holder under an award theretofore granted, unless such award expressly so provides or such holder consents. If not terminated earlier by our board of directors, the 2013 Plan will terminate on the tenth anniversary of the date it becomes effective.

Repricing Permitted. Our compensation committee (or the board of directors, in the case of awards to non-employee directors) shall have the authority, without the approval of our stockholders, to authorize the amendment of any outstanding award to reduce its price per share and to provide that an award will be canceled and replaced with the grant of an award having a lesser price per share.

Securities Laws and Federal Income Taxes. The 2013 Plan is designed to comply with various securities and federal tax laws as follows:

Securities Laws. The 2013 Plan is intended to conform to all provisions of the Securities Act of 1933, as amended, and the Exchange Act and any and all regulations and rules promulgated by the SEC thereunder, including, without limitation, Rule 16b-3. The 2013 Plan will be administered, and awards will be granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations.

Federal Income Tax Consequences. The material federal income tax consequences of the 2013 Plan under current federal income tax law are summarized in the following discussion, which deals with the general tax principles applicable to the 2013 Plan. The following discussion is based upon laws, regulations, rulings and decisions now in effect, all of which are subject to change. Foreign, state and local tax laws, and employment, estate and gift tax considerations are not discussed due to the fact that they may vary depending on individual circumstances and from locality to locality.

- Stock Options and Stock Appreciation Rights. A 2013 Plan participant generally will not recognize taxable income and we generally will not be entitled to a tax deduction upon the grant of a stock option or stock appreciation right. The tax consequences of exercising a stock option and the subsequent disposition of the shares received upon exercise will depend upon whether the option qualifies as an ISO as defined in Section 422 of the Code. The 2013 Plan permits the grant of options that are intended to qualify as ISOs as well as options that are not intended to so qualify; however, ISOs generally may be granted only to our employees and employees of our parent or subsidiary corporations, if any. Upon exercising an option that does not qualify as an ISO when the fair market value of our stock is higher than the exercise price of the option, a 2013 Plan participant generally will recognize taxable income at ordinary income tax rates equal to the excess of the fair market value of the stock on the date of exercise over the purchase price, and we (or our subsidiaries, if any) generally will be entitled to a corresponding tax deduction for compensation expense, in the amount equal to the amount by which the fair market value of the shares purchased exceeds the purchase price for the shares. Upon a subsequent sale or other disposition of the option shares, the participant will recognize a short-term or long-term capital gain or loss in the amount of the difference between the sales price of the shares and the participant’s tax basis in the shares.

Upon exercising an ISO, a 2013 Plan participant generally will not recognize taxable income, and we will not be entitled to a tax deduction for compensation expense. However, upon exercise, the amount by which the fair market value of the shares purchased exceeds the purchase price will be an item of adjustment for alternative minimum tax purposes. The participant will recognize taxable income upon a sale or other taxable disposition of the option shares. For federal income tax purposes, dispositions are divided into two categories: qualifying and disqualifying. A qualifying disposition generally occurs if the sale or other disposition is made more than two years after the date the option was granted and more than one year after the date the shares are transferred upon exercise. If the sale or disposition occurs before these two periods are satisfied, then a disqualifying disposition generally will result.

Upon a qualifying disposition of ISO shares, the participant will recognize long-term capital gain in an amount equal to the excess of the amount realized upon the sale or other disposition of the shares over their purchase price. If there is a disqualifying disposition of the shares, then the excess of the fair market value of the shares on the exercise date (or, if less, the price at which the shares are sold) over their purchase price will be taxable as ordinary income to the participant. If there is a disqualifying disposition in the same year of exercise, it eliminates the item of adjustment for alternative minimum tax purposes. Any additional gain or loss recognized upon the disposition will be recognized as a capital gain or loss by the participant.

We will not be entitled to any tax deduction if the participant makes a qualifying disposition of ISO shares. If the participant makes a disqualifying disposition of the shares, we should be entitled to a tax deduction for compensation expense in the amount of the ordinary income recognized by the participant.

Upon exercising or settling a SAR, a 2013 Plan participant will recognize taxable income at ordinary income tax rates, and we should be entitled to a corresponding tax deduction for compensation expense, in the amount paid or value of the shares issued upon exercise or settlement. Payments in shares will be valued at the fair market value of the shares at the time of the payment, and upon the subsequent disposition of the shares the participant will recognize a short-term or long-term capital gain or loss in the amount of the difference between the sales price of the shares and the participant's tax basis in the shares.

- Restricted Stock and Restricted Stock Units. A 2013 Plan participant generally will not recognize taxable income at ordinary income tax rates and we generally will not be entitled to a tax deduction upon the grant of restricted stock or restricted stock units. Upon the termination of restrictions on restricted stock or the payment of restricted stock units, the participant will recognize taxable income at ordinary income tax rates, and we should be entitled to a corresponding tax deduction for compensation expense, in the amount paid to the participant or the amount by which the then fair market value of the shares received by the participant exceeds the amount, if any, paid for them. Upon the subsequent disposition of any shares, the participant will recognize a short-term or long-term capital gain or loss in the amount of the difference between the sales price of the shares and the participant's tax basis in the shares. However, a 2013 Plan participant granted restricted stock that is subject to forfeiture or repurchase through a vesting schedule such that it is subject to a "risk of forfeiture" (as defined in Section 83 of the Code) may make an election under Section 83(b) of the Code to recognize taxable income at ordinary income tax rates, at the time of the grant, in an amount equal to the fair market value of the shares of common stock on the date of grant, less the amount paid, if any, for such shares. We will be entitled to a corresponding tax deduction for compensation, in the amount recognized as taxable income by the participant. If a timely Section 83(b) election is made, the participant will not recognize any additional ordinary income on the termination of restrictions on restricted stock, and we will not be entitled to any additional tax deduction.
- Dividend Equivalents, Stock Payment Awards and Cash-Based Awards. A 2013 Plan participant will not recognize taxable income and we will not be entitled to a tax deduction upon the grant of dividend equivalents, stock payment awards or cash-based awards until cash or shares are paid or distributed to the participant. At that time, any cash payments or the fair market value of shares that the participant receives will be taxable to the participant at ordinary income tax rates and we should be entitled to a corresponding tax deduction for compensation expense. Payments in shares will be valued at the fair market value of the shares at the time of the payment, and upon the subsequent disposition of the shares, the participant will recognize a short-term or long-term capital gain or loss in the amount of the difference between the sales price of the shares and the participant's tax basis in the shares.
- Section 409A of the Code. Certain types of awards under the 2013 Plan may constitute, or provide for, a deferral of compensation under Section 409A. Unless certain requirements set forth in Section 409A are complied with, holders of such awards may be taxed earlier than would otherwise be the case (e.g., at the time of vesting instead of the time of payment) and may be subject to an additional 20% federal income tax (and, potentially, certain interest penalties). To the extent applicable, the 2013 Plan and awards granted under the 2013 Plan will be structured and interpreted to comply with Section 409A and the Department of Treasury regulations and other interpretive guidance that may be issued pursuant to Section 409A.

- Section 162(m) Limitation. In general, under Section 162(m) of the Code, income tax deductions of publicly held corporations may be limited to the extent total compensation (including base salary, annual bonus, stock option exercises and non-qualified benefits paid) for certain executive officers exceeds $1 million (less the amount of any "excess parachute payments" as defined in Section 280G of the Code) in any one year. However, under Section 162(m), the deduction limit does not apply to certain "performance-based compensation" if an independent compensation committee determines performance goals and if the material terms of the performance-based compensation are disclosed to and approved by our stockholders. In particular, stock options and SARs will satisfy the "performance-based compensation" exception if the awards are made by a qualifying compensation committee, the plan sets the maximum number of shares that can be granted to any person within a specified period and the compensation is based solely on an increase in the stock price after the grant date. Specifically, the option exercise price must be equal to or greater than the fair market value of the stock subject to the award on the grant date. Under a Section 162(m) transition rule for compensation plans of corporations which are privately held and which become publicly held in an initial public offering, certain awards under the 2013 Plan will not be subject to Section 162(m) until a specified transition date, which is the earlier of (1) the material modification of the 2013 Plan, (2) the issuance of all employer stock and other compensation that has been allocated under the 2013 Plan, or (3) the first annual meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the initial public offering occurs. After the transition date, rights or awards granted under the 2013 Plan, other than options and SARs, will not qualify as "performance-based compensation" for purposes of Section 162(m) unless such rights or awards are granted or vest upon pre-established objective performance goals, the material terms of which are disclosed to and approved by our stockholders.

We have attempted to structure the 2013 Plan in such a manner that, after the transition date, the compensation attributable to stock options and SARs which meet the other requirements of Section 162(m) will not be subject to the $1 million limitation. We have not, however, requested a ruling from the Internal Revenue Service or an opinion of counsel regarding this issue.

2007 Equity Incentive Plan

On May 30, 2007, our board of directors approved the Evoke Pharma, Inc. 2007 Equity Incentive Plan, or the 2007 Plan.

A total of 2,250,000 shares of our common stock are reserved for issuance under the 2007 Plan. As of December 31, 2012, 2,250,000 shares of our common stock were subject to outstanding option awards and zero shares of our common stock remained available for future issuance. After the effective date of the 2013 Plan, no additional awards will be granted under the 2007 Plan.

Administration. The compensation committee of our board of directors administers the 2007 Plan, except with respect to any award granted to non-employee directors (as defined in the 2007 Plan), which must be administered by our full board of directors. Subject to the terms and conditions of the 2007 Plan, the administrator has the authority to select the persons to whom awards are to be made, to determine the type or types of awards to be granted to each person, determine the number of awards to grant, determine the number of shares to be subject to such awards, and the terms and conditions of such awards, and make all other determinations and decisions and to take all other actions necessary or advisable for the administration of the 2007 Plan. The plan administrator is also authorized to establish, adopt, amend or revise rules relating to administration of the 2007 Plan, subject to certain restrictions.

Eligibility. Options, SARs, restricted stock and other awards under the 2007 Plan may be granted to individuals who are then our employees, consultants and members of our board of directors and our subsidiaries. Only employees may be granted ISOs.

Awards. The 2007 Plan provides that our administrator may grant or issue stock options, restricted stock, restricted stock units, SARs, dividend equivalents, stock payments, or any combination thereof. The administrator considers each award grant subjectively, considering factors such as the individual performance of the recipient and the anticipated contribution of the recipient to the attainment of our long-term goals. Each award is set forth in a separate agreement with the person receiving the award and indicates the type, terms and conditions of the award.

- NQSOs provide for the right to purchase shares of our common stock at a specified price which may not be less than the fair market value of a share of stock on the date of grant, and usually will become exercisable (at the discretion of our compensation committee or the board of directors, in the case of awards to non-employee directors) in one or more installments after the grant date, subject to the participant's continued employment or service with us and/or subject to the satisfaction of performance targets established by our compensation committee (or the board of directors, in the case of awards to non-employee directors). NQSOs may be granted for any term specified by our compensation committee (or the board of directors, in the case of awards to non-employee directors), but the term may not exceed ten years.
- ISOs are designed to comply with the provisions of the Internal Revenue Code and are subject to specified restrictions contained in the Internal Revenue Code applicable to ISOs. Among such restrictions, ISOs must have an exercise price of not less than the fair market value of a share of common stock on the date of grant, may only be granted to employees, must expire within a specified period of time following the optionee's termination of employment, and must be exercised within the ten years after the date of grant. In the case of an ISO granted to an individual who owns (or is deemed to own) more than 10% of the total combined voting power of all classes of our capital stock on the date of grant, the 2007 Plan provides that the exercise price must be at least 110% of the fair market value of a share of common stock on the date of grant and the ISO must expire on the fifth anniversary of the date of its grant.
- Restricted stock may be granted to participants and made subject to such restrictions as may be determined by the administrator. Typically, restricted stock may be repurchased by us at the original purchase price or, if no cash consideration was paid for such stock, forfeited for no consideration if the conditions or restrictions are not met, and the restricted stock may not be sold or otherwise transferred to third parties until restrictions are removed or expire. Recipients of restricted stock, unlike recipients of options, may have voting rights and may receive dividends, if any, prior to when the restrictions lapse.
- Restricted stock units may be awarded to participants, typically without payment of consideration or for a nominal purchase price, but subject to vesting conditions including continued employment or performance criteria established by the administrator. Like restricted stock, restricted stock units may not be sold or otherwise transferred or hypothecated until vesting conditions are removed or expire. Unlike restricted stock, stock underlying restricted stock units will not be issued until some time after the restricted stock units have vested, and recipients of restricted stock units generally will have no voting or dividend rights prior to the time when vesting conditions are satisfied and the shares have been issued.
- SARs typically will provide for payments to the holder based upon increases in the price of our common stock over the exercise price of the SAR. There are no restrictions specified in the 2007 Plan on the exercise of SARs or the amount of gain realizable therefrom. The administrator may elect to pay SARs in cash or in common stock or in a combination of both.
- Dividend equivalents may be awarded to participants and represent the value of the dividends, if any, per share paid by us, calculated with reference to the number of shares covered by the stock options, SARs or other awards held by the participant.
- Stock payments may be authorized by the administrator in the form of common stock or an option or other right to purchase common stock as part of a deferred compensation arrangement, made in lieu of all or any part of compensation, including bonuses, that would otherwise be payable to employees, consultants or members of our board of directors.

Corporate Transactions. In the event of a change of control where the acquiror does not assume awards granted under the 2007 Plan, awards issued under the 2007 Plan will be subject to accelerated vesting such that 100% of the awards will become vested and exercisable or payable, as applicable, immediately prior to the change in control. Under the 2007 Plan, a change of control is generally defined as:

- a transaction or series of related transactions whereby any person or entity or related group of persons or entities (other than us, our subsidiaries, an employee benefit plan maintained by us or any of our

subsidiaries or a person or entity that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, us) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of more than 50% of the total combined voting power of our securities outstanding immediately after such acquisition;

- during any two-year period, individuals who, at the beginning of such period, constitute our board of directors together with any new director(s) whose election by our board of directors or nomination for election by our stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of our board of directors;
- our consummation (whether we are directly or indirectly involved through one or more intermediaries) of (1) a merger, consolidation, reorganization, or business combination, (2) the sale or other disposition of all or substantially all of our assets or (3) the acquisition of assets or stock of another entity, in each case other than a transaction that results in our voting securities outstanding immediately before the transaction continuing to represent, directly or indirectly, at least a majority of the combined voting power of the successor entity's outstanding voting securities immediately after the transaction, and after which no person or entity beneficially owns voting securities representing 50% or more of the combined voting power of the acquiring company that is not attributable to voting power held in the company prior to such transaction; or
- the approval by our stockholders of a liquidation or dissolution of our company.

Amendment and Termination of the 2007 Plan. Our board of directors may terminate, amend or modify the 2007 Plan. However, stockholder approval of any amendment to the 2007 Plan must be obtained to the extent necessary and desirable to comply with any applicable law, regulation or stock exchange rule, or for any amendment to the 2007 Plan that increases the number of shares available under the 2007 Plan. The administrator may, with the consent of the affected option holders, cancel any or all outstanding awards under the 2007 Plan and grant new awards in substitution. If not terminated earlier by the compensation committee or the board of directors, the 2007 Plan will terminate on May 30, 2017.

Securities Laws and Federal Income Taxes. The 2007 Plan is designed to comply with applicable securities laws in the same manner as described above in the description of the 2013 Plan under the heading "—2013 Equity Incentive Award Plan—Securities Laws and Federal Income Taxes—Securities Laws." The general federal tax consequences of awards under the 2007 Plan are the same as those described above in the description of the 2013 Plan under the heading "—2013 Equity Incentive Award Plan—Securities Laws and Federal Income Taxes—Federal Income Tax Consequences."

2013 Employee Stock Purchase Plan

Concurrently with this offering, we intend to establish the Evoke Pharma, Inc. 2013 Employee Stock Purchase Plan, or the ESPP. We expect our board of directors to adopt, and our stockholders to approve, the ESPP prior to the completion of this offering. The ESPP will become effective on the day prior to the public trading date of our common stock. Our executive officers and all of our other employees will be allowed to participate in our ESPP, subject to the eligibility requirements described below. The material terms of the ESPP, as it is currently contemplated, are summarized below. Our board of directors is still in the process of developing, approving and implementing the ESPP and, accordingly, this summary is subject to change.

A total of shares of our common stock will initially be reserved for issuance under our ESPP. In addition, the number of shares available for issuance under the ESPP will be annually increased on the first day of each fiscal year during the term of the ESPP, beginning with the 2014 fiscal year, by an amount equal to the least of:

- shares;
- % of the outstanding shares of our common stock as of the last day of our immediately preceding fiscal year; or
- such other amount as may be determined by our board of directors.

The ESPP will also provide for an aggregate limit of shares of common stock that may be issued under the ESPP during the term of the ESPP.

Our board of directors or its committee has full and exclusive authority to interpret the terms of the ESPP and determine eligibility. Our compensation committee will be the initial administrator of the ESPP.

Our employees are eligible to participate in the ESPP if they are customarily employed by us or any participating subsidiary for at least 20 hours per week and more than five months in any calendar year. However, an employee may not be granted rights to purchase stock under our ESPP if such employee, immediately after the grant, would own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of our common or other class of stock.

Our ESPP is intended to qualify under Code Section 423 and stock will be offered under the ESPP during offering periods. The length of the offering periods under the ESPP will be determined by our compensation committee and may be up to 27 months long. Employee payroll deductions will be used to purchase shares on each purchase date during an offering period. The purchase dates will be determined by the compensation committee for each offering period, but will generally be the last day in each offering period. Offering periods under the ESPP will commence when determined by our compensation committee. The compensation committee may, in its discretion, modify the terms of future offering periods.

Our ESPP permits participants to purchase common stock through payroll deductions of up to % of their eligible compensation, which includes a participant's gross base compensation for services to the company, excluding overtime payments, sales commissions, incentive compensation, bonuses, expense reimbursements, fringe benefits and other special payments. A participant may purchase a maximum of shares of common stock during each offering period. In addition, no employee will be permitted to accrue the right to purchase stock under the ESPP at a rate in excess of $25,000 worth of shares during any calendar year during which such a purchase right is outstanding (based on the fair market value per share of our common stock as of the first day of the offering period).

On the first trading day of each offering period, each participant automatically is granted an option to purchase shares of our common stock. The option expires at the end of the offering period or upon termination of employment, whichever is earlier, but is exercised at the end of each purchase period to the extent of the payroll deductions accumulated during such purchase period. The purchase price of the shares will be 85% of the lower of the fair market value of our common stock on the first trading day of the offering period or on the applicable purchase date. Participants may end their participation at any time during an offering period, and will be paid their accrued payroll deductions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with us.

A participant may not transfer rights granted under the ESPP other than by will, the laws of descent and distribution or as otherwise provided under the ESPP.

In the event of certain significant transactions or a change in control (as defined in the ESPP), the compensation committee may provide for (1) either the replacement or termination of outstanding rights in exchange for cash, (2) the assumption or substitution of outstanding rights by the successor or survivor corporation or parent or subsidiary thereof, if any, (3) the adjustment in the number and type of shares of stock subject to outstanding rights, (4) the use of participants' accumulated payroll deductions to purchase stock on a new purchase date prior to the next purchase date and termination of any rights under ongoing offering periods or (5) the termination of all outstanding rights. Under the ESPP, a change in control has the same definition as given to such term in the 2013 Plan.

The compensation committee may amend, suspend or terminate the ESPP. However, stockholder approval of any amendment to the ESPP will be obtained for any amendment which changes the aggregate number or type of shares that may be sold pursuant to rights under the ESPP, changes the corporations or classes of corporations whose employees are eligible to participate in the ESPP or changes the ESPP in any manner that would cause the ESPP to no longer be an employee stock purchase plan within the meaning of Section 423(b) of the Code. The ESPP will terminate no later than the tenth anniversary of the ESPP's initial adoption by our board of directors.

Securities Laws. The ESPP has been designed to comply with various securities laws in the same manner as described above in the description of the 2013 Plan.

Federal Income Taxes. The material federal income tax consequences of the ESPP under current federal income tax law are summarized in the following discussion, which deals with the general tax principles applicable to the ESPP. The following discussion is based upon laws, regulations, rulings and decisions now in effect, all of which are subject to change. Foreign, state and local tax laws, and employment, estate and gift tax considerations are not discussed due to the fact that they may vary depending on individual circumstances and from locality to locality.

The ESPP, and the right of participants to make purchases thereunder, is intended to qualify under the provisions of Section 423 of the Code. Under the applicable Code provisions, no income will be taxable to a participant until the sale or other disposition of the shares purchased under the ESPP. This means that an eligible employee will not recognize taxable income on the date the employee is granted an option under the ESPP (i.e., the first day of the offering period). In addition, the employee will not recognize taxable income upon the purchase of shares. Upon such sale or disposition, the participant will generally be subject to tax in an amount that depends upon the length of time such shares are held by the participant prior to disposing of them. If the shares are sold or disposed of more than two years from the first day of the offering period during which the shares were purchased and more than one year from the date of purchase, or if the participant dies while holding the shares, the participant (or his or her estate) will recognize ordinary income measured as the lesser of (1) the excess of the fair market value of the shares at the time of such sale or disposition over the purchase price or (2) an amount equal to 15% of the fair market value of the shares as of the first day of the offering period. Any additional gain will be treated as long-term capital gain. If the shares are held for the holding periods described above but are sold for a price that is less than the purchase price, there is no ordinary income and the participating employee has a long-term capital loss for the difference between the sale price and the purchase price.

If the shares are sold or otherwise disposed of before the expiration of the holding periods described above, the participant will recognize ordinary income generally measured as the excess of the fair market value of the shares on the date the shares are purchased over the purchase price and we will be entitled to a tax deduction for compensation expense in the amount of ordinary income recognized by the employee. Any additional gain or loss on such sale or disposition will be long-term or short-term capital gain or loss, depending on how long the shares were held following the date they were purchased by the participant prior to disposing of them. If the shares are sold or otherwise disposed of before the expiration of the holding periods described above but are sold for a price that is less than the purchase price, the participant will recognize ordinary income equal to the excess of the fair market value of the shares on the date of purchase over the purchase price (and we will be entitled to a corresponding deduction), but the participant generally will be able to report a capital loss equal to the difference between the sales price of the shares and the fair market value of the shares on the date of purchase.

Limitations of Liability and Indemnification Matters

Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by the Delaware General Corporation Law, which prohibits our amended and restated certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director’s duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation and our amended and restated bylaws also provide that if Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws also provide that we shall have the power to indemnify our employees and agents to the fullest extent permitted by law. Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our amended and restated bylaws would permit indemnification. We have obtained directors' and officers' liability insurance.

We have entered into separate indemnification agreements with our directors and executive officers, in addition to indemnification provided for in our amended and restated certificate of incorporation and amended and restated bylaws. These agreements, among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by this person in any action or proceeding arising out of this person's services as a director or executive officer or at our request. We believe that these provisions in our amended and restated certificate of incorporation and amended and restated bylaws and indemnification agreements are necessary to attract and retain qualified persons as directors and executive officers.

The above description of the indemnification provisions of our amended and restated certificate of incorporation, our amended and restated bylaws and our indemnification agreements is not complete and is qualified in its entirety by reference to these documents, each of which is incorporated by reference as an exhibit to this registration statement.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS

The following includes a summary of transactions since January 1, 2010 to which we have been a party in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than equity and other compensation, termination, change in control and other arrangements, which are described under "Executive and Director Compensation." We also describe below certain other transactions with our directors, executive officers and stockholders.

Preferred Stock Financings

From June 2007 through June 2010, we issued and sold to investors an aggregate of 12,195,068 shares of our Series A convertible preferred stock at a purchase price of $1.50 per share, for aggregate consideration of approximately $18.3 million.

The participants in this Series A convertible preferred stock financing included the following directors and holders of more than 5% of our capital stock or entities affiliated with them. The following table presents the number of shares issued to these related parties in these financings. Each share of Series A convertible preferred stock identified in the following table will be automatically converted into of a share of our common stock immediately prior to the closing of this offering.

Participants	Series A Convertible Preferred Stock
Investor (1)	
Funds affiliated with Domain Associates, L.L.C.(2)	5,666,667
Funds affiliated with Funds affiliated with LVP GP III, LLC(3)	5,666,667
Cam L. Garner(4)	78,027
Scott L. Glenn(5)	78,027

(1) Additional details regarding these stockholders and their equity holdings are provided in "Principal Stockholders."
(2) Represents shares purchased by Domain Partners VII, L.P. and DP VII Associates, L.P.
(3) Represents shares purchased by LVP Life Science Ventures III, L.P., LVP III Associates, L.P., and LVP III Partners, L.P.
(4) Represents shares purchased by Garner Investments, L.L.C., of which Mr. Garner is the managing member.
(5) Represents shares purchased by Windamere III, LLC, of which Mr. Glenn is the managing member.

Some of our directors are associated with our principal stockholders as indicated in the table below:

Director	Principal Stockholder
Todd C. Brady, M.D., Ph.D.	Funds affiliated with Domain Associates, L.L.C.
Kenneth J. Widder, M.D.	Funds affiliated with Funds affiliated with LVP GP III, LLC

Investor Rights Agreement

We entered into an investor rights agreement in June 2007 with the holders of our convertible preferred stock, including entities with which certain of our directors are affiliated. This agreement provides for certain rights relating to the registration of their shares of common stock issuable upon conversion of their convertible preferred

stock, a right of first refusal to purchase future securities sold by us and certain additional covenants made by us. Except for the registration rights (including the related provisions pursuant to which we have agreed to indemnify the parties to the investor rights agreement), all rights under this agreement will terminate upon completion of this offering. The registration rights will continue following this offering and will terminate seven years following the completion of this offering, or for any particular holder with registration rights, at such time following this offering when all securities held by that stockholder subject to registration rights may be sold pursuant to Rule 144 under the Securities Act. See "Description of Capital Stock—Registration Rights" for additional information.

Voting Agreement

We entered into a voting agreement in June 2007 by and among us and certain of our stockholders, pursuant to which the following directors were each elected to serve as members on our board of directors and, as of the date of this prospectus, continue to so serve: Drs. Brady, Widder and Hill and Messrs. Garner, Gonyer, and Glenn. Pursuant to the voting agreement, Mr. Hawley, as our Chief Executive Officer, was initially selected to serve on our board of directors as a representative of holders of our common stock, as designated by a majority of our common stockholders. Drs. Brady and Widder were initially selected to serve on our board of directors as representatives of holders of our previously outstanding preferred stock, as designated by Domain Partners VII, L.P., and Latterell Venture Partners, L.P., respectively.

The voting agreement will terminate upon the closing of this offering, and members previously elected to our board of directors pursuant to this agreement will continue to serve as directors until they resign, are removed or their successors are duly elected by holders of our common stock. The composition of our board of directors after this offering is described in more detail under "Management—Board Composition and Election of Directors."

Employment Agreements

We have entered into employment agreements with the following executive officers: David A. Gonyer, R.Ph. our President and Chief Executive Officer; Matthew J. D'Onofrio, MBA, our Executive Vice President, Chief Business Officer. For more information regarding these agreements, see the section of this prospectus entitled "Executive and Director Compensation—Narrative to Compensation Table."

Indemnification Agreements

We have entered into indemnification agreements with each of our directors and executive officers prior to the closing of this offering. These agreements, among other things, require us or will require us to indemnify each director (and in certain cases their related venture capital funds) and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer.

Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we will indemnify each of our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. Further, we have entered into indemnification agreements with each of our directors and officers, and we have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment under certain circumstances. For further information, see "Executive and Director Compensation—Limitations of Liability and Indemnification Matters."

Stock Option Grants to Executive Officers and Directors

We have granted stock options to our executive officers and certain of our directors as more fully described in the section entitled "Executive and Director Compensation."

Policies and Procedures for Related Person Transactions

Our board of directors has adopted a written related person transaction policy, to be effective upon the consummation of this offering, setting forth the policies and procedures for the review and approval or ratification of related-person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds $120,000 and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of December 31, 2012, and as adjusted to reflect the sale of shares of common stock in this offering, by:

- each of our named executive officers;
- each of our directors;
- all of our executive officers and directors as a group; and
- each person or group of affiliated persons known by us to beneficially own more than 5% of our common stock.

The number of shares beneficially owned by each stockholder is determined under rules issued by the SEC. Under these rules, beneficial ownership includes any shares as to which a person has sole or shared voting power or investment power. Applicable percentage ownership is based on 18,408,818 shares of common stock outstanding on December 31, 2012, which gives effect to the conversion of all outstanding shares of our convertible preferred stock into shares of common stock. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options, warrants or other rights held by such person that are currently exercisable or will become exercisable within 60 days of December 31, 2012 are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person.

Unless otherwise indicated, the address of each beneficial owner listed below is c/o Evoke Pharma, Inc., 308 North Sierra Avenue, Solana Beach, CA 92075. We believe, based on information provided to us, that each of the stockholders listed below has sole voting and investment power with respect to the shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

	Shares Beneficially Owned Prior to Offering		Shares Beneficially Owned After Offering	
Name of Beneficial Owner	Number	Percentage	Number	Percentage
5% or Greater Stockholders				
Funds affiliated with Domain Associates, L.L.C.[1] One Palmer Square Princeton, NJ 08542	5,692,917	30.9%		
Funds affiliated with LVP GP III, LLC[2] 1 Embarcadero Center, Suite 4050 San Francisco, CA 94111	5,692,917	30.9%		
Executive Officers and Directors				
David A. Gonyer, R.Ph.[3]	2,585,000	13.8%		
Matthew J. D'Onofrio[4]	1,205,000	6.5%		
Cam L. Garner[5]	1,878,027	10.2%		
Todd C. Brady, M.D., Ph.D.	—	—		
Scott L. Glenn[6]	204,277	1.1%		
Malcolm R. Hill, Pharm.D.[7]	96,250	*		
Kenneth J. Widder, M.D.[2]	5,692,917	30.9%		
All executive officers and directors as a group (7 persons)[8]	11,661,471	59.4%		

* Less than 1%.

[1] Includes 26,250 shares held by Domain Associates, L.L.C., 5,571,637 shares held by Domain Partners VII, L.P. and 95,030 shares held by DP VII Associates, L.P. The voting and disposition of the shares held by Domain Partners VII, L.P. and DP VII Associates, L.P. is determined by the managing members of One Palmer Square Associates VII, L.L.C., the general partner of Domain Partners VII, L.P. and DP VII Associates, L.P. James C. Blair, Brian H. Dovey, Jesse I. Treu, Kathleen K. Schoemaker, Nicole Vitullo and Brian K. Halak are the managing members of each of Domain Associates, L.L.C. and One Palmer Square Associates VII, L.L.C. and share voting and investment power with respect to these shares. Each member disclaims beneficial ownership of these shares, except to the extent of his or her pecuniary interest therein.

[2] Includes 5,271,317 shares held by LVP Life Science Ventures III, L.P., 263,566 shares held by LVP III Associates, L.P., 131,784 shares held by LVP III Partners, L.P., and 26,250 shares held by LVPMC, LLC. LVP GP III, LLC is the general partner of LVP Life Science Ventures III, L.P., LVP III Associates, L.P. and LVP III Partners, L.P. Patrick F. Latterell, Stephen M. Salmon, James N. Woody and Kenneth J. Widder, the members of LVPMC, LLC and LVP GP III, LLC, share voting and investment power with respect to these shares. Each member disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.

[3] Includes (a) 150,000 shares Mr. Gonyer acquired upon the early exercise of options, 71,875 of which are subject to our right of repurchase within 60 days of December 31, 2012 and (b) 360,000 shares Mr. Gonyer has the right to acquire pursuant to outstanding options which are immediately exercisable, 187,500 of which would be subject to our right of repurchase within 60 days of December 31, 2012.

[4] Includes (a) 150,000 shares Mr. D'Onofrio acquired upon the early exercise of options, 71,875 of which are subject to our right of repurchase within 60 days of December 31, 2012 and (b) 230,000 shares Mr. D'Onofrio has the right to acquire pursuant to outstanding options which are immediately exercisable, 119,792 of which would be subject to our right of repurchase within 60 days of December 31, 2012.

[5] Includes (a) 1,678,027 shares held by Garner Investments, L.L.C., of which Mr. Garner is the managing member, (b) 100,000 shares held by the Anna Berenice Garner Irrevocable Trust dated 8/13/2007, of which Mr. Garner is a trustee and (c) 100,000 shares held by the Lee Adair Garner Irrevocable Trust dtd 8/13/2007, of which Mr. Garner is a trustee.

[6] Includes (a) 126,250 shares held by Glenn Holdings, L.P., of which Mr. Glenn is the General Partner, and (b) 78,027 shares held by Windamere III, LLC, of which Mr. Glenn is the Managing Member.

[7] Includes 26,250 shares that Dr. Hill has the right to acquire pursuant to outstanding options which are immediately exercisable.

[8] Includes (a) 616,250 shares of common stock subject to outstanding options which are immediately exercisable, 307,292 of which would be subject to our right of repurchase within 60 days of December 31, 2012.

DESCRIPTION OF CAPITAL STOCK

General

Following the closing of this offering, our authorized capital stock will consist of 200,000,000 shares of common stock, par value $0.0001 per share, and 10,000,000 shares of preferred stock, par value $0.0001 per share. The following description summarizes some of the terms of our amended and restated certificate of incorporation and amended and restated bylaws, our outstanding warrants, the investors' rights agreement and of the Delaware General Corporation Law. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description you should refer to our amended and restated certificate of incorporation, amended and restated bylaws, warrants and investors' rights agreement, copies of which have been filed or incorporated by reference as exhibits to the registration statement of which the prospectus is a part, as well as the relevant provisions of the Delaware General Corporation Law.

Common Stock

As of December 31, 2012, there were 18,408,818 shares of our common stock outstanding and held of record by 15 stockholders, assuming the automatic conversion of all outstanding shares of our convertible preferred stock into 12,195,068 shares of common stock, which we expect to automatically occur immediately prior to the closing of this offering. Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders, including the election of directors, and do not have cumulative voting rights. Accordingly, the holders of a majority of the outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose, other than any directors that holders of any preferred stock we may issue may be entitled to elect. Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared by the board of directors out of legally available funds. In the event of our liquidation, dissolution or winding up, the holders of common stock will be entitled to share ratably in the assets legally available for distribution to stockholders after the payment of or provision for all of our debts and other liabilities, subject to the prior rights of any preferred stock then outstanding. Holders of common stock have no preemptive or conversion rights or other subscription rights and there are no redemption or sinking funds provisions applicable to the common stock. All outstanding shares of common stock are, and the common stock to be outstanding upon completion of this offering will be, duly authorized, validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

Preferred Stock

Under the terms of our amended and restated certificate of incorporation, which will become effective immediately prior to the closing of this offering, our board of directors has the authority, without further action by our stockholders, to issue up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the dividend, voting and other rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in our control and may adversely affect the market price of the common stock and the voting and other rights of the holders of common stock. We have no current plans to issue any shares of preferred stock.

Options

As of December 31, 2012, options to purchase 616,250 shares of our common stock were outstanding under our 2007 equity incentive plan, of which 308,958 were vested and all of which were exercisable as of that date.

Warrants

In February 2008, in connection with the closing of a debt facility, we issued a warrant to Square 1 Bank, which warrant is immediately exercisable for an aggregate of 50,000 shares of our Series A convertible preferred stock, at an exercise price of $1.50 per share. Immediately prior to the closing of this offering, this warrant will become exercisable for 50,000 shares of common stock at an exercise price of $1.50 per share. This warrant will expire three years from the effective date of the registration statement of which this prospectus is a part, which is , 2016.

In June 2012, in connection with the closing of a debt facility, we issued a warrant to Silicon Valley Bank, which warrant is immediately exercisable for an aggregate of 20,000 shares of our Series A convertible preferred stock, at an exercise price of $1.50 per share. Immediately prior to the closing of this offering, this warrant will become exercisable for shares of common stock at an exercise price of $1.50 per share. This warrant will expire 10 years from the date of grant, which is June 1, 2022.

Each of the above warrants has a net exercise provision under which their holders may, in lieu of payment of the exercise price in cash, surrender the warrant and receive, a net amount of shares of our common stock based on the fair market value of our common stock at the time of the net exercise of the warrant after deduction of the aggregate exercise price. These warrants also contain provisions for the adjustment of the exercise price and the aggregate number of shares issuable upon the exercise of the warrants in the event of stock dividends, stock splits, reorganizations and reclassifications and consolidations.

We have agreed to issue to the representative of the underwriters in this offering warrants to purchase up to shares of our common stock, with a per share exercise price equal to 175% of the public offering price. In addition, the warrants provide for registration rights upon request, in certain cases. In addition, the warrants provide for registration rights upon request, in certain cases. The demand registration right provided will not be greater than five years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(H)(iv). The piggyback registration right provided will not be greater than seven years from the effective date of the offering in compliance with FINRA Rule 5110(f)(2)(H)(v). See “Underwriting—Representative’s Warrants” section of this prospectus for a description of these warrants.

Registration Rights

In addition to the registration rights granted with respect to the representative’s warrant described above, as of December 31, 2012, holders of shares of our common stock, which includes shares issuable upon the automatic conversion of our Series A convertible preferred stock immediately prior to the closing of this offering, will be entitled to the following rights with respect to the registration of such shares for public resale under the Securities Act, pursuant to an investor rights agreement by and among us and certain of our stockholders. The registration of shares of common stock as a result of the following rights being exercised would enable holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective.

Demand Registration Rights

If at any time beginning six months after this offering the holders of at least a majority of the registrable securities request in writing that we effect a registration with respect to their shares in an offering with an anticipated aggregate offering price of at least $5.0 million, we may be required to register their shares. We are obligated to

effect at most two registrations for the holders of registrable securities in response to these demand registration rights. If the holders requesting registration intend to distribute their shares by means of an underwriting, the managing underwriter of such offering will have the right to limit the numbers of shares to be underwritten for reasons related to the marketing of the shares.

Piggyback Registration Rights

If at any time after this offering we propose to register any shares of our common stock under the Securities Act, subject to certain exceptions, the holders of registrable securities will be entitled to notice of the registration and to include their shares of registrable securities in the registration. If our proposed registration involves an underwriting, the managing underwriter of such offering will have the right to limit the number of shares to be underwritten for reasons related to the marketing of the shares.

Form S-3 Registration Rights

If at any time after we become entitled under the Securities Act to register our shares on Form S-3 a holder of registrable securities requests in writing that we register their shares for public resale on Form S-3 and the reasonably anticipated price to the public of the offering is $1.0 million or more, we will be required to use our best efforts to effect such registration; provided, however, that we will not be required to effect such a registration if, within the preceding 12 months, we have already effected two registrations on Form S-3 for the holders of registrable securities.

Expenses

Ordinarily, other than underwriting discounts and commissions, we will be required to pay all expenses incurred by us related to any registration effected pursuant to the exercise of these registration rights. These expenses may include all registration and filing fees, printing expenses, fees and disbursements of our counsel, reasonable fees and disbursements of a counsel for the selling securityholders, blue sky fees and expenses and the expenses of any special audits incident to the registration.

Termination of Registration Rights

The registration rights terminate upon the earlier of seven years after the effective date of the registration statement of which this prospectus is a part, or, with respect to the registration rights of an individual holder, when the holder can sell all of such holder’s registrable securities in compliance with Rule 144 of the Securities Act.

Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

Some provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our amended and restated bylaws provide that a special meeting of stockholders may be called only by our chairman of the board, chief executive officer or president, or by a resolution adopted by a majority of our board of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Elimination of Stockholder Action by Written Consent

Our amended and restated certificate of incorporation and amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting.

Staggered Board

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. For more information on the classified board, see "Management—Board Composition and Election of Directors." This system of electing and removing directors may tend to discourage a third-party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our amended and restated certificate of incorporation provides that no member of our board of directors may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of not less than 66 $^{2}/_{3}$% of the total voting power of all of our outstanding voting stock then entitled to vote in the election of directors.

Stockholders Not Entitled to Cumulative Voting

Our amended and restated certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed to be "interested stockholders" from engaging in a "business combination" with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock, would require approval by holders of at least 66 2/3% of the total voting power of all of our outstanding voting stock.

The provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be .

NASDAQ Capital Market

We have applied to have our common stock listed on The NASDAQ Capital Market under the symbol “EVOK.”

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely affect the market price of our common stock. Although we have applied to have our common stock listed on The NASDAQ Capital Market, we cannot assure you that there will be an active public market for our common stock.

Based on the number of shares of our common stock outstanding as of December 31, 2012 and assuming (1) the issuance of shares in this offering, and (2) the conversion of all outstanding shares of our convertible preferred stock into 12,195,068 shares of our common stock, which we expect to automatically occur immediately prior to the closing of the offering, (3) no exercise of the underwriters' over-allotment option to purchase additional shares of common stock, and (5) no exercise of outstanding options or warrants, we will have outstanding an aggregate of shares of common stock.

Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. Shares purchased by our affiliates would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement.

The remaining shares of common stock will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or 701 under the Securities Act, each of which is summarized below. We expect that substantially all of these shares will be subject to the 180-day lock-up period under the lock-up agreements described below.

In addition, of the 616,250 shares of our common stock that were subject to stock options outstanding as of December 31, 2012, options to purchase 308,958 of such shares of common stock were vested as of such date and, upon exercise, these shares will be eligible for sale subject to the lock-up agreements described below and Rules 144 and 701 under the Securities Act.

Lock-Up Agreements

We, each of our directors and executive officers and holders of substantially all of our outstanding shares of common stock have agreed that, without the prior written consent of Aegis Capital Corp. on behalf of the underwriters, we and they will not, subject to limited exceptions, during the period ending 180 days after the date of this prospectus, subject to extension in specified circumstances:

- offer, pledge, sell or contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock;
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock or any securities convertible into or exchangeable or exercisable for shares of our common stock, whether such transaction is to be settled by delivery of shares of our common stock or such other securities, in cash or otherwise;
- make any demand for or exercise any right with respect to the registration of any shares of our common stock or any securities convertible into or exchangeable or exercisable for shares of our common stock; or
- publicly announce an intention to do any of the foregoing.

The lock-up restrictions, specified exceptions and the circumstances under which the 180-day lock-up period may be extended are described in more detail under "Underwriting."

Upon the expiration of the lock-up period, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above.

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our common stock for at least six months would be entitled to sell in "broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or
- the average weekly trading volume in our common stock on The NASDAQ Capital Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the Securities and Exchange Commission and The NASDAQ Capital Market concurrently with either the placing of a sale order with the broker or the execution of a sale directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

Equity Plan

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to outstanding stock options and common stock issued or issuable under our stock plan. We expect to file the registration statement covering shares offered pursuant to our stock plan shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market subject to compliance with the resale provisions of Rule 144.

Registration Rights

Based on the number of shares of our convertible preferred stock outstanding as of December 31, 2012 and assuming the automatic conversion of all outstanding shares of our convertible preferred stock into shares of our common stock immediately prior to the closing of the offering, the holders of shares of common stock or their transferees will be entitled to various rights with respect to the registration of these shares under the Securities Act upon the closing of this offering. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See "Description of Capital Stock—Registration Rights" for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreement.

MATERIAL U.S. TAX CONSEQUENCES TO NON-U.S. HOLDERS OF COMMON STOCK

The following discussion is a summary of the material U.S. federal income tax consequences to non-U.S. holders (as defined below) of the purchase, ownership and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or foreign tax laws are not discussed. This discussion is based on the Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service, or IRS, in effect as of the date of this offering. These authorities may change or be subject to differing interpretations. Any such change may be applied retroactively in a manner that could adversely affect a non-U.S. holder of our common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position regarding the tax consequences of the purchase, ownership and disposition of our common stock.

This discussion is limited to non-U.S. holders that hold our common stock as a "capital asset" within the meaning of Section 1221 of the Code (property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a non-U.S. holder's particular circumstances, including the impact of the unearned income Medicare contribution tax. In addition, it does not address consequences relevant to non-U.S. holders subject to particular rules, including, without limitation:

- U.S. expatriates and certain former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- real estate investment trusts or regulated investment companies;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- S corporations, partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes;
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation; and
- tax-qualified retirement plans.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT INTENDED AS TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE

APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "non-U.S. holder" is any beneficial owner of our common stock that is neither a "U.S. person" nor a partnership for United States federal income tax purposes. A U.S. person is any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more United States persons (within the meaning of Section 7701(a)(30) of the Code), or (2) has made a valid election under applicable Treasury Regulations to continue to be treated as a United States person.

Distributions

As described in the section entitled "Dividend Policy," we do not anticipate declaring or paying dividends to holders of our common stock in the foreseeable future. However, if we do make distributions on our common stock, such distributions of cash or property on our common stock will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a non-U.S. holder's adjusted tax basis in its common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below in the section relating to the sale or disposition of our common stock.

Subject to the discussion below on backup withholding and foreign accounts, dividends paid to a non-U.S. holder of our common stock that are not effectively connected with the non-U.S. holder's conduct of a trade or business within the United States will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty).

Non-U.S. holders will be entitled to a reduction in or an exemption from withholding on dividends as a result of either (a) an applicable income tax treaty or (b) the non-U.S. holder holding our common stock in connection with the conduct of a trade or business within the United States and dividends being paid in connection with that trade or business. To claim such a reduction in or exemption from withholding, the non-U.S. holder must provide the applicable withholding agent with a properly executed (a) IRS Form W-8BEN claiming an exemption from or reduction of the withholding tax under the benefit of an income tax treaty between the United States and the country in which the non-U.S. holder resides or is established, or (b) IRS Form W-8ECI stating that the dividends are not subject to withholding tax because they are effectively connected with the conduct by the non-U.S. holder of a trade or business within the United States, as may be applicable. These certifications must be provided to the applicable withholding agent prior to the payment of dividends and must be updated periodically. Non-U.S. holders that do not timely provide the applicable withholding agent with the required certification, but that qualify for a reduced rate under an applicable income tax treaty, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

Subject to the discussion below on backup withholding and foreign accounts, if dividends paid to a non-U.S. holder are effectively connected with the non-U.S. holder's conduct of a trade or business within the United

States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such dividends are attributable), then, although exempt from U.S. federal withholding tax (provided the non-U.S. holder provides appropriate certification, as described above), the non-U.S. holder will be subject to U.S. federal income tax on such dividends on a net income basis at the regular graduated U.S. federal income tax rates. In addition, a non-U.S. holder that is a corporation may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on its effectively connected earnings and profits for the taxable year that are attributable to such dividends, as adjusted for certain items. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

Sale or Other Taxable Disposition

Subject to the discussions below on backup withholding and foreign accounts, a non-U.S. holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other disposition of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the non-U.S. holder maintains a permanent establishment in the United States to which such gain is attributable);
- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our common stock constitutes a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes.

Gain described in the first bullet point above will generally be subject to U.S. federal income tax on a net income basis at the regular graduated U.S. federal income tax rates. A non-U.S. holder that is a foreign corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) of a portion of its effectively connected earnings and profits for the taxable year, as adjusted for certain items.

A non-U.S. holder described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on any gain derived from the disposition, which may be offset by certain U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States) provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we are not currently and do not anticipate becoming a USRPHC. Because the determination of whether we are a USRPHC depends on the fair market value of our USRPIs relative to the fair market value of our other business assets and our non-U.S. real property interests, however, there can be no assurance we are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a non-U.S. holder of our common stock will not be subject to U.S. federal income tax if such class of stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such non-U.S. holder owned, actually or constructively, 5% or less of such class of our stock throughout the shorter of the five-year period ending on the date of the sale or other disposition or the non-U.S. holder's holding period for such stock.

Non-U.S. holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Subject to the discussion below on foreign accounts, a non-U.S. holder will not be subject to backup withholding with respect to payments of dividends on our common stock we make to the non-U.S. holder, provided

the applicable withholding agent does not have actual knowledge or reason to know such holder is a United States person and the holder certifies its non-U.S. status, such as by providing a valid IRS Form W-8BEN or W-8ECI, or other applicable certification. However, information returns will be filed with the IRS in connection with any dividends on our common stock paid to the non-U.S. holder, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the non-U.S. holder resides or is established.

Information reporting and backup withholding may apply to the proceeds of a sale of our common stock within the United States, and information reporting may (although backup withholding generally will not) apply to the proceeds of a sale of our common stock outside the United States conducted through certain U.S.-related financial intermediaries, in each case, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder on IRS Form W-8BEN or other applicable form (and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person) or such owner otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under the Foreign Account Tax Compliance Act, or FATCA, on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on payments to non-compliant foreign financial institutions and certain other account holders.

The withholding provisions described above will generally apply to payments of dividends made on or after January 1, 2014 and to payments of gross proceeds from a sale or other disposition of stock on or after January 1, 2017. Because we may not know the extent to which a distribution is a dividend for U.S. federal income tax purposes at the time it is made, for purposes of these withholding rules we may treat the entire distribution as a dividend. Prospective investors should consult their tax advisors regarding these withholding provisions.

UNDERWRITING

Aegis Capital Corp. is acting as the sole book-running manager of the offering and as representative of the underwriters, or the "Representative." We have entered into an underwriting agreement, dated the date of this prospectus, with the Representative. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to each underwriter named below and each underwriter named below has severally and not jointly agreed to purchase from us, at the public offering price per share less the underwriting discounts set forth on the cover page of this prospectus, the number of shares of common stock listed next to its name in the following table:

Name of Underwriter	Number of Shares
Aegis Capital Corp.	

The underwriters are committed to purchase all the shares of common stock offered by us other than those covered by the option to purchase additional shares described below, if they purchase any shares. The obligations of the underwriters may be terminated upon the occurrence of certain events specified in the underwriting agreement. Furthermore, pursuant to the underwriting agreement, the underwriters' obligations are subject to customary conditions, representations and warranties contained in the underwriting agreement, such as receipt by the underwriters of officers' certificates and legal opinions.

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

We have granted the underwriters an over-allotment option. This option, which is exercisable for up to 30 days after the date of this prospectus, permits the underwriters to purchase a maximum of additional shares (15% of the shares sold in this offering) from us to cover over-allotments, if any. If the underwriters exercise all or part of this option, they will purchase shares covered by the option at the public offering price per share that appears on the cover page of this prospectus, less the underwriting discount. If this option is exercised in full, the total price to the public will be $ and the total net proceeds, before expenses, to us will be $.

Discount. The following table shows the public offering price, underwriting discount and proceeds, before expenses, to us. The information assumes either no exercise or full exercise by the underwriters of their over-allotment option.

	Per Share	Total Without Over-Allotment Option	Total With Over-Allotment Option
Public offering price	$	$	$
Underwriting discounts and commissions (7%)	$	$	$
Non-accountable expense allowance[(1)]	$	$	$
Proceeds, before expenses, to us	$	$	$

(1) The expense allowance of 1% is not payable with respect to the shares sold upon exercise of the underwriters' over-allotment option.

The underwriters propose to offer the shares offered by us to the public at the public offering price per share set forth on the cover of this prospectus. In addition, the underwriters may offer some of the shares to other securities dealers at such price less a concession of $ per share. If all of the shares offered by us are not sold at the public offering price per share, the underwriters may change the offering price per share and other selling terms by means of a supplement to this prospectus.

We have paid an expense deposit of $25,000 to the Representative, which will be applied against the accountable expenses that will be paid by us to the Representative in connection with this offering. The underwriting agreement provides that in the event the offering is terminated, the $25,000 expense deposit paid to the Representative will be returned to us to the extent that offering expenses are not actually incurred by the Representative.

We have also agreed to pay the Representative's expenses relating to the offering, including (a) all fees, expenses and disbursements relating to background checks of our officers and directors in an amount not to exceed $5,000 per individual; (b) all filing fees incurred in clearing this offering with FINRA; (c) all fees, expenses and disbursements relating to the registration, qualification or exemption of securities offered under state securities laws, or "blue sky" laws, or under the securities laws of foreign jurisdictions designated by the underwriters (including reasonable fees and disbursements of blue sky counsel not to exceed $10,000); (d) $21,775 for the underwriters' use of Ipreo's book-building, prospectus tracking and compliance software for this offering; and (e) up to $20,000 of the Representative's actual accountable road show expenses for the offering.

We estimate that the total expenses of the offering payable by us, excluding underwriting discounts and commissions, will be approximately $.

Discretionary Accounts. The underwriters do not intend to confirm sales of the securities offered hereby to any accounts over which they have discretionary authority.

Lock-Up Agreements. Pursuant to certain "lock-up" agreements, we, our executive officers and directors, and holders of our outstanding shares of common stock have agreed, subject to certain exceptions, not to offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of or announce the intention to otherwise dispose of, or enter into any swap, hedge or similar agreement or arrangement that transfers, in whole or in part, the economic risk of ownership of, directly or indirectly, engage in any short selling of any common stock or securities convertible into or exchangeable or exercisable for any common stock, whether currently owned or subsequently acquired, without the prior written consent of the underwriter, for a period of 180 days after the date of this prospectus.

The lock-up period described in the preceding paragraph will be automatically extended if: (1) during the last 17 days of the restricted period, we issue an earnings release or announce material news or a material event; or (2) prior to the expiration of the lock-up period, we announce that we will release earnings results during the 16-day period beginning on the last day of the lock-up period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the date of the earnings release, unless the Representative waives this extension in writing; provided, however, that this lock-up period extension shall not apply to the extent that FINRA has amended or repealed NASD Rule 2711(f)(4), or has otherwise provided written interpretive guidance regarding such rule, in each case, so as to eliminate the prohibition of any broker, dealer, or member of a national securities association from publishing or distributing any research report, with respect to the securities of an emerging growth company (as defined in the JOBS Act) prior to or after the expiration of any agreement between the broker, dealer, or member of a national securities association and the emerging growth company or its shareholders that restricts or prohibits the sale of securities held by the emerging growth company or its shareholders after the initial public offering date.

Right of First Refusal. We granted the representative of the underwriters in this offering, for a period of eight months after the closing of this offering, a right of first refusal to act as sole book-running manager for each and every future public equity offering by our company or any of our successors or subsidiaries.

NASDAQ Listing. We have applied to list our common stock on The NASDAQ Capital Market under the symbol "EVOK."

Electronic Offer, Sale and Distribution of Shares. A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters or selling group members, if any, participating in this offering and one or more of the underwriters participating in this offering may distribute prospectuses electronically. The Representative may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the

underwriters and selling group members that will make internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on these websites is not part of, nor incorporated by reference into, this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or any underwriter in its capacity as underwriter, and should not be relied upon by investors.

Price Stabilization, Short Positions and Penalty Bids. In order to facilitate the offering of our common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock. In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in the offering. "Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares of common stock in the offering. The underwriters may close out any covered short position by either exercising their over-allotment option or purchasing shares of common stock in the open market. In determining the source of shares of common stock to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. "Naked" short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As result, the price of our common stock may be higher than the price that might otherwise exist in the open market.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act, they may also engage in other activities that stabilize, maintain or otherwise affect the price of our common stock, including the imposition of penalty bids. This means that if the representative of the underwriters purchases common stock in the open market in stabilizing transactions or to cover short sales, the representative can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

The underwriters make no representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Other Relationships. Certain of the underwriters and their affiliates have provided, and may in the future provide, various investment banking, commercial banking and other financial services for us and our affiliates for which they have received, and may in the future receive, customary fees. However, except as disclosed in this prospectus, we have no present arrangements with any of the underwriters for any further services.

Offer restrictions outside the United States

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

Australia

This prospectus is not a disclosure document under Chapter 6D of the Australian Corporations Act, has not been lodged with the Australian Securities and Investments Commission and does not purport to include the information required of a disclosure document under Chapter 6D of the Australian Corporations Act. Accordingly, (i) the offer of the securities under this prospectus is only made to persons to whom it is lawful to offer the securities without disclosure under Chapter 6D of the Australian Corporations Act under one or more exemptions set out in section 708 of the Australian Corporations Act, (ii) this prospectus is made available in Australia only to those persons as set forth in clause (i) above, and (iii) the offeree must be sent a notice stating in substance that by accepting this offer, the offeree represents that the offeree is such a person as set forth in clause (i) above, and, unless permitted under the Australian Corporations Act, agrees not to sell or offer for sale within Australia any of the securities sold to the offeree within 12 months after its transfer for the offeree under this prospectus.

China

The information in this document does not constitute a public offer of the securities, whether by way of sale or subscription, in the People's Republic of China (excluding, for purposes of this paragraph, Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan). The securities may not be offered or sold directly or indirectly in the PRC to legal or natural persons other than directly to "qualified domestic institutional investors."

European Economic Area—Belgium, Germany, Luxembourg and Netherlands

The information in this document has been prepared on the basis that all offers of securities will be made pursuant to an exemption under the Directive 2003/71/EC ("Prospectus Directive"), as implemented in Member States of the European Economic Area (each, a "Relevant Member State"), from the requirement to produce a prospectus for offers of securities.

An offer to the public of securities has not been made, and may not be made, in a Relevant Member State except pursuant to one of the following exemptions under the Prospectus Directive as implemented in that Relevant Member State:

(a) to legal entities that are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

(b) to any legal entity that has two or more of (i) an average of at least 250 employees during its last fiscal year; (ii) a total balance sheet of more than €43,000,000 (as shown on its last annual unconsolidated or consolidated financial statements) and (iii) an annual net turnover of more than €50,000,000 (as shown on its last annual unconsolidated or consolidated financial statements);

(c) to fewer than 100 natural or legal persons (other than qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive) subject to obtaining the prior consent of the Company or any underwriter for any such offer; or

(d) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of securities shall result in a requirement for the publication by the Company of a prospectus pursuant to Article 3 of the Prospectus Directive.

France

This document is not being distributed in the context of a public offering of financial securities (offre au public de titres financiers) in France within the meaning of Article L.411-1 of the French Monetary and Financial Code (Code monétaire et financier) and Articles 211-1 et seq. of the General Regulation of the French Autorité des marchés financiers ("AMF"). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France.

This document and any other offering material relating to the securities have not been, and will not be, submitted to the AMF for approval in France and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in France.

Such offers, sales and distributions have been and shall only be made in France to (i) qualified investors (investisseurs qualifiés) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-1 to D.411-3, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation and/or (ii) a restricted number of non-qualified investors (cercle restreint d'investisseurs) acting for their own account, as defined in and in accordance with Articles L.411-2-II-2° and D.411-4, D.744-1, D.754-1 and D.764-1 of the French Monetary and Financial Code and any implementing regulation.

Pursuant to Article 211-3 of the General Regulation of the AMF, investors in France are informed that the securities cannot be distributed (directly or indirectly) to the public by the investors otherwise than in accordance with Articles L.411-1, L.411-2, L.412-1 and L.621-8 to L.621-8-3 of the French Monetary and Financial Code.

Ireland

The information in this document does not constitute a prospectus under any Irish laws or regulations and this document has not been filed with or approved by any Irish regulatory authority as the information has not been prepared in the context of a public offering of securities in Ireland within the meaning of the Irish Prospectus (Directive 2003/71/EC) Regulations 2005 (the "Prospectus Regulations"). The securities have not been offered or sold, and will not be offered, sold or delivered directly or indirectly in Ireland by way of a public offering, except to (i) qualified investors as defined in Regulation 2(l) of the Prospectus Regulations and (ii) fewer than 100 natural or legal persons who are not qualified investors.

Israel

The securities offered by this prospectus have not been approved or disapproved by the Israeli Securities Authority, or the ISA, nor have such securities been registered for sale in Israel. The shares may not be offered or sold, directly or indirectly, to the public in Israel, absent the publication of a prospectus. The ISA has not issued permits, approvals or licenses in connection with the offering or publishing the prospectus; nor has it authenticated the details included herein, confirmed their reliability or completeness, or rendered an opinion as to the quality of the securities being offered. Any resale in Israel, directly or indirectly, to the public of the securities offered by this prospectus is subject to restrictions on transferability and must be effected only in compliance with the Israeli securities laws and regulations.

Italy

The offering of the securities in the Republic of Italy has not been authorized by the Italian Securities and Exchange Commission (Commissione Nazionale per le Societ—$$—Aga e la Borsa, "CONSOB" pursuant to the Italian securities legislation and, accordingly, no offering material relating to the securities may be distributed in Italy and such securities may not be offered or sold in Italy in a public offer within the meaning of Article 1.1(t) of Legislative Decree No. 58 of 24 February 1998 ("Decree No. 58"), other than:

- to Italian qualified investors, as defined in Article 100 of Decree no. 58 by reference to Article 34-ter of CONSOB Regulation no. 11971 of 14 May 1999 ("Regulation no. 1197l") as amended ("Qualified Investors"); and
- in other circumstances that are exempt from the rules on public offer pursuant to Article 100 of Decree No. 58 and Article 34-ter of Regulation No. 11971 as amended.

Any offer, sale or delivery of the securities or distribution of any offer document relating to the securities in Italy (excluding placements where a Qualified Investor solicits an offer from the issuer) under the paragraphs above must be:

- made by investment firms, banks or financial intermediaries permitted to conduct such activities in Italy in accordance with Legislative Decree No. 385 of 1 September 1993 (as amended), Decree No. 58, CONSOB Regulation No. 16190 of 29 October 2007 and any other applicable laws; and
- in compliance with all relevant Italian securities, tax and exchange controls and any other applicable laws.

Any subsequent distribution of the securities in Italy must be made in compliance with the public offer and prospectus requirement rules provided under Decree No. 58 and the Regulation No. 11971 as amended, unless an exception from those rules applies. Failure to comply with such rules may result in the sale of such securities being declared null and void and in the liability of the entity transferring the securities for any damages suffered by the investors.

Japan

The securities have not been and will not be registered under Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948), as amended (the "FIEL") pursuant to an exemption from the registration requirements applicable to a private placement of securities to Qualified Institutional Investors (as defined in and in accordance with Article 2, paragraph 3 of the FIEL and the regulations promulgated thereunder). Accordingly, the securities may not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan other than Qualified Institutional Investors. Any Qualified Institutional Investor who acquires securities may not resell them to any person in Japan that is not a Qualified Institutional Investor, and acquisition by any such person of securities is conditional upon the execution of an agreement to that effect.

Portugal

This document is not being distributed in the context of a public offer of financial securities (oferta pública de valores mobiliários) in Portugal, within the meaning of Article 109 of the Portuguese Securities Code (Código dos Valores Mobiliários). The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in Portugal. This document and any other offering material relating to the securities have not been, and will not be, submitted to the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários) for approval in Portugal and, accordingly, may not be distributed or caused to distributed, directly or indirectly, to the public in Portugal, other than under circumstances that are deemed not to qualify as a public offer under the Portuguese Securities Code. Such offers, sales and distributions of securities in Portugal are limited to persons who are "qualified investors" (as defined in the Portuguese Securities Code). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Sweden

This document has not been, and will not be, registered with or approved by Finansinspektionen (the Swedish Financial Supervisory Authority). Accordingly, this document may not be made available, nor may the securities be offered for sale in Sweden, other than under circumstances that are deemed not to require a prospectus under the Swedish Financial Instruments Trading Act (1991:980) (Sw. lag (1991:980) om handel med finansiella instrument). Any offering of securities in Sweden is limited to persons who are "qualified investors" (as defined in the Financial Instruments Trading Act). Only such investors may receive this document and they may not distribute it or the information contained in it to any other person.

Switzerland

The securities may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the

Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering material relating to the securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering material relating to the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of securities will not be supervised by, the Swiss Financial Market Supervisory Authority.

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United Arab Emirates

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LEGAL MATTERS

The validity of the shares of common stock offered hereby will be passed upon for us by Latham & Watkins LLP, San Diego, California. Sichenzia Ross Friedman Ference LLP, New York, New York has acted as counsel for the underwriters in connection with certain legal matters related to this offering.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our financial statements at December 31, 2011 and 2012, and for each of the two years in the period ended December 31, 2012, and for the period from January 29, 2007 (inception) to December 31, 2012, as set forth in their report (which contains an explanatory paragraph describing conditions that raise substantial doubt about our ability to continue as a going concern as described in Note 1 to the financial statements). We have included our financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed thereto. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. Upon completion of this offering, we will be required to file periodic reports, proxy statements and other information with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. You may read and copy this information at the Public Reference Room of the Securities and Exchange Commission, 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the public reference rooms by calling the Securities and Exchange Commission at 1-800-SEC-0330. The Securities and Exchange Commission also maintains an Internet website that contains reports, proxy statements and other information about registrants, like us, that file electronically with the Securities and Exchange Commission. The address of that site is *www.sec.gov*.

Evoke Pharma, Inc.
(A Development Stage Company)

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders

Evoke Pharma, Inc.

We have audited the accompanying balance sheets of Evoke Pharma, Inc. (a development stage company), as of December 31, 2011 and 2012, and the related statements of operations and comprehensive loss, convertible preferred stock and stockholders' deficit and cash flows for the years then ended and for the period from January 29, 2007 (inception) to December 31, 2012. 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 in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Evoke Pharma, Inc. at December 31, 2011 and 2012, and the results of its operations and its cash flows for the two years then ended and for the period from January 29, 2007 (inception) to December 31, 2012, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company's recurring losses from operations and insufficient working capital raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

San Diego, California
April 19, 2013

Evoke Pharma, Inc.
(A Development Stage Company)

Balance Sheets

	December 31, 2011	December 31, 2012	Pro Forma December 31, 2012 (unaudited)
Assets			
Current assets:			
Cash and cash equivalents	$ 865,876	$ 116,013	
Prepaids and other assets	39,459	—	
Total assets	$ 905,335	$ 116,013	
Liabilities, convertible preferred stock and stockholders' deficit			
Current liabilities:			
Accounts payable and accrued expenses	$ 88,712	$ 96,798	
Accrued compensation	206,788	417,611	
Warrant liability	39,000	56,000	$ —
Total current liabilities	334,500	570,409	
Long-term debt, net of debt discount	—	979,792	
Total liabilities	334,500	1,550,201	
Series A convertible preferred stock, $0.0001 par value:			
Authorized shares - 12,245,068 at December 31, 2011 and 12,305,068 at December 31, 2012; issued and outstanding shares - 12,195,068 at December 31, 2011 and 2012; liquidation preference - $12,292,600 at December 31, 2011 and 2012; no shares issued and outstanding, pro forma (unaudited)	18,225,166	18,225,166	—
Stockholders' deficit:			
Common stock, $0.0001 par value; authorized shares - 20,000,000 at December 31, 2011 and 2012; issued and outstanding shares - 6,213,750 at December 31, 2011 and 2012; 18,408,818 shares issued and outstanding, pro forma (unaudited)	621	621	1,841
Additional paid-in capital	182,523	195,028	18,474,974
Deficit accumulated during the development stage	(17,837,475)	(19,855,003)	(19,855,003)
Total stockholders' deficit	(17,654,331)	(19,659,354)	$ (1,378,188)
Total liabilities, convertible preferred stock and stockholders' deficit	$ 905,335	$ 116,013	

See accompanying notes.

Evoke Pharma, Inc.
(A Development Stage Company)

Statements of Operations and Comprehensive Loss

	Years Ended December 31,		Period From January 29, 2007 (Inception) to December 31, 2012
	2011	2012	
Operating expenses:			
Research and development	$ 1,844,044	$ 1,165,645	$ 15,991,529
General and administrative	570,524	836,781	3,304,533
Purchase of in-process research and development	—	—	650,000
Total operating expenses	2,414,568	2,002,426	19,946,062
Loss from operations	(2,414,568)	(2,002,426)	(19,946,062)
Other income (expense):			
Interest income	10,696	1,690	213,852
Interest expense	(2,872)	(24,042)	(205,942)
Change in fair value of preferred stock purchase right	—	—	(188,587)
Change in fair value of warrant liability	5,500	7,250	27,736
Grant income	—	—	244,000
Total other income (expense)	13,324	(15,102)	91,059
Net loss and comprehensive loss	$(2,401,244)	$ (2,017,528)	$(19,855,003)
Net loss per common share, basic and diluted	$ (0.44)	$ (0.36)	
Weighted-average shares used to compute basic and diluted net loss per share	5,513,125	5,620,000	
Pro forma net loss per common share, basic and diluted (unaudited)		$ (0.11)	
Weighted-average shares used to compute pro forma net loss per common share, basic and diluted (unaudited)		17,815,068	

Evoke Pharma, Inc.
(A Development Stage Company)

Statements of Convertible Preferred Stock and Stockholders' Deficit

	Series A Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deficit Accumulated During the Development Stage	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balance at January 29, 2007 (inception)	—	$ —	—	$ —	$ —	$ —	$ —
Issuance of restricted common stock for cash to founders at $0.001 per share	—	—	4,580,000	458	4,122	—	4,580
Issuance of Series A convertible preferred stock at $1.50 per share for cash and the conversion of $250,000 of bridge notes and $42,538 of accrued interest, net of issuance costs of $218,037	4,195,067	6,074,501	—	—	—	—	—
Initial fair value of preferred stock purchase rights issued in connection with Series A financing	—	(848,257)	—	—	—	—	—
Estimated fair value of exercised purchase right of $0.04 per share	—	80,819	—	—	—	—	—
Issuance of common stock upon exercise of stock options	—	—	1,333,750	133	77,225	—	77,358
Stock-based compensation expense	—	—	—	—	5,458	—	5,458
Net loss	—	—	—	—	—	(2,009,591)	(2,009,591)
Balance at December 31, 2007	4,195,067	5,307,063	5,913,750	591	86,805	(2,009,591)	(1,922,195)
Issuance of Series A convertible preferred stock at $1.50 per share for cash, net of issuance costs of $1,855	4,000,000	5,998,145	—	—	—	—	—
Estimated fair value of purchase rights upon completion of final preferred stock investment	—	956,025	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	16,184	—	16,184
Net loss	—	—	—	—	—	(3,227,664)	(3,227,664)
Balance at December 31, 2008	8,195,067	12,261,233	5,913,750	591	102,989	(5,237,255)	(5,133,675)
Stock-based compensation expense	—	—	—	—	17,803	—	17,803
Net loss	—	—	—	—	—	(5,159,638)	(5,159,638)
Balance at December 31, 2009	8,195,067	12,261,233	5,913,750	591	120,792	(10,396,893)	(10,275,510)
Issuance of Series A convertible preferred stock at $1.50 per share for cash, net of issuance costs of $36,069	4,000,001	5,963,933	—	—	—	—	—
Issuance of common stock upon exercise of stock options	—	—	300,000	30	23,970	—	24,000
Stock-based compensation expense	—	—	—	—	15,056	—	15,056
Net loss	—	—	—	—	—	(5,039,338)	(5,039,338)
Balance at December 31, 2010	12,195,068	18,225,166	6,213,750	621	159,818	(15,436,231)	(15,275,792)
Stock-based compensation expense	—	—	—	—	22,705	—	22,705
Net loss	—	—	—	—	—	(2,401,244)	(2,401,244)
Balance at December 31, 2011	12,195,068	18,225,166	6,213,750	621	182,523	(17,837,475)	(17,654,331)
Stock-based compensation expense	—	—	—	—	12,505	—	12,505
Net loss	—	—	—	—	—	(2,017,528)	(2,017,528)
Balance at December 31, 2012	12,195,068	$18,225,166	6,213,750	$ 621	$195,028	$(19,855,003)	$(19,659,354)

See accompanying notes.

Evoke Pharma, Inc.
(A Development Stage Company)

Statements of Cash Flows

	Years Ended December 31,		Period From January 29, 2007 (Inception) to December 31,
	2011	2012	2012
Operating activities			
Net loss	$(2,401,244)	$(2,017,528)	$(19,855,003)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation expense	22,705	12,505	89,711
Non-cash interest	2,426	4,042	106,066
Change in fair value of purchase right liability	—	—	188,587
Change in fair value of warrant liability	(5,500)	(7,250)	(27,736)
Changes in operating assets and liabilities:			
Prepaid expenses and other assets	76,353	39,459	—
Accounts payable and accrued expenses	(587,848)	218,909	514,409
Net cash used in operating activities	(2,893,108)	(1,749,863)	(18,983,966)
Financing activities			
Proceeds from convertible promissory note	—	—	250,000
Proceeds from bank line of credit and loan advances	—	1,000,000	3,500,000
Payment on bank line of credit	(277,779)		(2,500,000)
Proceeds from issuance of common stock	—	—	4,580
Proceeds from the issuance of preferred stock and purchase rights, net	—	—	17,744,041
Proceeds from the exercise of stock options	—	—	101,358
Net cash (used in) provided by financing activities	(277,779)	1,000,000	19,099,979
Net (decrease) increase in cash and cash equivalents	(3,170,887)	(749,863)	116,013
Cash and cash equivalents at beginning of period	4,036,763	865,876	—
Cash and cash equivalents at end of period	$ 865,876	$ 116,013	$ 116,013
Supplemental disclosures of cash flow information			
Interest paid	$ 1,346	$ 20,000	$ 99,876
Noncash financing activities			
Conversion of convertible promissory note and accrued interest to Series A Convertible Preferred Stock	$ —	$ —	$ 292,538
Issuance of Series A Convertible Preferred Stock warrants	$ —	$ 24,250	$ 59,486

See accompanying notes.

Evoke Pharma, Inc.
(A Development Stage Company)

Notes to Financial Statements

1. Organization and Basis of Presentation

Evoke Pharma, Inc. (the "Company") was incorporated in the state of Delaware on January 29, 2007 (inception). The Company is a privately held specialty pharmaceutical company focused primarily on the development of drugs to treat gastroenterological disorders and disease.

As of December 31, 2012, the Company has devoted substantially all of its efforts to product development, raising capital and building infrastructure, and has not realized revenues from its planned principal operations. Accordingly, the Company is considered to be in the development stage.

The accompanying financial statements have been prepared on the going concern basis, which assumes that the Company will continue to operate as a going concern and which contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The most recent year financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty. Management's plans in regard to these matters are focused on raising additional capital or other financing.

As reflected in the accompanying financial statements, the Company has a limited operating history and the sales and income potential of the Company's business are unproven. The Company has experienced net losses since its inception and, as of December 31, 2012, had an accumulated deficit of $19,855,003. The Company has a working capital deficit of $(454,396) as of December 31, 2012.

Based on the Company's resources at December 31, 2012, and its current plan of expenditures on its development program, preparation for commercialization, and other operating costs, the Company believes that its current capital will not be sufficient to fund its planned operations for at least 12 months from the date of the financial statements. These issues raise substantial doubt about the ability of the Company to continue as a going concern. The Company expects to continue to incur net losses for at least the next several years. Over that period, the Company will need to raise additional debt other than the existing loan and security agreement as discussed in Note 4 or equity financing to fund its development.

If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations, financial condition and future prospects.

2. Summary of Significant Accounting Policies

Use of Estimates

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Unaudited Pro Forma Balance Sheet Information

The unaudited pro forma balance sheet information as of December 31, 2012 assumes the automatic conversion of all outstanding shares of convertible preferred stock into shares of common stock upon the completion of a qualifying initial public offering ("IPO")

of the Company's common stock. In addition, the pro forma information assumes reclassification of the preferred stock warrant liability to additional paid-in capital upon completion of the IPO, as the warrants become common stock warrants that are not subject to remeasurement. Shares of common stock issued in such IPO and any related net proceeds are excluded from the pro forma information.

Segment Reporting

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker in making decisions regarding resource allocation and assessing performance. The Company views its operations and manages its business in one operating segment operating in the United States.

Fair Value of Financial Instruments

The carrying amounts of accounts payable and accrued liabilities are considered to be representative of their respective fair values because of the short-term nature of those instruments. Based on the borrowing rates currently available to the Company for loans with similar terms, the Company believes that the fair value of long-term debt approximates its carrying value. The carrying amount of the warrant liability represents fair value.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less from the date of purchase to be cash equivalents. Cash and cash equivalents include cash in readily available checking and savings accounts.

Research and Development Expenses

All research and development costs are expensed as incurred and primarily include costs paid to third-party contractors to perform research, conduct clinical trials and develop drug materials and delivery devices.

Concentrations of Risk

The Company relies on third-party manufacturers for the production of its drug candidate. If the third-party manufacturers are unable to continue manufacturing the Company's drug candidate, or if the Company loses one of its sole source suppliers used in its manufacturing processes, the Company may not be able to meet clinical trial supply demand for its product candidate and the development of the product candidate could be materially and adversely affected.

Stock-Based Compensation

Share-based payments to employees, including grants of employee stock options and restricted stock, are recognized in the financial statements based on their grant date fair values in accordance with the applicable accounting guidance. For the years ended December 31, 2011 and 2012, and the period ended January 29, 2007 (inception) to December 31, 2012, the Company recognized $19,200, $12,505 and $68,052, respectively, in stock-based compensation expense associated with equity awards granted to employees and members of the board of directors of the Company.

For nonemployees, the Company accounts for stock-based compensation in accordance with Accounting Standards Codification ("ASC") 505-50, *Equity-Based Payments to Non-Employees*. Equity instruments awarded to nonemployees are periodically

remeasured as the underlying awards vest unless the instruments are fully vested, immediately exercisable and nonforfeitable on the date of grant. For the years ended December 31, 2011 and 2012 and the period of January 29, 2007 (inception) to December 31, 2012, the Company recognized $3,505, $0 and $21,659, respectively, in stock-based compensation expense related to equity awards granted to nonemployees.

At December 31, 2012, there was $25,049 of unrecognized stock-based compensation expense related to unvested employee equity awards to be recognized over a weighted-average period of approximately two years.

The Company grants stock options to purchase common stock to employees with exercise prices equal to the value of the underlying stock, as determined by the board of directors on the date the equity award was granted. The board of directors determined the fair value of the underlying common stock by considering a number of factors, including historical and projected financial results, the risks the Company faced at the time, the preferences of the Company's preferred stockholders and the lack of liquidity of the Company's common stock.

The fair value of each option award is estimated on the date of grant using the Black-Scholes Merton valuation model using the appropriate forfeiture rate, risk-free interest rate, expected term and volatility assumptions. The expected life of options was calculated using the simplified method. The simplified method calculates the life as the average of the contractual term and the vesting period of the option. The Company did not have a readily available market and therefore estimates the volatility rate based on comparable companies. The risk-free interest rate is based upon U.S. Treasury securities with remaining terms similar to the expected term of the share-based awards. The Company granted 590,000 options in 2011 and no options in 2012.

Income Taxes

The Company accounts for income taxes in accordance with ASC 740, *Income Taxes*. Under ASC 740, deferred tax assets and liabilities reflect the future tax consequences of the differences between the financial reporting and tax basis of assets and liabilities using current enacted tax rates. The Company provides a valuation allowance against net deferred tax assets unless, based upon the available evidence, it is more likely than not that the deferred tax assets will be realized.

The Company's policy related to accounting for uncertainty in income taxes prescribes a recognition threshold and measurement attributed criteria for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period, without consideration for common stock equivalents and adjusted for the weighted-average number of common shares outstanding that are subject to repurchase. The Company has excluded 700,625 weighted-average shares subject to repurchase and 593,750 weighted-average shares subject to repurchase from the weighted-average number of common shares outstanding for the years ended December 31, 2011 and 2012, respectively. Diluted net loss per share is calculated by dividing the net loss by the weighted-average number of common share equivalents outstanding for the period determined using the treasury-stock method. Dilutive common stock equivalents are comprised of convertible preferred stock, warrants for the purchase of convertible preferred stock and options outstanding under the Company's equity incentive plan. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

Unaudited Pro Forma Net Loss Per Share

The following table summarizes our unaudited pro forma net loss per share:

	Year Ended December 31, 2012
Numerator	
Net loss	$ (2,017,528)
Change in fair value of warrant liability	(7,250)
Pro forma net loss	$ (2,024,778)
Denominator	
Shares used to compute net loss per common share, basic and diluted	5,620,000
Add: Pro forma adjustments to reflect assumed weighted-average effect of conversion of convertible preferred stock	12,195,068
Shares used to compute pro forma net loss per common share, basic and diluted	17,815,068
Pro forma net loss per common share, basic and diluted (unaudited)	$ (0.11)

Comprehensive Income (Loss)

ASC 220, *Comprehensive Income*, defines comprehensive income (loss) as a change in equity during a period from transactions and other events and circumstances from non-owner sources. Net loss and comprehensive loss were the same for all periods presented.

3. Fair Value Measurements

The following tables present information about the Company's financial liabilities measured at fair value on a recurring basis as of December 31, 2011 and 2012, and indicate the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value. As a basis for categorizing inputs, the Company uses a three-tier fair value hierarchy, which prioritizes the inputs used to measure fair value from market based assumptions to entity specific assumptions:

Level 1: Observable inputs such as quoted prices in active markets;

Level 2: Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and

Level 3: Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The Company's Level 3 financial liabilities consist of warrant liabilities related to warrants to purchase preferred stock. All warrants are being measured at fair value utilizing the Black-Scholes option pricing model.

Liabilities measured at fair value on a recurring basis as of December 31, 2012 are as follows:

	Balance as of December 31, 2012	Fair Value Measurements at Reporting Date Using: Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Liabilities				
Preferred stock warrant liability	$ 56,000	$ —	$ —	$ 56,000
Total liabilities	$ 56,000	$ —	$ —	$ 56,000

Liabilities measured at fair value on a recurring basis as of December 31, 2011 are as follows:

	Balance as of December 31, 2011	Fair Value Measurements at Reporting Date Using: Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Liabilities				
Preferred stock warrant liability	$ 39,000	$ —	$ —	$ 39,000
Total liabilities	$ 39,000	$ —	$ —	$ 39,000

The following table is a reconciliation of all the Company's liabilities measured using significant unobservable inputs (Level 3) for the year ended December 31, 2012:

	Warrant Liability
Fair value measurement at December 31, 2011	$ 39,000
Warrants issued in connection with loan and security agreement	24,250
Change in fair value of warrant liability	(7,250)
Fair value measurement at December 31, 2012	$ 56,000

4. Debt

In 2008, the Company entered into a $2.5 million loan and security agreement collateralized by the Company's personal property. The Company drew the full amount of the loan and issued a warrant to purchase 50,000 shares of Series A convertible preferred stock ("Series A Convertible Preferred Stock") at an exercise price of $1.50 per share, which warrant expires three years from the effective date of the registration statement for the IPO. The loan and security agreement was repaid in full as of December 31, 2011.

In June 2012, the Company entered into a $3.0 million loan and security agreement collateralized by the Company's personal property. Interest on advances under the agreement is at a fixed interest rate equal to 4.50%. The loan and security agreement contains only non-financial covenants. Advances under the loan and security agreement have an interest-only period through December 31, 2013 and a 24-month payback period commences in January 2014. Total interest incurred under the loan and security agreement for the year ended December 31, 2012 was $20,000.

In addition, at the time of each advance under the loan and security agreement, the bank will be issued a warrant for shares of Series A Convertible Preferred Stock at an exercise price of $1.50 per share that is exercisable in whole, or in part, at any time until the expiration date of June 1, 2022. During July 2012, the Company drew down $1.0 million and issued the bank a warrant to purchase 20,000 shares of Series A Convertible Preferred Stock at an exercise price of $1.50 per share. As of December 31, 2012, the warrant is fully exercisable and expires on June 1, 2022. The initial $24,250 fair value of the warrant was recorded as a debt discount and is amortized to interest expense over the term of the loan on the effective interest method.

During January 2013, the Company drew down the remaining $2.0 million and issued a warrant to purchase 40,000 shares of Series A Convertible Preferred Stock to the bank.

The aggregate advances under the loan and security agreement and unamortized discount as of December 31, 2012 are as follows:

	December 31, 2012
Aggregate advances under loan and security agreement	$1,000,000
Less unamortized discount	(20,208)
Long-term debt, net of debt discount	$ 979,792

5. Acquisition of Technology

In June 2007, the Company purchased from Questcor Pharmaceuticals, Inc. (“Questcor”) all rights and patents to a development program for the Company’s EVK-001 product candidate, for an upfront payment of $650,000 which was expensed as in-process research and development. In addition to the upfront payment, the Company will be required to make additional milestone payments totaling up to $52,000,000 if EVK-001 achieves specified development and commercial milestones, and to pay to Questcor a low single digit royalty on net sales of EVK-001.

6. Convertible Preferred Stock and Stockholders’ Deficit

Convertible Preferred Stock

The Company’s convertible preferred stock has been classified as temporary equity in the accompanying balance sheets instead of in stockholders’ deficit in accordance with authoritative guidance for the classification and measurement of potentially redeemable securities. Upon certain change in control events that are outside of the Company’s control, including liquidation, sale or transfer of control of the Company, holders of the convertible preferred stock can cause its redemption.

During June and October 2007, the Company sold an aggregate of 4,000,000 shares of Series A Convertible Preferred Stock at $1.50 per share for gross proceeds of $6,000,000 in cash. In addition, $250,000 in convertible promissory notes issued in an earlier bridge financing and $42,538 in accrued interest thereon converted into 195,067 shares of Series A Convertible Preferred Stock. In connection with the Series A Convertible Preferred Stock issuance, $848,257 of the proceeds were allocated to the preferred stock purchase right liability, and the Company incurred $218,037 of offering costs.

As part of the October 2007 Series A Convertible Preferred Stock transaction, the preferred stock purchase right liability for the second closing was revalued with the $4,132 increase in fair value recorded as other expense on the statement of operations and the then fair value of $80,819 was reclassified to Series A Convertible Preferred Stock. At December 31, 2007, the preferred stock purchase right liability for the third closing was revalued with the $68,955 increase in fair value recorded as other expense on the statement of operations.

During November 2008, the Company sold an additional 4,000,000 shares of Series A Convertible Preferred Stock for gross proceeds of $6,000,000 in cash. In connection with this financing, the Company incurred $1,855 of offering costs. As part of the Series A Convertible Preferred Stock transaction, the preferred stock purchase right liability for the third closing was revalued with the $115,500 increase in fair value recorded as other expense on the statement of operations and the then fair value of $956,025 was reclassified to Series A Convertible Preferred Stock.

During June 2010, the Company sold an additional 4,000,001 shares of Series A Convertible Preferred Stock for gross proceeds of $6,000,002 in cash. In connection with this financing, the Company incurred $36,069 of offering costs.

The holders of the Series A Convertible Preferred Stock are entitled to receive noncumulative dividends at a rate of $0.12 per share per annum. The preferred stock dividends are payable when and if declared by the Board of Directors. As of December 31, 2012, the Board of Directors has not declared any dividends. The Series A Convertible Preferred Stock dividends are payable in preference and in priority to any dividends on common stock.

The holders of the Series A Convertible Preferred Stock are entitled to receive liquidation preferences at the rate of $1.50 per share, plus all declared and unpaid dividends. Liquidation payments to the holders of Series A Convertible Preferred Stock have priority and are made in preference to any payments to the holders of common stock.

The shares of Series A Convertible Preferred Stock are convertible into an equal number of shares of common stock, at the option of the holder, subject to certain anti-dilutive adjustments. Each share of Series A Convertible Preferred Stock is automatically converted into common stock immediately upon the earlier of (i) the Company’s sale of its common stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, in which the per share price is at least $4.50 (as adjusted), and the gross cash proceeds are at least $25,000,000 or (ii) the date specified by written consent or agreement of the holders of not less than 66.66% of the then outstanding shares of Series A Convertible Preferred Stock.

The holders of Series A Convertible Preferred Stock are entitled to one vote for each share of common stock into which such Series A Convertible Preferred Stock could then be converted; and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of common stock.

The holders of the Series A Convertible Preferred Stock with greater than 250,000 shares are entitled to elect one member each to the Company’s Board of Directors.

Common Stock

During March 2007, in conjunction with the founding of the Company, 4,580,000 shares of its common stock were issued to the founders at a price of $0.001 per share.

Stock Options

The Company adopted the 2007 Equity Incentive Plan (the "Plan") in May 2007 under which 2,250,000 shares of common stock are reserved for issuance to employees, nonemployee directors and consultants of the Company. The Plan provides for the grant of incentive stock options, nonstatutory stock options, phantom stock and rights to purchase restricted stock to eligible recipients. Recipients of incentive stock options shall be eligible to purchase shares of the Company's common stock at an exercise price equal to no less than the estimated fair market value of such stock on the date of grant. The maximum term of options granted under the Plan is ten years. The options generally vest over four years or upon achieving predetermined corporate milestones. As of December 31, 2012, no options remain available for future grant under the Plan.

The following table summarizes stock option transactions under the Plan:

	Options Outstanding	Weighted-Average Exercise Price
Outstanding at December 31, 2011	616,250	$ 0.079
Granted	—	—
Exercised	—	—
Outstanding at December 31, 2012	616,250	$ 0.079
Exercisable at December 31, 2012	616,250	$ 0.079

The shares of common stock issued from the exercise of stock options are restricted and vest over time or on the achievement of certain milestones. The Plan permits the early exercise of options but the Company has the option to repurchase any unvested shares at the original purchase price (the exercise price paid by the Purchaser) upon any voluntary or involuntary termination ("Repurchase Option"). Any unvested shares immediately vest in the event of termination for reasons other than cause, and vesting accelerates in the event of a merger, sale, or other change in control of the Company. Of the total 1,633,750 stock options exercised, 1,077,500 and 1,002,500 were vested as of December 31, 2012 and 2011, respectively.

Since the inception of the Company, 1,360,000 stock options were issued with an exercise price of $0.058 and 890,000 stock options were issued with an exercise price of $0.08, resulting in a weighted-average exercise price of $0.067 per share.

As of December 31, 2012, the Company had 616,250 options outstanding, with a weighted-average contractual term of 7.96 years.

Common Stock Reserved for Future Issuance

Common stock reserved for future issuance consists of the following at December 31, 2011 and 2012:

	2011	2012
Conversion of preferred stock	12,195,068	12,195,068
Stock options issued and outstanding	616,250	616,250
Authorized for future option grants	—	—
Warrants for convertible preferred stock	50,000	70,000
	12,861,318	12,881,318

7. Income Taxes

On January 1, 2009, the Company adopted authoritative guidance relating to the accounting for uncertainty in income taxes. The guidance clarified the recognition threshold and measurement attributes for financial statement disclosure of tax positions taken, or expected to be taken, on a tax return. The impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more likely than not to be sustained upon audit by the relevant taxing authority. An uncertain tax position will not be recognized if it has a less than 50% likelihood of being sustained. On the date of adoption, there were no unrecognized tax benefits.

As of December 31, 2011 and 2012, there were no unrecognized tax benefits included in the balance sheets that would, if recognized, affect the Company's effective tax rate. The Company has not recognized any interest and penalties related to income taxes in the balance sheets or statements of operations. The Company is subject to taxation in the U.S. and state jurisdictions. As of December 31, 2012, the Company's tax years beginning 2007 to date are subject to examination by taxing authorities.

Pursuant to Sections 382 and 383 of the Internal Revenue Code of 1986, as amended ("IRC"), annual use of the Company's net operating loss and research and development credit carryforwards may be limited in the event a cumulative change in ownership of more than 50% occurs within a three-year period. The Company has not completed an IRC Section 382/383 analysis regarding the limitation of net operating loss and research and development credit carryforwards. Until this analysis has been completed, the Company has removed the deferred tax assets for net operating losses of approximately $6.7 million and a research and development credit of approximately $773,000 generated through 2012 from its deferred tax asset schedule, and has recorded a corresponding decrease to its valuation allowance. When this analysis is finalized, the Company plans to update its unrecognized tax benefits accordingly. The Company does not expect this analysis to be completed within the next 12 months and, as a result, the Company does not expect that the unrecognized tax benefits will change within 12 months of this reporting date. Due to the existence of the valuation allowance, future changes in the Company's unrecognized tax benefits will not impact the Company's effective tax rate. Significant components of the Company's deferred tax assets at December 31, 2011 and 2012 are as follows:

	December 31,	
	2011	2012
Deferred tax assets:		
Acquired technology	$ 181,000	$ 164,000
Other, net	86,000	203,000
Total deferred tax assets	267,000	367,000
Less valuation allowance	(267,000)	(367,000)
Net deferred tax assets	$ —	$ —

At December 31, 2012, the Company has federal and state net operating loss carryforwards of approximately $18.6 million and $18.2 million, respectively. The federal and state loss carryforwards begin to expire in 2028 and 2018, respectively, unless previously utilized. The Company also has federal and state research tax credit carryforwards of approximately $525,000 and $428,000, respectively. The federal research credit carryforwards will begin expiring in 2028 unless previously utilized. The state research credit will carry forward indefinitely.

8. Subsequent Events

The Company has completed an evaluation of all subsequent events through April 19, 2013 to ensure that this filing includes appropriate disclosure of events both recognized in the December 31, 2012 financial statements and events which have occurred but were not recognized in the financial statements. The Company has concluded that no subsequent events have occurred, other than the borrowing under the loan and security agreement and issuance of additional preferred stock warrants as disclosed in Note 4.

Shares
Common Stock

PROSPECTUS

, 2013

Aegis Capital Corp

You should rely only on the information contained in this prospectus. No dealer, salesperson or other person is authorized to give information that is not contained in this prospectus. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of these securities.

Until , 2013 (25 days after the commencement of this offering) all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and The NASDAQ Capital Market listing fee.

	Amount
Securities and Exchange Commission registration fee	$ *
FINRA filing fee	*
NASDAQ Capital Stock Market listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Blue Sky fees and expenses	*
Transfer Agent's fees and expenses	*
Printing and engraving expenses	*
Miscellaneous	*
Total expenses	$ *

* To be provided by amendment.

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our certificate of incorporation provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, or Securities Act, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding shares of capital stock issued by us since our inception in January 2010. Also included is the consideration received by us for such shares and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed.

(a) Issuances of Capital Stock and Warrants to Purchase Capital Stock

1. In June 2010, we issued an aggregate of 4,000,001 shares of our Series A convertible preferred stock to certain of our existing investors at a price per share of $1.50 for aggregate gross consideration of approximately $6.0 million. These shares of Series A-1 convertible preferred stock will convert into 4,000,001 shares of our common stock immediately prior to the closing of this offering.
2. In June 2012, as consideration for entering into a debt facility, we issued a warrant to a lender exercisable for an aggregate of 20,000 shares of our Series A convertible preferred stock at an initial exercise price of

$1.50 per share. This warrant will become exercisable for an aggregate of 20,000 shares of our common stock immediately prior to the closing of this offering. This warrant terminates ten years after the date issued.

No underwriters were involved in the foregoing sales of securities. The securities described in this section (a) of Item 15 were issued to investors in reliance upon the exemption from the registration requirements of the Securities Act, as set forth in Section 4(2) under the Securities Act and Regulation D promulgated thereunder relative to transactions by an issuer not involving any public offering, to the extent an exemption from such registration was required. All purchasers of shares of convertible preferred stock described above represented to us in connection with their purchase that they were accredited investors and were acquiring the shares for their own account for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof and that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

(b) Grants and Exercise of Stock Options

1. From January 2010 through December 31, 2012, we granted stock options to purchase an aggregate of 890,000 shares of our common stock with an exercise price of $0.08 per share, to certain of our employees in connection with services provided to us by such employees. Of these, options to purchase 300,000 shares of common stock have been exercised through December 31, 2012 for aggregate consideration of $24,000, each at an exercise price of $0.08 per share.

The stock options and the common stock issuable upon the exercise of such options as described in this section (b) of Item 15 were issued pursuant to written compensatory plans or arrangements with our employees and directors, in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 701 promulgated under the Securities Act or the exemption set forth in Section 4(2) under the Securities Act and Regulation D promulgated thereunder relative to transactions by an issuer not involving any public offering. All recipients either received adequate information about us or had access, through employment or other relationships, to such information.

All of the foregoing securities are deemed restricted securities for purposes of the Securities Act. All certificates representing the issued shares of capital stock described in this Item 15 included appropriate legends setting forth that the securities had not been registered and the applicable restrictions on transfer.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Exhibit
1.1*	Underwriting Agreement
3.1	Restated Certificate of Incorporation, as amended (currently in effect)
3.2	Bylaws (currently in effect)
3.3*	Form of Amended and Restated Certificate of Incorporation (to be effective immediately prior to the closing of this offering)
3.4*	Form of Amended and Restated Bylaws (to be effective immediately prior to the closing of this offering)
4.1*	Specimen stock certificate evidencing the shares of common stock
4.2	Investor Rights Agreement dated as of June 1, 2007
4.3	Warrant dated February 7, 2007 issued by the Registrant to Square 1 Bank
4.4	Warrant dated June 1, 2012 issued by the Registrant to Silicon Valley Bank
4.5*	Form of Warrant Agreement to be issued by the Registrant to the Representative upon closing of this offering.
5.1*	Opinion of Latham & Watkins LLP
10.1*	Form of Indemnity Agreement for Directors and Officers
10.2*	Amended and Restated Employment Agreement, effective as of August 12, 2008, between the Registrant and David A. Gonyer, as amended
10.3*	Amended and Restated Employment Agreement, effective as of August 12, 2008, between the Registrant and Matthew D'Onofrio, as amended
10.4	2007 Equity Incentive Plan, as amended, and form of option agreement thereunder
10.5*	2013 Equity Incentive Plan and form of option agreement thereunder
10.6*	2013 Employee Stock Purchase Plan
10.7*	Amended and Restated Retention Letter between the Registrant and David A. Gonyer
10.8*	Amended and Restated Retention Letter between the Registrant and Matthew D'Onofrio
10.9*	Independent Director Compensation Policy
10.10†	Asset Purchase Agreement, dated as of June 1, 2007, by and among the Registrant and Questcor Pharmaceuticals, Inc.
10.11	Loan and Security Agreement, dated as of June 1, 20012, between Silicon Valley Bank and the Registrant
23.1*	Consent of Ernst & Young LLP, independent registered public accounting firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)

* To be filed by amendment.

† Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

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

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned hereby undertakes that:

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

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

(3) For the purpose of determining liability under the Securities Act to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(4) In a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Solana Beach, State of California, on this day of , 2013.

EVOKE PHARMA, INC.

By: _____
David A. Gonyer
President and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of Evoke Pharma, Inc., hereby severally constitute and appoint David A Gonyer, R.Ph., and Matthew J. D'Onofrio, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
_____ David A. Gonyer, R.Ph.	Chief Executive Officer and Director (principal executive officer)	, 2013
_____ Matthew J. D'Onofrio	Executive Vice President, Chief Business Officer, Treasurer and Secretary (principal financial and accounting officer)	, 2013
_____ Cam L. Garner	Chairman of the Board of Directors	, 2013
_____ Todd C. Brady, M.D., Ph.D.	Director	, 2013
_____ Scott L. Glenn	Director	, 2013
_____ Malcolm R. Hill, Pharm.D.	Director	, 2013
_____ Kenneth J. Widder, M.D.	Director	, 2013

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23.1*	Consent of Ernst & Young LLP, independent registered public accounting firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on signature page)

* To be filed by amendment.

† Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934.

RESTATED CERTIFICATE OF INCORPORATION
OF
EVOKE PHARMA, INC.

(as amended as of June 1, 2012)

Evoke Pharma, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

The name of this Corporation is Evoke Pharma, Inc. The Corporation originally filed its Certificate of Incorporation with the Secretary of the State of Delaware on January 29, 2007.

I

The name of this Corporation is Evoke Pharma, Inc.

II

The address of this Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle 19801. The name of its registered agent at such address is Corporation Service Company.

III

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

IV

The Corporation is authorized to issue two classes of stock designated "Common Stock" and "Preferred Stock." The Preferred Stock shall consist of one series designated "Series A Preferred Stock."

The number of shares of Common Stock which this Corporation is authorized to issue is Twenty Million (20,000,000). The number of shares of Preferred Stock which this Corporation is authorized to issue is Twelve Million Three Hundred Five Thousand Sixty-Eight (12,305,068), all of which shares shall be designated Series A Preferred Stock.

All shares of Common Stock and Series A Preferred Stock shall have a par value of $0.0001 per share.

The rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of shares of capital or the holders thereof are set forth below in this Article IV.

1. Dividends.

(a) Rights to Receive Dividends. The holder of each then outstanding share of Series A Preferred Stock shall be entitled to receive dividends at a rate of $0.12 per share per annum (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations), payable out of funds legally available therefor. Such dividends shall be payable in preference and priority to any payment of any dividend on any shares of Common Stock of the Corporation, when, as and if declared by the Board of Directors. The right to such dividends on the Series A Preferred Stock shall not be cumulative, and no right shall accrue to holders of Series A Preferred Stock by reason of the fact that

dividends on such shares are not declared or paid in any prior year, whether or not the earnings of the Corporation were sufficient to pay such dividends in whole or in part. The Board of Directors may fix a record date for the determination of holders of Series A Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be not more than thirty (30) days prior to the date fixed for the payment thereof (the "Preferred Stock Date of Accrual"). Notwithstanding the foregoing, dividends, if paid, or if declared and set apart for payment, must be paid, or declared and set apart for payment, on all outstanding shares of the Series A Preferred Stock contemporaneously.

(b) Payment of Dividends. The Corporation shall pay to each holder of Series A Preferred Stock on the Preferred Stock Date of Accrual with respect to shares held by each of such holders any and all dividends which have been declared through such date.

(c) Other Dividends. Subject to the provisions of Sections 1(a) and (b) hereof, no dividend or other distribution shall be paid, or declared and set apart for payment, other than dividends of Common Stock on the Common Stock of the Corporation, on the shares of any class or series of capital stock of the Corporation, unless and until there shall first be declared and paid on each share of the Series A Preferred Stock a cash dividend in an amount equal to such dividend or other distribution with each share of Series A Preferred Stock entitled to receive the amount specified in Section 1(a) plus the product of (i) the amount of the dividend declared on each share of Common Stock and (ii) the number of shares of Common Stock into which the share of Series A Preferred Stock is then convertible under Section 5 hereof determined by reference to the Conversion Price in effect at the record date for such dividend.

Neither the Corporation nor any of its Subsidiaries shall purchase, redeem or otherwise acquire for value any shares of any class or series of the Corporation's capital stock (other than the shares of Common Stock issued by the Corporation to its employees, directors or outside consultants or contractors pursuant to plans or arrangements duly approved by the Board of Directors), and no money shall be paid into or set aside or made available for a sinking fund for the purchase, redemption or acquisition thereof.

2. Liquidation.

(a) Preference. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation (a "Liquidation Event"), after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of each share of Series A Preferred Stock shall be entitled to receive on a pro rata basis out of the assets of the Corporation, whether such assets are capital, surplus or earnings, an amount equal to the Liquidation Value as set forth in Section 2(d) of such share, which amount shall be paid prior to and in preference of any payment made or assets distributed on the Common Stock or any other class or series of capital stock of the Corporation.

(b) Partial Payment. If upon any Liquidation Event the assets of the Corporation distributable as aforesaid among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to them of the full preferential amounts to which they are entitled, then the entire assets of the Corporation so to be distributed shall be distributed ratably among the holders of the Series A Preferred Stock, in proportion to the sum of their respective per share Liquidation Value, until payment in full of such amount per share.

(c) Remaining Assets. After payment to the holders of the Series A Preferred Stock of the amounts set forth in Section 2(a) above, the entire remaining assets and funds of the Corporation legally available for distribution, if any, shall be distributed ratably among the holders of the Common Stock and the holders of the Series A Preferred Stock on an as-converted to Common Stock basis at the then applicable conversion rate, until such time as each share of Series A Preferred Stock has received an

aggregate distribution of $4.50 (including both the distributions made pursuant to Section 2(a) above and this Section 2(c)), at which point no further payments shall be made to holders of the Series A Preferred Stock by reason thereof and any remaining assets of the Corporation shall be distributed ratably among the holders of the Common Stock.

(d) Liquidation Value. The Liquidation Value per share of Series A Preferred Stock as of any particular date shall be the sum of (A) $1.50 (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations) plus (B) all declared but unpaid dividends as of the date the Liquidation Value of such share is determined.

(e) Deemed Liquidation Events.

(i) Definition. For purposes of this Section 2, a Liquidation Event shall be deemed to be occasioned by, or to include, the following (each, a "Deemed Liquidation Event") unless the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock elect otherwise:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Section 2(e)(i)(a), all shares of Common Stock issuable upon exercise of stock options of the Corporation outstanding immediately prior to such merger or consolidation or upon conversion of convertible securities of the Corporation outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(ii) Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2(e)(i)(a) unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2(a), (b) and (c).

(b) In the event of a Deemed Liquidation Event referred to in Section 2(e)(i)(a)(ii) or 2(e)(i)(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series A Preferred Stock, and (iii) if the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the "Available Proceeds"), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Liquidation Value. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Prior to the distribution or redemption provided for in this Section 2(e)(ii)(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

(iii) Notice. The Corporation shall give each holder of record of Series A Preferred Stock written notice of such impending event described in Section 2(e)(i) not later than twenty (20) calendar days prior to the stockholders meeting called to approve such transaction, or twenty (20) calendar days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) calendar days after the Corporation has given the first notice provided for herein or sooner than ten (10) calendar days after the Corporation has given notice of any material changes provided for herein. Notwithstanding the foregoing, the periods set forth in this subsection 2(e)(iii) may be shortened and/or notice may be waived upon the Corporation's receipt of written consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock.

3. Redemption. The Corporation shall not be obligated to, and shall not have the right to call or redeem any shares of the Series A Preferred Stock except in accordance with Section 2(e)(ii)(b) above.

4. Voting Rights; Directors.

(a) Generally. On all matters to come before the stockholders, the Series A Preferred Stock shall have that number of votes per share (rounded up to the nearest whole share) equivalent to the number of shares of Common Stock into which such share of Series A Preferred Stock is then convertible

determined by reference to the Conversion Price in effect at the record date of the determination of the holders of the shares entitled to vote or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is first solicited. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held. Except as otherwise provided by law or this Restated Certificate of Incorporation, the holders of Series A Preferred Stock shall vote together with the holders of the outstanding shares of Common Stock, and not as a separate class or series.

(b) Directors.

(i) The authorized number of directors shall be six (6) until this provision is amended in accordance with the terms of this Restated Certificate of Incorporation. The holders of the outstanding shares of Series A Preferred Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect two (2) members of the Board of Directors (the "Preferred Directors"). The holders of the outstanding shares of Common Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, shall be entitled to elect two (2) members of the Board of Directors (the "Common Directors"). The holders of the outstanding shares of Common Stock and Series A Preferred Stock, voting together as a single class, shall be entitled to elect the remaining members of the Board of Directors (the "General Directors").

(ii) In the case of any vacancy in the office of a director occurring among the Preferred Directors or the Common Directors, by the affirmative vote of the holders of a majority of the shares of the class or classes entitled to vote on the election of the Preferred Director or Common Director, as the case may be, such holders shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. In the case of any vacancy in the office of a General Director, by the affirmative vote of the holders of a majority of the holders of the Preferred Stock and the Common Stock, voting together as a single class, such holders shall elect a successor or successors to hold the office for the unexpired term of the director or directors whose place or places shall be vacant. Any director may be removed during the aforesaid term of office, whether with or without cause, only by the affirmative vote of the holders of a majority of the shares eligible to vote in an election for the seat occupied by that director (e.g., in order to remove a Preferred Director, the holders of a majority of the Series A Preferred Stock, voting as a separate class and to the exclusion of all other classes of capital stock of the Corporation, must so vote).

(c) Protective Provisions. In addition to voting rights provided by law, so long as at least Two Million (2,000,000) shares of Series A Preferred Stock shall be outstanding (as adjusted for all stock splits, stock dividends, consolidations, recapitalizations and reorganizations), the Corporation shall not, without the consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series A Preferred Stock, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of the Series A Preferred Stock shall vote as a separate class and to the exclusion of all other classes of capital stock of the Corporation:

(i) amend or repeal any provision of, or add any provision to, this Restated Certificate of Incorporation or the Corporation's By-laws if such action would materially and adversely alter or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, or otherwise uniquely and adversely affect (including, without limitation, Section 4(b) of this Article IV), the Series A Preferred Stock (whether by merger, consolidation, reclassification, amendment of this Restated Certificate of Incorporation, sale or otherwise);

(ii) increase or decrease the total number of authorized shares of the Corporation's Series A Preferred Stock or in the total number of authorized directors;

(iii) authorize, create or issue (whether by merger, consolidation, reclassification, amendment of this Restated Certificate of Incorporation, sale or otherwise) shares of any class or series of stock not authorized herein having preferences as to dividends or assets superior to or on parity with the Series A Preferred Stock;

(iv) do any act or thing which would result in a Liquidation Event;

(v) declare or pay any dividends on any capital stock of the Corporation; provided, however, that the restriction shall not apply to dividends payable solely in Common Stock;

(vi) redeem or repurchase capital stock of the Corporation except in connection with the repurchase of shares of Common Stock issued to or held by employees, consultants, officers and directors upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, which agreements were authorized by the Board of Directors; or

(vii) take any action which would result in taxation of the holders of shares of the Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended (or any comparable provision of the Internal Revenue Code as hereafter from time to time amended).

5. Conversion. The rights of the holders of shares of Series A Preferred Stock to convert such shares into shares of Common Stock (as defined in Section 5(h) below) of the Corporation (the "Conversion Rights"), and the terms and conditions of such conversion, shall be as follows:

(a) Right to Convert; Automatic Conversion.

(i) Each share of the Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of the issuance of such share, at the office of the Corporation or any transfer agent for the Series A Preferred Stock or the Common Stock, into that number of the fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below.

(ii) Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, the holder shall surrender the certificate(s) therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock and shall give written notice to the Corporation at such office that the holder elects to convert the same (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section 5(b)(iv) hereof). This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock certificate(s) for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted; except that in the case of an automatic conversion pursuant to Section 5(b)(iv)(A) hereof such conversion shall be deemed to have been made immediately prior to the closing of the offering referred to in Section 5(b)(iv)(A) or in the case of an automatic conversion pursuant to Section 5(b)(iv)(B) hereof, immediately prior to the close of business on the date of the election referred to in Section 5(b)(iv)(B) and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten public offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event any persons entitled to receive Common Stock upon conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(iii) The Corporation shall, as soon as practicable after the surrender of the certificate or certificates evidencing shares of Series A Preferred Stock for conversion at the office of the Corporation or the transfer agent for the Series A Preferred Stock or the Common Stock, issue to each holder of such shares, or its nominee or nominees, a certificate or certificates evidencing the number of shares of Common Stock (and any other securities and property) to which it shall be entitled and, in the event that only a part of the shares evidenced by such certificate or certificates are converted, a certificate evidencing the number of shares of Series A Preferred Stock which are not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the Person or Persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock at such date and shall, with respect to such shares, have only those rights of a holder of Common Stock of the Corporation.

(iv) Each share of Series A Preferred Stock then outstanding shall be automatically converted into that number of fully paid and nonassessable shares of Common Stock determined in accordance with the provisions of Section 5(b) below upon the earlier of (A) the close of business of the day immediately preceding the effective date of the Corporation's registration statement filed in connection with a Qualified Public Offering (as defined in Section 7 below) or (B) the consent of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series A Preferred Stock voting or consenting together as a separate class, given in person or by proxy, either in writing or by vote at a meeting called for that purpose at which the holders of Series A Preferred Stock shall vote together as a separate class.

(b) Conversion of Preferred Stock. The Series A Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing the Conversion Price (as defined herein) per share in effect at the time into $1.50 per share of Series A Preferred Stock being converted.

(c) Conversion Price. The conversion price per share for the Series A Preferred Stock shall initially be $1.50 (the "Conversion Price") and shall be subject to adjustment from time to time as provided herein.

(d) Adjustment for Stock Splits and Combinations. If outstanding shares of the Common Stock of the Corporation shall be subdivided into a greater number of shares, or a dividend in Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock, shall be paid in respect to the Common Stock of the Corporation, the Conversion Price in effect immediately prior to such subdivision or at the record date of such dividend shall be proportionately reduced, and conversely, if outstanding shares of the Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

Any adjustment to the Conversion Price under this Section 5(d) shall become effective at the close of business on the date the subdivision or combination referred to herein becomes effective.

(e) Reorganizations, Mergers, Consolidations or Reclassifications. In the event of any capital reorganization, any reclassification of the Common Stock (other than a change in par value or as a result of a stock dividend, subdivision, split-up or combination of shares), the consolidation or merger of the Corporation with or into another Person (excluding a consolidation or merger described in Section 2(e)(i)(a) of this Article IV) (collectively referred to hereinafter as "Reorganizations"), the holders of the

Series A Preferred Stock shall thereafter be entitled to receive, and provision shall be made therefor in any agreement relating to a Reorganization, upon conversion of the Series A Preferred Stock the kind and number of shares of Common Stock or other securities or property (including cash) of the Corporation, or other corporation resulting from such consolidation or surviving such merger to which a holder of the number of shares of the Common Stock of the Corporation which the Series A Preferred Stock entitled the holder thereof to convert to immediately prior to such Reorganization would have been entitled to receive with respect to such Reorganization; and in any such case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock to the end that the provisions set forth herein (including the specified changes and other adjustments to the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares, other securities or property thereafter receivable upon conversion of the Series A Preferred Stock. The provisions of this Section 5(e) shall similarly apply to successive Reorganizations.

(f) Sale of Additional Shares.

(i) If at any time or from time to time following the date of the initial issuance of shares of Series A Preferred Stock, the Corporation shall issue or sell (or is deemed to have issued or sold) Additional Shares of Common Stock other than as a dividend or other distribution on any class of stock and other than as a subdivision or combination of shares of Common Stock as provided in Section 5(d) above, for a consideration per share less than the then existing Conversion Price, then, and in each such case, the then existing Conversion Price shall be reduced, as of the opening of business on the date of such issuance or sale, to a price determined by multiplying the applicable Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the Series A Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date immediately prior to such issuance) plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for such issuance would purchase at the applicable Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock issuable upon conversion of the Series A Preferred Stock and the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the date immediately prior to such issuance) plus the number of shares of Additional Shares of Common Stock actually issued in such issuance.

(ii) For the purpose of making any adjustment in the Conversion Price, or number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock, as provided above, the consideration received by the Corporation for any issue or sale of securities shall:

(a) To the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any expenses payable directly or indirectly by the Corporation and any underwriting or similar commissions, compensations, discounts or concessions paid or allowed by the Corporation in connection with such issue or sale;

(b) To the extent it consists of property other than cash, the consideration other than cash shall be computed at the fair market value thereof as determined in good faith by the Board of Directors, at or about, but as of, the date of the adoption of the resolution specifically authorizing such issuance or sale, irrespective of any accounting treatment thereof; provided, however, that such fair market value as determined by the Board of Directors, when added to any cash consideration received in connection with such issuance or sale, shall not exceed the aggregate market price of the Additional Shares of Common Stock being issued, as of the date of the adoption of such resolution; and

(c) If Additional Shares of Common Stock, Convertible Securities (as defined below) or Rights (as defined below) are issued or sold together with other stock or securities or other assets of the Corporation for consideration which covers both, the consideration received for the Additional Shares of Common Stock, Convertible Securities or Rights shall be computed as that portion of the consideration so received which is reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights.

(iii) For the purpose of making any adjustment in the Conversion Price provided in Section 5(f) hereof, if at any time, or from time to time, the Corporation issues any stock or other securities convertible into Additional Shares of Common Stock (such stock or other securities being hereinafter referred to as "Convertible Securities") or issues any rights or options to purchase Additional Shares of Common Stock or Convertible Securities (such rights or options being hereinafter referred to as "Rights"), then, and in each such case, if the Effective Conversion Price (as hereinafter defined) of such Rights or Convertible Securities shall be less than the Conversion Price in effect immediately prior to the issuance of such Rights or Convertible Securities, the Corporation shall be deemed to have issued at the time of the issuance of such Rights or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received in consideration for the issuance of such shares an amount equal to the aggregate Effective Conversion Price of such Rights or Convertible Securities. For the purposes of this Section 5(f)(iii), "Effective Conversion Price" shall mean an amount equal to the sum of the lowest amount of consideration, if any, received or receivable by the Corporation with respect to any one (1) Additional Share of Common Stock upon issuance of the Rights or Convertible Securities and upon their exercise or conversion, respectively. No further adjustment of the Conversion Price adjusted upon the issuance of such Rights or Convertible Securities shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such Rights or the conversion of any such Convertible Securities. If any such Rights or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, such Conversion Price, as applicable, as adjusted upon the issuance of such Rights or Convertible Securities shall be readjusted to the Conversion Price, as applicable, which would have been in effect had such adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such Rights or on the conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such Rights, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities. No readjustment pursuant to this subsection (f)(iii) shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (a) the Conversion Price on the original adjustment date and (b) the Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

(g) Additional Shares of Common Stock. "Additional Shares of Common Stock" as used in this Section 5 shall mean all shares of Common Stock issued or deemed to be issued by the Corporation, whether or not subsequently reacquired or retired by the Corporation, other than:

(i) shares of Common Stock issued upon the conversion of any shares of the Corporation's Preferred Stock;

(ii) shares of Common Stock issued or issuable to employees or officers or directors or outside consultants or contractors of the Corporation or any Subsidiary pursuant to a plan, agreement or arrangement duly approved by the Board of Directors;

(iii) shares of Common Stock issued pursuant to a Qualified Public Offering;

(iv) shares of Common Stock issued or issuable pursuant to the exercise or conversion of options, warrants or convertible securities (including, without limitation, the Convertible Promissory Notes (as defined in Section 7 below)) outstanding as of the date hereof;

(v) shares of Common Stock issued to effect any stock split, stock dividend or recapitalization of the Corporation;

(vi) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the Corporation obtaining lease financing, whether issued to a lessor, guarantor or other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors;

(vii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any borrowings, direct or indirect from financial institutions or other Persons by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors;

(viii) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with the acquisition of all or a substantial portion of the assets or the business of another entity by the Corporation, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors; and

(ix) shares of Common Stock and/or options, warrants or other Common Stock purchase rights issued in connection with any corporate partnering transaction, strategic alliance, technology transfer or similar transaction between the Corporation and any other Person, provided that such issuance is pursuant to an agreement or arrangement duly approved by the Board of Directors.

(h) Common Stock. "Common Stock" as used in this Section 5 shall mean any shares of any class of the Corporation's capital stock other than the Series A Preferred Stock. The Common Stock issuable upon conversion of the Preferred Stock, however, shall be the Common Stock of the Corporation as constituted on the date hereof, except as otherwise provided in this Section 5.

(i) Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price or the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred Stock, the Corporation, at its expense, shall cause the Chief Financial Officer of the Corporation to compute such adjustment or readjustment in accordance with this Restated Certificate of Incorporation and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first-class mail, postage prepaid, to each registered holder of the Series A Preferred Stock at the holder's address as shown on the Corporation's stock transfer books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold; (ii) Conversion Price at the time in effect for the Series A Preferred Stock; and (iii) the number of Additional Shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred Stock. Such notice may be given in advance of such adjustment or readjustment and may be included as part of a notice required to be given pursuant to Section 5(j) below.

(j) Notices of Record Date. In the event the Corporation shall propose to take any action of the type or types requiring an adjustment to the Conversion Price of the Series A Preferred Stock, or the number or character of the Series A Preferred Stock as set forth herein, the Corporation shall give notice to the holders of the Series A Preferred Stock as applicable in the manner set forth in Section 5(i) above, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable upon the occurrence of such action or deliverable upon the conversion of Series A Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least twenty (20) days prior to the taking of such proposed action. Notwithstanding the requirements of this Section 5(j), this Section 5(j) shall not be applicable and no such notice shall be required with respect to any action that is, or has been, approved by the holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock voting or consenting together as a single class and to the exclusion of all other classes of capital stock of the Corporation.

(k) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding shares of Series A Preferred Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, the Corporation shall promptly seek such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose. In the event of the consolidation or merger of the Corporation with another corporation where the Corporation is not the surviving corporation, effective provisions shall be made in the certificate or articles of incorporation, merger or consolidation, or otherwise of the surviving corporation so that such corporation will at all times reserve and keep available a sufficient number of shares of Common Stock or other securities or property to provide for the conversion of Series A Preferred Stock in accordance with the provisions of this Section 5.

(l) Payment of Taxes. The Corporation shall pay all taxes and other governmental charges (other than any income or other taxes imposed upon the profits realized by the recipient) that may be imposed in respect of the issue or delivery of shares of Common Stock or other securities or property upon conversion of shares of Series A Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock or other securities in a name other than that in which the shares of Series A Preferred Stock so converted were registered.

(m) Status of Converted Stock. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be cancelled and shall not be issuable by the Corporation, and this Restated Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in the Corporation’s authorized capital stock.

(n) No Impairment. Subject to the right of this Corporation to amend its Certificate of Incorporation or take any other corporate action upon obtaining the necessary approvals required by its

Certificate of Incorporation and applicable law, the Corporation shall not amend this Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith use its best efforts, and assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against dilution or other impairment.

6. Common Stock.

(a) Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section 2 of this Article IV.

(c) Redemption. The Common Stock is not redeemable.

(d) Voting Rights. The holder of each share of Common Stock shall have the right to one (1) vote, and shall be entitled to notice of any stockholders' meeting in accordance with the By-laws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by this Restated Certificate of Incorporation and law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

7. Miscellaneous.

(a) Definitions.

(i) "Additional Shares of Common Stock" shall have that meaning set forth in Section 5(g) hereof.

(ii) "Common Stock" shall have that meaning set forth in Section 5(h) hereof.

(iii) "Conversion Price" shall have that meaning set forth in Section 5(c) hereof.

(iv) "Conversion Rights" shall have that meaning set forth in Section 5 hereof.

(v) "Convertible Promissory Notes" shall mean those certain convertible promissory notes dated as of March 12, 2007 issued by the Corporation in the aggregate principal amount of $250,000.

(vi) "Convertible Securities" shall have that meaning set forth in Section 5(f)(iii) hereof.

(vii) “Effective Conversion Price” shall have that meaning set forth in Section 5(f)(iii) hereof.

(viii) “Liquidation Value” shall have that meaning set forth in Section 2(d) hereof.

(ix) “Person” shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

(x) “Preferred Stock” shall have that meaning set forth in the first paragraph of this Article IV.

(xi) “Preferred Stock Date of Accrual” shall have that meaning set forth in Section 1(a) hereof.

(xii) “Qualified Public Offering” means a firmly underwritten public offering of the Corporation’s Common Stock on a Form S-1 Registration Statement, or any similar form of registration statement, adopted by the Securities and Exchange Commission (the “Commission”) from and after the date hereof, filed with the Commission under the Securities Act of 1933, as amended, with respect to which the Corporation receives gross proceeds of at least $25,000,000 (prior to deduction for underwriters’ discounts and expenses relating to such public offering, including without limitation, fees of the Corporation’s counsel) and the price to the public is at least $4.50 per share (equitably adjusted for all stock splits, sub-divisions, stock dividends, combinations and the like with respect to such shares).

(xiii) “Series A Preferred Stock” shall have that meaning set forth in the first paragraph of this Article IV.

(xiv) “Subsidiary” means any corporation of which equity securities possessing a majority of the ordinary voting power in electing the board of directors are, at the time as of which such determination is being made, owned by the Corporation either directly or indirectly through one or more Subsidiaries.

(b) Notices. All notices referred to herein, except as otherwise expressly provided, shall be made by registered or certified mail, return receipt requested, postage prepaid and shall be deemed to have been given when so mailed.

(c) Conflicts. So long as any of the Series A Preferred Stock is outstanding, in the event of any conflict between the provisions of this Article IV and the remainder of this Restated Certificate of Incorporation or the By-laws of the Corporation (both as presently existing or hereafter amended and supplemented), the provisions of this Article IV shall be and remain controlling.

V

EXCULPATION AND INDEMNIFICATION

1. Exculpation. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the Delaware General Corporation Law; or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is hereafter

amended to further reduce or to authorize, with the approval of the Corporation's stockholders, further reductions in the liability of the Corporation's directors for breach of fiduciary duty, then a director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the Delaware General Corporation Law as so amended.

2. Indemnification. To the maximum extent permitted by applicable law, the Corporation shall provide indemnification of (and advancement of expenses to) any director, officer, employee or other Persons to which Delaware law permits the Corporation to provide indemnification through bylaw provisions, agreements with any such director, officer, employee or other Persons, vote of stockholders or disinterested directors or otherwise, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

3. Effect of Repeal or Modification. Any repeal or modification of any of the foregoing provisions of this Article V shall not adversely affect any right or protection of a director, officer, agent or other Person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

VI

BOARD POWER REGARDING BY-LAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the By-laws of the Corporation without the vote or assent of the stockholders.

VII

ELECTION OF DIRECTORS

Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

VIII

CORPORATE POWER

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation which restates and amends the provisions of the Certificate of Incorporation of the Corporation, and which has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware and has been executed by its President this 31st day of May, 2007.

EVOKE PHARMA, INC.

/s/ David A. Gonyer
David A. Gonyer
President

Exhibit 3.2

BYLAWS

OF

EVOKE PHARMA, INC.

ARTICLE I

OFFICES

Section 1. REGISTERED OFFICE. The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. OTHER OFFICES. The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE OF MEETINGS. Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

Section 2. ANNUAL MEETING OF STOCKHOLDERS. The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected in the manner provided in the certificate of incorporation of the corporation (the "***Certificate of Incorporation***") and in the Bylaws, and any other proper business may be transacted.

Section 3. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

Section 4. VOTING. When a quorum is present at any meeting, in all matters other than the election of directors, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes, or the Certificate of Incorporation, or these Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 5. PROXIES. At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him or her by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three (3) years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Except as may be otherwise provided in the Certificate of Incorporation, each stockholder shall have one vote for each share of stock having voting power, registered in his or her name on the books of the corporation on the record date set by the Board of Directors as provided in Article VII, Section 6 hereof.

Section 6. SPECIAL MEETINGS. Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President and shall be called by the Chairman of the Board, President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. NOTICE OF STOCKHOLDERS' MEETINGS. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty (60) days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the corporation.

Section 8. MAINTENANCE AND INSPECTION OF STOCKHOLDER LIST. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 9. STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING. Unless otherwise provided in the Certificate of Incorporation, any action

required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 9 to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation by delivery to its registered office in Delaware, its principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

DIRECTORS

Section 1. THE NUMBER OF DIRECTORS. Unless otherwise provided by law, the number of directors which shall constitute the whole Board of Directors shall be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the directors. The directors need not be stockholders. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his or her successor is elected and qualified; provided, however, that unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by a majority of the stock represented and entitled to vote thereat.

Section 2. VACANCIES. Vacancies on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election of directors and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board of Directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. POWERS. The property and business of the corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of

Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. PLACE OF DIRECTORS' MEETINGS. The directors may hold their meetings and have one or more offices, and keep the books of the corporation outside of the State of Delaware.

Section 5. REGULAR MEETINGS. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board of Directors.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by the President on forty-eight (48) hours notice to each director, either personally or by mail, e-mail or by telegram; special meetings shall be called by the Chairman of the Board, President or the Secretary in like manner and on like notice on the written request of two directors unless the Board of Directors consists of only one director; in which case special meetings shall be called by the Chairman of the Board, President or Secretary in like manner or on like notice on the written request of the sole director.

Section 7. QUORUM. At all meetings of the Board of Directors a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the vote of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum.

Section 8. ACTION WITHOUT MEETING. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 9. TELEPHONIC MEETINGS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 10. COMMITTEES OF DIRECTORS. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each such committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the

meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the Bylaws of the corporation; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 11. MINUTES OF COMMITTEE MEETINGS. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 12. CHAIRMAN OF THE BOARD. The Board of Directors may designate one of its members to serve as Chairman of the Board, and if so, the Chairman of the Board shall, if present, preside at all meetings of the Board of Directors and stockholders, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Board of Directors or prescribed by these Bylaws.

Section 13. COMPENSATION OF DIRECTORS. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

OFFICERS

Section 1. OFFICERS. The officers of this corporation shall be chosen by the Board of Directors and shall include a President and a Secretary. The corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Vice-Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer or Treasurer, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 hereof. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. ELECTION OF OFFICERS. The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the corporation.

Section 3. SUBORDINATE OFFICERS. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 4. COMPENSATION OF OFFICERS. The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 5. TERM OF OFFICE; REMOVAL AND VACANCIES. The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 6. PRESIDENT. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors. He or she shall be an ex-officio member of all committees and shall have the general powers and duties of management usually vested in the office of President and Chief Executive Officer of corporations, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 7. VICE PRESIDENTS. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 8. SECRETARY. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. He or she shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws. He or she shall keep in safe custody the seal of the corporation, and when authorized by the Board of Directors, affix the same to any instrument requiring it, and when so affixed it shall be attested by his or her signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature.

Section 9. ASSISTANT SECRETARY. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 10. CHIEF FINANCIAL OFFICER OR TREASURER. The Chief Financial Officer or Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Chief Financial Officer or Treasurer and of the financial condition of the corporation. If required by the Board of Directors, he or she shall give the corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of his or her office and for the restoration to the corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the corporation.

Section 11. ASSISTANT TREASURER. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Chief Financial Officer or Treasurer, perform the duties and exercise the powers of the Chief Financial Officer or Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

(a) The corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) The corporation shall indemnify to the maximum extent permitted by law any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a

manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(c) To the extent that a director or officer of the corporation shall be successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs (a) and (b), or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholders. The corporation, acting through its Board of Directors or otherwise, shall cause such determination to be made if so requested by any person who is indemnifiable under this Article V.

(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation as authorized in this Article V.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(g) The Board of Directors may authorize, by a vote of a majority of a quorum of the Board of Directors, the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this Article V.

(h) For the purposes of this Article V, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include service as a director or officer of the corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(k) The corporation shall be required to indemnify a person in connection with an action, suit or proceeding (or part thereof) initiated by such person only if the action, suit or proceeding (or part thereof) was authorized by the Board of Directors of the corporation.

ARTICLE VI

INDEMNIFICATION OF EMPLOYEES AND AGENTS

The corporation may indemnify every person who was or is a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an employee or agent of the corporation or, while an employee or agent of the corporation, is or was serving at the request of the corporation as an employee or agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent permitted by applicable law.

ARTICLE VII

CERTIFICATES OF STOCK

Section 1. CERTIFICATES. Every holder of stock of the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman or Vice-Chairman of the Board of Directors, or the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer of the corporation, certifying the number of shares represented by the certificate owned by such stockholder in the corporation.

Section 2. SIGNATURES ON CERTIFICATES. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Section 3. STATEMENT OF STOCK RIGHTS, PREFERENCES, PRIVILEGES. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 4. LOST CERTIFICATES. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. TRANSFERS OF STOCK. Upon surrender to the corporation, or the transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6. FIXED RECORD DATE. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten (10) days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date which shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors.

Section 7. REGISTERED STOCKHOLDERS. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize

any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. DIVIDENDS. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to and subject to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. PAYMENT OF DIVIDENDS; DIRECTORS' DUTIES. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve.

Section 3. CHECKS. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 4. FISCAL YEAR. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 5. CORPORATE SEAL. The corporate seal shall contain two concentric circles with the name of the corporation between the two circles and the date and state of incorporation appearing in the inner circle.

Section 6. MANNER OF GIVING NOTICE. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his or her address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 7. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 8. ANNUAL STATEMENT. The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

ARTICLE IX

AMENDMENTS

Section 1. AMENDMENT BY DIRECTORS OR STOCKHOLDERS. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

ARTICLE X IX

RIGHT OF FIRST REFUSAL

Section 1. RESTRICTION ON TRANSFER. No stockholder of the corporation shall transfer, assign, hypothecate, encumber, pledge or otherwise alienate (hereinafter "***Transfer***") any shares of Common Stock of the corporation (the "***Common Stock***") owned by such stockholder unless such stockholder previously complied with all provisions of this Article X. Any Transfer not made in accordance with this Article X shall be void, and the corporation shall not treat the transferee in such transaction as a stockholder for any purpose.

Section 2. NOTICE REQUIREMENT. If a stockholder seeks to Transfer any Common Stock, whether voluntarily or involuntarily, such stockholder (the "***Offering Stockholder***") shall first give simultaneous written notice of such intention ("***Notice of Transfer***") to the Secretary of the corporation. The Notice of Transfer shall specify the number of shares of Common Stock to be transferred (the "***Offered Shares***"), and state the price and all other terms of the proposed transaction. The Notice of Transfer shall constitute an irrevocable offer to sell the Offered Shares during the periods described below.

Section 3. OPTION OF THE CORPORATION. For twenty-five (25) days following the delivery of a Notice of Transfer (the "***Option Period***"), the corporation shall have an irrevocable right to purchase all or a portion of the Offered Shares in accordance with the terms stated in the Notice of Transfer. The right may be exercised by a written notice, signed by the President of the corporation (the "***Corporation Notice***"), stating that the corporation desires to purchase the Offered Shares and tendering the purchase price therefor. Such notice and the purchase price for the Offered Shares shall be delivered to the Offering Stockholder before expiration of the Option Period. Failure to so respond within the Option Period to the Notice of Transfer shall be deemed an irrevocable waiver by the corporation of its right to acquire the Offered Shares. The corporation shall effect the purchase of the Offered Shares, including payment of the purchase price, not more than five (5) business days after delivery of the Corporation Notice, and at such time the Offering Stockholder shall deliver to the corporation the certificate(s) representing the Offered Shares to be purchased by the corporation, each certificate to be properly endorsed for transfer. Any Common Stock so purchased by the corporation shall thereupon be cancelled and cease to be issued and outstanding shares of the corporation's Common Stock.

Section 4. SPECIAL PROVISIONS REGARDING EXCHANGES. If the Notice of Transfer specifies consideration other than cash, then the Offered Shares may be purchased in cash for the fair market value of such property, as determined in good faith by the Board of Directors. In the event that the Board of Directors decides to hire an independent appraiser in connection with such determination, all expenses for such independent appraiser shall be borne by the Offering Stockholder.

Section 5. EFFECT OF PURCHASE. For purposes of Section 3 of this Article X, the purchase price for Offered Shares shall be deemed tendered, and said Offered Shares shall be deemed purchased, at such time as the Offering Stockholder receives written notice enclosing a cashier's check for the purchase price or stating that the purchase price has been delivered to a third party (such as counsel to the corporation) with instructions to deliver such amount to the Offering Stockholder upon surrender of certificates representing the Offered Shares, duly endorsed with signatures guaranteed. All rights accorded the Offering Stockholder with respect to the Offered Shares, other than the right to payment therefor, shall cease at that time. If payment is tendered directly to the Offering Stockholder, the Offering Stockholder shall promptly, but in no event later than five (5) business days, cause to be delivered certificate(s) representing the Offered Shares, duly endorsed with signatures guaranteed, to the corporation's transfer agent for cancellation or transfer.

Section 6. CERTAIN TRANSFERS EXEMPT. Notwithstanding anything else contained in this Article X to the contrary, an Offering Stockholder shall be permitted to make Transfers of certain shares of Common Stock held by such Offering Stockholder without complying with the provisions of Sections 1 through 5 of this Article X above if such Transfer is:

(a) to the Offering Stockholder's spouse, parents, children, or siblings or other members of the Offering Stockholder's family (including relatives by marriage), or to a trust for the benefit of the Offering Stockholder or any of the foregoing members of his or her family, or to a custodian, trustee or other fiduciary for the account of the Offering Stockholder or any of the foregoing members of his or her family in connection with a bona fide estate planning transaction; provided, however, that this Section shall not permit any Transfer to be made by the Offering Stockholder in connection with the dissolution of the Offering Stockholder's marriage or the legal separation of the Offering Stockholder and Offering Stockholder's spouse to such spouse on the account of any settlement of any community property or other marital property rights such spouse may have in such shares;

(b) by way of bequest or inheritance upon death;

(c) to any person, association or entity that, directly or indirectly, through one or more intermediaries, has voting control or has its voting controlled by, or is under common voting control with, such Offering Stockholder;

(d) by way of a bona fide gift;

(e) in connection with a Change of Control (as defined in Section 7 of this Article X below); or

(f) subject to an alternative right of first refusal or similar right granted by the Offering Stockholder to the corporation, including in certain circumstances, but not limited to, restricted stock purchase agreements, co-sale agreements and equity incentive award plans.

Any Transfer set forth in clauses (a) through (f) of this Section 6 may be referred to herein as a "***Permitted Transfer***."

Section 7. LIMITATIONS ON RIGHT OF FIRST REFUSAL. The restrictions imposed by this Article X shall not apply to and shall terminate upon (i) the closing of a firmly underwritten public offering of Common Stock or (ii) the closing of any transaction or series of related transactions constituting (a) a reorganization, merger, consolidation or sale of all or substantially all of the corporation's stock, as a result of which transaction or series of related transactions the corporation's stockholders of record as constituted immediately prior to such transaction or series of related transactions hold less than a majority of the outstanding voting power of the surviving or acquiring entity after the consummation of such transaction or series of related transactions; or (b) a sale of all or substantially all of the assets of the corporation (each of clauses (a) and (b) a "***Change of Control***").

Section 8. WAIVER. The provisions of this Article X may be waived with respect to any Transfer only in writing signed by the corporation.

Section 9. ASSIGNMENT; ALTERNATIVE RIGHTS. The corporation may assign its rights under this Article X or grant alternative rights of first refusal or similar rights to a third party or parties.

Section 10. LEGEND. Any and all certificates representing any shares of Common Stock shall bear a legend referring to the restrictions imposed by this Article X in substantially the form below:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION, A COPY OF WHICH ARE ON FILE WITH THE SECRETARY OF THE CORPORATION."

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EVOKE PHARMA, INC.

INVESTOR RIGHTS AGREEMENT

June 1, 2007

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EVOKE PHARMA, INC.

INVESTOR RIGHTS AGREEMENT

THIS INVESTOR RIGHTS AGREEMENT (this **"Agreement**") is made as of June 1, 2007, by and among **EVOKE PHARMA, INC.,** a Delaware corporation **(**the **"Company**"), and each of the entities and persons listed on Schedule A hereto (collectively, the "**Investors**").

RECITALS

A. The Investors are purchasing shares of the Company's Series A Preferred Stock, par value $0.0001 per share (the "**Series A Preferred Stock**"), pursuant to that certain Series A Preferred Stock Purchase Agreement of even date herewith (the "**Purchase Agreement**").

B. The obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

SECTION 1. CERTAIN DEFINITIONS.

As used in this Agreement, the following terms shall have the following respective meanings:

(a) "**Affiliate**" shall mean with respect to any Person, any Person which directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person.

(b) "**Board**" shall mean the Board of Directors of the Company.

(c) "**Commission**" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

(d) "**Common Stock**" shall mean the Company's common stock, par value $0.0001 per share.

(e) "**Convertible Promissory Notes**" shall mean those certain convertible promissory notes dated as of March 12, 2007 issued by the Company in the aggregate principal amount of $250,000.

(f) "**Convertible Securities**" shall mean the Company's Series A Preferred Stock.

(g) "**Form S-3**" shall mean Form S-3 issued by the Commission or any substantially similar form then in effect.

(h) "**Holder**" shall mean any Person entering into this Agreement and any holder of outstanding Registrable Securities or an assignee or transferee of Registration rights as permitted by Section 3.8.

(i) "**Initiating Holders**" shall mean Holders who in the aggregate hold more than fifty percent (50%) of the Registrable Securities, excluding shares under clause (ii) of the definition of "Registrable Securities" below.

(j) "**Material Adverse Event**" shall mean an occurrence having a consequence that either (a) is materially adverse as to the business, properties, prospects or financial condition of the Company or (b) is reasonably foreseeable, has a reasonable likelihood of occurring, and if it were to occur would reasonably be expected to materially adversely affect the business, properties, prospects or financial condition of the Company.

(k) "**Person**" shall mean an individual, a corporation, a partnership, a trust or unincorporated organization or any other entity or organization.

(l) "**Qualified Public Offering**" shall mean a firmly underwritten public offering of the Company's Common Stock Registered under the Securities Act and (i) involving gross proceeds to the Company of at least Twenty Five Million Dollars ($25,000,000) (prior to deduction for underwriters' discounts and other expenses relating to such public offering, including, without limitation, fees of the Company's counsel) and the price to the public is at least Four Dollars and Fifty Cents ($4.50) per share (equitably adjusted for all stock splits, sub-divisions, stock dividends, combinations and the like with respect to such shares) or (ii) approved by holders of at least sixty-six and two-thirds percent (66 2/3%) of the then outstanding shares of Series A Preferred Stock.

(m) The terms "**Register**," "**Registered**" and "**Registration**" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act ("Registration Statement"), and the declaration or ordering of the effectiveness of such Registration Statement.

(n) "**Registrable Securities**" shall mean (i) all Common Stock not previously sold to the public issued or issuable upon conversion of any of the Convertible Securities purchased by or issued to the Investors, (ii) all of the shares of Common Stock owned by the Investors, (iii) any shares of Common Stock issued or issuable upon conversion of any Convertible Securities granted registration rights pursuant to Section 3.7 of this Agreement, and (iv) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the Common Stock described in clauses (i) through (iii) of this definition.

(o) "**Registration Expenses**" shall mean all expenses incurred by the Company in complying with Sections 3.1 or 3.2 of this Agreement, including, without limitation, all federal and state registration, qualification and filing fees, printing expenses, fees and disbursements of counsel for the Company and fees and disbursements, in an aggregate amount not to exceed $25,000, of not more than one (1) special counsel for the Holders, blue sky fees and expenses, and the expense of any special audits incident to or required by any such Registration.

(p) "**Securities Act**" shall mean the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

(q) "**Selling Expenses**" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement.

(r) "**Special Registration Statement**" shall mean (i) a registration statement relating to any employee benefit plan, (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, including any registration statements related to the resale of securities issued in such a transaction, or (iii) a registration related to stock issued upon conversion of debt securities.

SECTION 2. COVENANTS OF THE COMPANY

2.1 Financial Statements and Reports to Stockholders; Budget. For so long as an Investor or subsequent holder of Convertible Securities holds or is deemed to hold at least Two Hundred Fifty Thousand (250,000) shares of Registrable Securities (equitably adjusted for all stock splits, subdivisions, stock dividends, combinations and the like with respect to such shares), the Company shall deliver to each Investor:

(a) As soon as practicable after the end of each fiscal year, and in any event within one hundred twenty (120) days thereafter, audited consolidated balance sheets of the Company and its subsidiaries, if any, as of the end of such fiscal year, and consolidated statements of income, stockholders' equity and consolidated statements of cash flow of the Company and its subsidiaries, if any, for such year, prepared in accordance with generally accepted accounting principles, consistently applied, and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by the Board.

(b) As soon as practicable after the end of each fiscal quarter, and in any event within forty-five (45) days after the end of each such fiscal quarter, an unaudited consolidated balance sheet of the Company as at the end of such quarter, and unaudited consolidated statements of income, stockholders' equity and statements of cash flow for such quarter and for the current fiscal year to date. Such financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied (other than accompanying notes and subject to normal year-end adjustments), all in reasonable detail, including detailed quarterly comparisons to budget.

(c) As soon as practicable after the end of each month, and in any event within thirty (30) days after the end of each such month, an unaudited consolidated balance sheet of the Company as at the end of such month, and unaudited consolidated statements of income, stockholders' equity and statements of cash flow for such month and for the current fiscal year to date. Such financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied (other than accompanying notes and subject to year-end adjustments), all in reasonable detail, including detailed monthly comparisons to budget.

(d) As soon as practicable, and in any event within thirty (30) days prior to the beginning of the fiscal year, a copy of the Company's annual operating plan and budget for the upcoming fiscal year, which shall include without limitation forecasts of the Company's revenues, expenses and cash position on a month-to-month basis for such upcoming fiscal year together with any other budgets or revised budgets as they become available throughout the fiscal year.

(e) Contemporaneously with delivery to holders of Common Stock, a copy of each report of the Company delivered to holders of Common Stock.

2.2 Inspection. For so long as an Investor or subsequent holder of Convertible Securities holds or is deemed to hold at least Two Hundred Fifty Thousand (250,000) shares of Registrable Securities (equitably adjusted for all stock splits, subdivisions, stock dividends, combinations and the like with respect to such shares), the Company shall permit such Investor, at such Investor's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times and as often as may be reasonably requested by each such Investor; *provided*, *however*, that the Company shall not be obligated pursuant to this Section 2.2 with respect to a competitor of the Company or with respect to any information which it reasonably considers to be a trade secret or confidential information. The rights of an

Investor under this Section 2.2 may not be assigned as part of such Investor's sale of any of the Registrable Securities or Convertible Securities except with the consent of the Company, which consent shall not be unreasonably withheld.

2.3 Confidentiality. Each Investor agrees and will cause any representative of the Investor to hold in confidence and trust and not use or disclose any information provided to or learned by it in connection with its rights under this Section 2, except that such Investor may disclose such information to any general partner, limited partner, member, subsidiary or parent (and their respective representatives) of such Investor for the purpose of evaluating its investment in the Company as long as (a) such general partner, limited partner, member, subsidiary or parent is advised of the confidentiality provisions of this Section 2.3 and (b) such Investor uses its commercially reasonable best efforts to ensure that such general partner, limited partner, member, subsidiary or parent holds such information in confidence and trust and will not use or disclose any information provided to or learned by it except as required by law. Notwithstanding the foregoing, however, the obligation of each Investor to hold information confidential as provided herein or any other document or agreement relating thereto shall not prohibit such Investor from disclosing such information: (i) to its board of directors, investment advisers, attorneys, accountants, consultants and other professionals to the extent necessary to obtain their services in connection with its investment in the Company, *provided* that such persons agree to hold such information confidential as provided herein and in such provisions (as modified by this paragraph); (ii) to any prospective purchaser of any shares of the Company owned by such Investor as long as such prospective purchaser agrees in writing to be bound by the confidentiality provisions as provided herein or in such provisions (as modified by this paragraph); (iii) to such Investor's investment advisor or any investment companies managed by such Investor's investment advisor, *provided* that such persons agree to hold such information confidential as provided herein or in such provisions (as modified by this paragraph); or (iv) as required by applicable law or regulation, regulatory body, stock exchange, court or administrative order, or any listing or trading agreement concerning such Investor or the Company. Furthermore, nothing in this Section 2.3 shall restrict any Investor's ability to disclose the existence or nature of its relationship with the Company, the nature or amount of its investment in securities of the Company or to provide its affiliates with quarterly, annual or other reports and such other information about the Company prepared by such Investor in the ordinary course of its business, *provided* that said Investor takes commercially reasonable measures to ensure that any such affiliates protect the confidential nature of such confidential information. The Company understands that the Investors are in the business of making investments in early stage companies involved in various life science fields and, therefore, engage in discussions with numerous entities that are seeking capital. The Residuals resulting from access to or work with such confidential information shall not be subject to the confidentiality and non-use obligations contained in this Agreement. For the purposes hereof, the term "**Residuals**" means know-how and experience gained from the information delivered by the Company to the Investors hereunder, and retained in the unaided memories of the Investors without reference to any material that is written, stored in magnetic, electronic or physical form or otherwise fixed. "**Residuals**" specifically excludes any works protected by patent.

2.4 Proprietary Information and Inventions Agreements. The Company agrees to require each employee and officer of the Company to execute a proprietary information and inventions agreement and each consultant and advisor of the Company to execute an agreement that provides for confidential treatment of the Company's proprietary information as a condition of employment or engagement or continued employment or engagement, as the case may be, unless otherwise approved by the Board.

2.5 Restriction on Sales by Employees, Directors and Certain Stockholders. The Company and Holders agree that, until the time of a Qualified Public Offering, first, the Company, and second, the Investors will have a right of first refusal on all transfers of Common Stock by employees, directors and stockholders who individually, or together with his, her or its Affiliates, hold more than one percent (1%) of the outstanding capital stock of the Company ("**1% Stockholders**"), subject to transfers to family

members or trusts for the benefit of family members and other limited exceptions as determined by the Board. The Company agrees to include appropriate language to this effect in its Bylaws or in future employment agreements, stock option and/or restricted stock grants, or other similar agreements with employees, directors and 1% Stockholders, as applicable.

2.6 Qualified Small Business. The Company covenants that so long as any Convertible Securities, or the Common Stock into which such shares are converted, are held by a Holder in whose hands such shares of Common Stock are eligible to qualify as "qualified small business stock" as defined in Section 1202(c) of the of the Internal Revenue Code of 1986, as amended (the "**Code**") ("**Qualified Small Business Stock**"), it will (i) comply with any applicable filing or reporting requirements imposed by the Code on issuers of Qualified Small Business Stock and (ii) execute and deliver to each Holder, from time to time, such forms, documents, schedules and other instruments as may be reasonably requested thereby to cause the Convertible Securities, or the Common Stock into which such shares are converted, to qualify as Qualified Small Business Stock.

2.7 Real Property Holding Corporation. The Company is not a "United States real property holding corporation," as that term is defined in Internal Revenue Code ("**IRC**") Section 897(c)(2) and Treasury Regulation Section 1.897-2(b). If at any time in the future the Company shall become a "United States real property holding corporation," the Company shall notify each foreign investor of such event as promptly as practicable. Within thirty (30) days after receipt of a request from a foreign investor, the Company shall prepare and deliver to such foreign investor the statement required under Treasury Regulation Section 1.897-2(h) and, subject to the succeeding sentence, either or both of the following documents: (i) an affidavit in conformance with the requirements of IRC Section 1445(b)(3) and the regulations thereunder or (ii) a notarized statement, executed by an officer having actual knowledge of the facts, that the shares of Company stock held by such foreign investor are of a class that is regularly traded on an established securities market, within the meaning of IRC Section 1445(b)(6) and the regulations thereunder. If the Company is unable to provide either of the documents described in (i) or (ii) above upon request, it shall promptly, in any event within thirty (30) days, notify such foreign investor in writing of the reason for such inability. Finally, upon the request of a foreign investor and without regard to whether either document described in (i) or (ii) above has been requested, the Company shall reasonably cooperate with the efforts of such foreign investor to obtain a "qualifying statement" within the meaning of IRC Section 1445(b)(4) and the regulations thereunder or such other documents as would excuse a transferee of a foreign investor's interest from withholding of income tax imposed pursuant to IRC Section 897(a).

2.8 Board Meeting; Compensation of Directors. The Company hereby covenants that so long as the holders of the Convertible Securities are entitled to appoint any members of the Board pursuant to the Company's Restated Certificate of Incorporation, as amended, the Board shall not meet less frequently than quarterly. All non-employee directors will be compensated by the Company identically; *provided however*, that additional compensation may be provided to the Chairman of the Board or the Chairman of any Committee of the Board; *provided*, that such compensation is approved by the Board. All out-of-pocket and travel expenses of the directors incurred in attending Board meetings (or meetings of committees thereof) or in connection with the performance of their duties as directors shall be paid or reimbursed promptly by the Company. The Company shall also agree to indemnify each of its officers and directors to the fullest extent permitted by the Delaware General Corporation Law and enter into customary indemnification agreements with each of its officers and directors evidencing such indemnification obligation.

2.9 Board Observer Rights. For so long as an Investor or subsequent holder of Convertible Securities holds or is deemed to hold (or is obligated to purchase under the Purchase Agreement) an aggregate of at least Two Million (2,000,000) shares of Registrable Securities (equitably adjusted for

all stock splits, subdivisions, stock dividends, combinations and the like with respect to such shares), the Company shall allow one representative designated by such Investor (the "**Observer**") to attend meetings of the Board in a non-voting capacity. The Company shall provide the Observer with copies of all materials that are provided by the Company to its directors; *provided*, *however*, that a majority of the members of the Board shall be entitled to recuse the Observer from portions of any Board meeting and to redact portions of any Board or Board committee materials delivered to the Observer where and to the extent that such majority determines, in good faith that (i) such recusal is reasonably necessary, in the opinion of counsel to the Company, to preserve attorney-client privilege with respect to a material matter, (ii) there exists, with respect to any deliberation or Board materials, an actual or potential conflict of interest between the Investor who has appointed such Observer and the Company or (iii) the presence of the Observer would otherwise be materially injurious to the Company in such circumstances. Any Observer will be subject to the confidentiality provisions set forth in Section 2.3. The Observer shall receive no compensation from the Company for service as an Observer and shall not be reimbursed for any expenses incurred by the Observer in connection with attendance of any meeting of the Board.

2.10 Employee Stock. With respect to any shares issued or options or rights granted to employees after the date hereof, unless otherwise approved by the Board, the Company shall cause each employee of the Company to enter into an agreement providing for vesting of such shares or options or rights over forty-eight (48) months, with no shares or options or rights being vested for twelve (12) months from the date of commencement of services in the case of stock or option grants for new hires, or the date of issuance or grant in the case of subsequent stock or option grants, at which time 1/4th of the shares or options or rights shall be vested and 1/36th of the remaining shares, options or rights shall be vested monthly thereafter. Any options providing for early exercise and any grant of restricted stock shall provide for a repurchase option so that upon termination of the employment relationship of the stockholder, the Company or its assignee (to the extent permissible under applicable securities law qualification) retains the option to repurchase at cost any unvested shares held by such stockholder.

2.11 Termination of Covenants. The covenants of the Company set forth in this Section 2 shall be terminated and be of no further force or effect upon the earlier of (a) the closing of the first Qualified Public Offering, (b) the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction, *provided* that this Section 2.11 shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company or a sale of shares by the Company for primarily equity financing purposes, and (c) the date when no shares of Registrable Securities or Convertible Securities shall be outstanding.

SECTION 3. REGISTRATION RIGHTS

3.1 Demand Registration.

3.1.1. Request for Registration on Form other than Form S-3. Subject to the terms of this Agreement, in the event that the Company shall receive from the Initiating Holders at any time after the earlier of (i) three (3) years after the date of this Agreement and (ii) six (6) months after the effective date of the Company's initial public offering of shares of Common Stock under a Registration Statement, a written request that the Company effect any Registration with respect to all or a part of the Registrable Securities on a form other than Form S-3 for an offering reasonably anticipated to have an aggregate offering price to the public which would exceed Five Million Dollars ($5,000,000), the Company shall (i)

promptly give written notice of the proposed Registration to all other Holders and shall (ii) as soon as practicable, use its reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a written request given within twenty (20) days after written notice from the Company. The Company shall not be obligated to take any action to effect any such Registration pursuant to this Section 3.1.1:

(i) after the Company has effected two (2) such Registrations pursuant to this Section 3.1.1 and such Registrations have been declared effective; provided that either (A) the conditions of Section 3.4(a) have been satisfied or (B) the registration statements continue to remain effective and there are no stop orders in effect with respect to such registration statements;

(ii) during the period starting with the date of filing of, and ending on the date one hundred eighty (180) days following the effective date of the registration statement pertaining to the Company's initial public offering, other than pursuant to a Special Registration Statement; *provided* that the Company makes reasonable good faith efforts to cause such registration statement to become effective;

(iii) if within thirty (30) days of receipt of a written request from the Initiating Holders pursuant to Section 3.1.1, the Company gives notice to the Holders of the Company's intention to file a registration statement for a public offering, other than pursuant to a Special Registration Statement, within ninety (90) days; or

(iv) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 3.1.3 below.

3.1.2. Right of Deferral of Registration on Form other than Form S-3. If the Company shall furnish to all such Holders who joined in the request a certificate signed by the President of the Company stating that, in the good faith judgment of the Board, it would be seriously detrimental to the Company for any Registration to be effected as requested under Section 3.1.1, the Company shall have the right to defer the filing of a Registration Statement with respect to such offering for a period of not more than ninety (90) days from delivery of the request of the Initiating Holders; *provided, however*, that the Company may not utilize this right more than once in any twelve (12)-month period.

3.1.3. Request for Registration on Form S-3. Subject to the terms of this Agreement, in the event that the Company receives from one or more Holders a written request that the Company effect any Registration on Form S-3 (or any successor form to Form S-3 regardless of its designation) at a time when the Company is eligible to Register securities on Form S-3 (or any successor form to Form S-3 regardless of its designation) for an offering of Registrable Securities which such Holders in their good faith discretion determine would have an anticipated offering price of at least One Million Dollars ($1,000,000), the Company will promptly give written notice of the proposed Registration to all the Holders and will as soon as practicable use its best efforts to effect Registration of the Registrable Securities specified in such request, together with all or such portion of the Registrable Securities of any Holder joining in such request as are specified in a written request delivered to the Company within thirty (30) days after written notice from the Company of the proposed Registration. There shall be no limit to the number of occasions on which the Company shall be obligated to effect Registration under this Section 3.1.3, but the Company shall not be required to effect more than two (2) such Registrations in any twelve (12)-month period. Notwithstanding the foregoing, the Company shall not be obligated to effect any Registration pursuant to this Section 3.1.3:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than One Million Dollars ($1,000,000);

(iii) if within thirty (30) days of receipt of a written request from any Holder or Holders pursuant to this Section 3.1.3, the Company gives notice to such Holder or Holders of the Company's intention to make a public offering within ninety (90) days, other than pursuant to a Special Registration Statement; or

(iv) if the Company shall furnish to the Holders a certificate signed by the President of the Company stating that, in the good faith judgment of the Board, it would be seriously detrimental to the Company for any Registration to be effected as requested under Section 3.1.3, the Company shall have the right to defer the filing of a Registration Statement with respect to such offering for a period of not more than ninety (90) days from delivery of the request of the Holders requesting such Registration; *provided*, *however*, that the Company may not utilize this right more than once in any twelve (12)-month period.

3.1.4. Registration of Other Securities in Demand Registration. Any Registration Statement filed pursuant to the request of the Initiating Holders under this Section 3 may, subject to the provisions of Section 3.1.5, include securities of the Company other than Registrable Securities.

3.1.5. Underwriting in Demand Registration.

a. Notice of Underwriting.

If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company, as a part of their request made pursuant to this Section 3.1, and the Company shall include such information in the written notice referred to in Section 3.1.1 or 3.1.3. The right of any Holder to Registration pursuant to Section 3 shall be conditioned upon such Holder's agreement to participate in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting.

b. Inclusion of other Holders in Demand Registration.

If the Company, officers or directors of the Company holding Common Stock other than Registrable Securities or holders of securities issued by the Company other than Registrable Securities, request inclusion in such Registration, the Initiating Holders, to the extent they deem advisable and consistent with the goals of such Registration, shall, on behalf of all Holders, offer to any or all of the Company, such officers or directors and such holders of securities other than Registrable Securities that such securities other than Registrable Securities be included in the underwriting and may condition such offer on the acceptance by such persons of the terms of this Section 3.1.

c. Selection of Underwriter in Demand Registration.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement with the representative ("**Underwriter's Representative**") of the underwriter or underwriters selected for such underwriting by the Holders of a majority of the Registrable Securities being Registered by the Initiating Holders and agreed to by the Company, which agreement shall not be unreasonably withheld or delayed.

d. Marketing Limitation in Demand Registration.

In the event the Underwriter's Representative advises the Initiating Holders in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, then (i) first the securities other than Registrable Securities and (ii) next the securities requested to be registered by the Company, shall be excluded from such Registration to the extent required by such limitation. If a limitation of the number of shares is still required, the Initiating Holders shall so advise all Holders and the number of shares of Registrable Securities that may be included in the Registration and underwriting shall be allocated among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities entitled to inclusion in such Registration held by such Holders at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 3.1.5(d) shall be included in such Registration Statement. To facilitate the allocation of shares in accordance with the above provisions, the Company or the Underwriter's Representative may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

e. Right of Withdrawal in Demand Registration.

If any Holder of Registrable Securities, or a holder of other securities entitled (upon request) to be included in such Registration, disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company, the underwriter and the Initiating Holders delivered at least seven (7) business days prior to the effective date of the Registration Statement. The securities so withdrawn shall also be withdrawn from the Registration Statement.

3.1.6. Blue Sky in Demand Registration. In the event of any Registration pursuant to Section 3.1, the Company will exercise its reasonable best efforts to Register and qualify the securities covered by the Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably appropriate for the distribution of such securities; *provided, however*, that (i) the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, and (ii) notwithstanding anything in this Agreement to the contrary, in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

3.2 Piggyback Registration.

3.2.1. Notice of Piggyback Registration and Inclusion of Registrable Securities. Subject to the terms of this Agreement, in the event the Company decides to Register any of its Common Stock (either for its own account or the account of a security holder or holders exercising their respective demand Registration rights) on a form (other than a Registration on Form S-4 and Form S-8, as those forms are issued by the Commission or any substantially similar forms then in effect) that would be suitable for a Registration involving solely Registrable Securities, the Company will: (i) promptly give each Holder written notice thereof (which shall include a list of the jurisdictions in which the Company intends to attempt to qualify such securities under the applicable Blue Sky or other state securities laws) and (ii) include in such Registration (and any related qualification under Blue Sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request delivered to the Company by any Holder within fifteen (15) days after delivery of such written notice from the Company.

3.2.2. Underwriting in Piggyback Registration.

a. Notice of Underwriting in Piggyback Registration.

If the Registration of which the Company gives notice pursuant to Section 3.2.1 is for a Registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice given pursuant to Section 3.2.1. In such event the right of any Holder to Registration shall be conditioned upon such underwriting and the inclusion of such Holder's Registrable Securities in such underwriting to the extent provided in this Section 3. All Holders proposing to distribute their securities through such underwriting shall (together with the Company and the other holders distributing their securities through such underwriting) enter into an underwriting agreement with the Underwriter's Representative for such offering. The Holders shall have no right to participate in the selection of the underwriters for an offering pursuant to this Section 3.2.

b. Marketing Limitation in Piggyback Registration.

In the event the Underwriter's Representative advises the Holders seeking Registration of Registrable Securities pursuant to Section 3.2 in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, the Underwriter's Representative (subject to the allocation priority set forth in Section 3.2.2(c)) may:

i. in the case of the Company's initial Registered public offering, exclude some or all Registrable Securities from such Registration and underwriting; and

ii. in the case of any subsequent registered public offering, limit the number of shares of Registrable Securities to be included in such Registration and underwriting to not less than twenty percent (20%) of the securities included in such Registration (based on aggregate market values).

c. Allocation of Shares in Piggyback Registration.

In the event that the Underwriter's Representative limits the number of shares to be included in a Registration pursuant to Section 3.2.2(b), the number of shares to be included in such Registration shall be allocated (subject to Section 3.2.2(b)) in the following manner: The number of

shares, if any, that may be included in the Registration and underwriting by selling stockholders shall first be allocated among all the requesting Holders pro rata according to the respective amounts of Registrable Securities entitled to be included in such offering by such requesting Holders and then among all other holders of securities other than Registrable Securities requesting and legally entitled to include shares in such Registration, in proportion, as nearly as practicable, to the respective amounts of securities (including Registrable Securities) which such Holders and such other holders would otherwise be entitled to include in such Registration. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 3.2.2(c) shall be included in the Registration Statement. To facilitate the allocation of shares in accordance with the above provisions, the Company or the Underwriter's Representative may round the number of shares allocated to any Holder to the nearest one hundred (100) shares.

d. Withdrawal in Piggyback Registration.

If any Holder disapproves of the terms of any such underwriting, he may elect to withdraw therefrom by written notice to the Company and the underwriter delivered at least seven (7) business days prior to the effective date of the Registration Statement. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such Registration.

3.2.3. Blue Sky in Piggyback Registration. In the event of any Registration of Registrable Securities pursuant to Section 3.2, the Company will exercise its best efforts to Register and qualify the securities covered by the Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably appropriate for the distribution of such securities; *provided*, *however*, that (i) the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, and (ii) notwithstanding anything in this Agreement to the contrary, in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

3.3 Expenses of Registration. All Registration Expenses incurred in connection with two (2) Registrations pursuant to Section 3.1.1, all Registrations pursuant to Section 3.1.3 (Form S-3) and all Registrations pursuant to Section 3.2 shall be borne by the Company. All Registration Expenses incurred in connection with any other registration, qualification or compliance shall be apportioned among the Holders and other holders of the securities so registered on the basis of the number of shares so registered. Notwithstanding the above, the Company shall not be required to pay for any expenses of any Registration proceeding begun pursuant to Section 3.1 if the Registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be Registered (which Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one (1) demand Registration pursuant to Section 3.1; *provided further, however*, that if at the time of such withdrawal, the Holders have learned of a Material Adverse Event either (i) not known to the Holders at the time of their request or (ii) not made known to the Holders within fifteen (15) days after their request, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 3.1. All Selling Expenses relating to securities held by stockholders and being sold in such registration shall be borne by the respective holders of such securities Registered pro rata on the basis of the number of shares registered.

3.4 Registration Procedures. In the case of each registration, qualification or compliance effected by the Company pursuant to this Section 3, the Company will:

(a) Keep each Holder whose Registrable Securities are included in any Registration pursuant to this Agreement advised as to the initiation and completion of such Registration. At its expense the Company will: (i) use its best efforts to keep such Registration effective for a period of one hundred twenty (120) days or until the Holder or Holders have completed the distribution described in the Registration Statement relating thereto, whichever first occurs; and (ii) furnish such number of prospectuses (including preliminary prospectuses) in conformity with the Securities Act and such other documents as a Holder from time to time may reasonably request. With respect to clause (i) of the preceding sentence, the Company may at any time upon written notice to the participating Holders and for a period not to exceed sixty (60) days thereafter (the "**Suspension Period**") delay the filing or effectiveness of any registration statement or suspend the use or effectiveness of any registration statement (and the Holders hereby agree not to offer or sell any Registrable Securities pursuant to such registration statement during the Suspension Period) if the Company reasonably believes that the Company may, in the absence of such delay or suspension hereunder, be required under state or federal securities laws to disclose any corporate development the disclosure of which could reasonably be expected to have an adverse effect upon the Company, its stockholders, a potentially significant transaction or event involving the Company, or any negotiations, discussions, or proposals directly relating thereto. In the event that the Company shall exercise its rights hereunder, the applicable time period during which the registration statement is to remain effective shall be extended by a period of time equal to the duration of the Suspension Period. The Company may extend the Suspension Period for an additional consecutive sixty (60) days with the consent of the holders of a majority of the Registrable Securities proposed to be sold by the Holders in the applicable Registration, which consent shall not be unreasonably withheld. If so directed by the Company, the Holders shall use their best efforts to deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holders' possession, of the prospectus relating to such Registrable Securities current at the time of receipt of such notice.

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statements as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the periods specified in Section 3.4(a) above;

(c) Promptly notify each Holder of Registrable Securities covered by the registration statement at any time when the Company becomes aware of the happening of any event as a result of which the registration statement or the prospectus included in such registration statement or any supplement to the prospectus (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of the prospectus, in light of the circumstances under which they were made) not misleading or, if for any other reason it shall be necessary during such time period to amend or supplement the registration statement or the prospectus in order to comply with the Securities Act, whereupon, in either case, each Holder shall immediately cease to use such registration statement or prospectus for any purpose and, as promptly as practicable thereafter, the Company shall prepare and file with the Commission, and furnish without charge to the appropriate Holders and managing underwriters, if any, a supplement or amendment to such registration statement or prospectus which will correct such statement or omission or effect such compliance and such copies thereof as the Holders and any underwriters may reasonably request;

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions except as may be required by law;

(e) Cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed;

(f) Provide a transfer agent and registrar for all Registrable Securities and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(g) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement; and

(h) Use its best efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 3, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 3, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities (to the extent the then applicable standards of professional conduct permit said letter to be addressed to the Holders).

3.5 Information Furnished by Holder. It shall be a condition precedent of the Company's obligations under this Agreement that each Holder of Registrable Securities included in any Registration furnish to the Company such information regarding such Holder and the distribution proposed by such Holder or Holders as the Company may reasonably request.

3.6 Indemnification.

3.6.1. Company's Indemnification of Holders. To the extent permitted by law, the Company will indemnify each Holder, each of its officers, directors and constituent partners, members, managers, legal counsel for the Holders, and each person controlling such Holder, with respect to which Registration, qualification or compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter, against all claims, losses, damages or liabilities (or actions in respect thereof) to the extent such claims, losses, damages or liabilities arise out of or are based upon any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such Registration, qualification or compliance, or are based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act or Exchange Act or state or federal law applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration, qualification or compliance; and the Company will reimburse each such Holder, each of its officers, directors and constituent partners, members, managers, legal counsel for the Holders, each such underwriter and each person who controls any such Holder or underwriter for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action; *provided, however*, that the indemnity contained in this Section 3.6.1 shall not apply to amounts paid in

settlement of any such claim, loss, damage, liability or action if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld); and *provided further*, that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based upon any untrue statement or omission based upon written information furnished to the Company by such Holder, underwriter, or controlling person and stated to be for use in connection with the offering of securities of the Company.

3.6.2. Holder's Indemnification of Company. To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such Registration, qualification or compliance is being effected pursuant to this Agreement, indemnify the Company, each of its directors and officers who has signed the registration statement, each underwriter, if any, of the Company's securities covered by such a Registration Statement, each person who controls the Company or such underwriter within the meaning of the Securities Act, and each other such Holder, each of its officers, directors and constituent partners, members, managers and each person controlling such other Holder, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based upon any untrue statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act or Exchange Act or state or federal law applicable to such Holder and relating to action or inaction required of such Holder in connection with any such Registration, qualification or compliance; and will reimburse the Company, such Holders, such directors, officers, partners, persons, underwriters or control persons for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company, and duly executed, by such Holder and stated to be specifically for use in connection with the offering of securities of the Company; *provided, however*, that the indemnity contained in this Section 3.6.2 shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if settlement is effected without the consent of such Holder (which consent shall not unreasonably be withheld); and *provided further*, that each Holder's liability under this Section 3.6.2 shall be several, and not joint with other Holders, and shall not exceed such Holder's net proceeds from the offering of securities made in connection with such Registration.

3.6.3. Indemnification Procedure. Promptly after receipt by an indemnified party under this Section 3.6 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 3.6, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; *provided, however*, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld; *provided further, however*, that if either party reasonably determines that there may be a conflict between the position of the indemnifying party and the indemnified party in conducting the defense of such action, suit or proceeding by reason of recognized claims for indemnity under this Section 3.6, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 3.6, but the omission so to notify the indemnifying party will not relieve such party of any liability that such party may have to any indemnified party otherwise other than under this Section 3.6.

3.6.4. Contribution. If the indemnification provided for in this Section 3.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; *provided* that, in no event shall any contribution by a Holder under this Subsection 3.6 exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

3.6.5. Underwriting Agreement. Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

3.6.6. Survival. The obligations of the Company and Holders under this Section 3.6 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 3, and otherwise. No indemnifying party, in defense of any claim of litigation set forth under this Section 3.6, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

3.7 Limitations on Registration Rights Granted to Other Securities. From and after the date of this Agreement, the Company shall not enter into any other agreement with any holder or prospective holder of any securities of the Company providing for the granting to such holder of any information or Registration rights, except that, with the consent of the Holders of at least sixty-six and two-thirds percent (66 2/3%) of the Registrable Securities then outstanding, additional holders may be added as parties to this Agreement with regard to any or all securities of the Company held by them. Any such additional parties shall execute a counterpart of this Agreement, and upon execution by such additional parties and by the Company, shall be considered an Investor for all purposes of this Agreement. The additional parties and the additional Registrable Securities shall be identified in an amendment to Schedule A hereto.

3.8 Transfer of Rights. The rights to information under Section 2 and the right to cause the Company to Register securities granted by the Company to the Investors under Sections 3.1 and 3.2 may be assigned by any Holder to a transferee or assignee of any Convertible Securities or Registrable Securities not sold to the public acquiring at least One Hundred Twenty-Five Thousand (125,000) shares of such Holder's Registrable Securities (equitably adjusted for all stock splits, subdivisions, stock dividends, combinations and the like with respect to such shares); *provided*, *however*, that (i) the Company must receive written notice prior to the time of said transfer, stating the name and address of said transferee or assignee and identifying the securities with respect to which such rights are being assigned, and (ii) with respect to the rights to information and inspection under Section 2, the transferee or assignee of such rights must not be a person deemed by the Board, in its best judgment, to be a competitor or potential competitor of the Company. Notwithstanding the limitation set forth in the foregoing sentence respecting the minimum number of shares which must be transferred, (a) any Holder which is a partnership may transfer such Holder's rights to such Holder's constituent partners, retired partners (including spouses, ancestors, lineal descendants and siblings of such partners or spouses who

acquire Convertible Securities or Registrable Securities by gift, will or intestate succession), (b) any Holder which is a limited liability company may transfer such Holder's rights to such Holder's constituent members or retired members (including spouses, ancestors, lineal descendants and siblings of such members or spouses who acquire Convertible Securities or Registrable Securities by gift, will or intestate succession), (c) any Holder which is a natural person may transfer such Holder's rights to any immediate family member or to any trust created for the benefit of such Holder or his or her immediate family members, (d) any Holder that is a partnership or limited liability company may transfer such Holder's rights to an Affiliate, subject in each case to such transferee's agreeing to be bound by the rights and restrictions of this Agreement, and (e) any Holder may transfer such Holder's rights to any other Holder who has the right to cause the Company to Register securities granted by the Company to the Investors under Sections 3.1 and 3.2. The rights under Sections 4 and 5 may be assigned by an Investor only as provided in such Sections.

3.9 Market Stand-off. If requested in writing by the underwriters for the initial public offering of the Company's Common Stock, each holder of Registrable Securities who is a party to this Agreement shall agree not to sell publicly any shares of Registrable Securities or any other securities of the Company (other than shares of Registrable Securities or other securities of the Company being registered in such offering), without the consent of such underwriters, for a period of not more than one hundred eighty (180 days) following the effective date of the registration statement relating to such offering; *provided, however*, that the Company shall use commercially reasonable efforts to convince such managing underwriters to allow for alternative means of liquidity for the holders if, in the opinion of such managing underwriters, such liquidity can be provided without an adverse impact on such initial public offering; and, *provided, further, however*, that all persons entitled to registration rights with respect to shares of Common Stock who are not parties to this Agreement, all other persons selling shares of Common Stock in such offering and all executive officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities shall also have agreed not to sell publicly their Common Stock under the circumstances and pursuant to the terms set forth in this section. Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company, or the Company's underwriters, which are consistent with the foregoing, or which are reasonably necessary to give further effect thereto.

3.10 Sale of Convertible Securities to Underwriter. Notwithstanding any provision in this Agreement to the contrary, in lieu of converting any Convertible Securities prior to the filing of any Registration Statement filed pursuant to this Agreement, the holder of such Convertible Securities may sell such Convertible Securities to the underwriters of the offering being Registered upon the undertaking of such underwriters to convert the Convertible Securities on or prior to the closing date of the offering. If and when the Convertible Securities are converted in accordance with their applicable terms and conditions, the Company agrees to cause the Common Stock issuable on the conversion of the Convertible Securities to be issued within such time period as will permit the underwriters to make and complete the distribution contemplated by the underwriting.

3.11 Rule 144 Requirements. Immediately after the date on which a Registration Statement filed by the Company under the Securities Act becomes effective, the Company shall undertake to make publicly available, and available to the Holders of Registrable Securities, such information as is necessary to enable the holders of Registrable Securities to make sales of Registrable Securities pursuant to Rule 144 of the Commission under the Securities Act. The Company shall furnish to any holder of Registrable Securities, upon request, a written statement executed by the Company as to the steps it has taken to comply with the current public information requirements of Rule 144.

3.12 Termination of Company Agreements. The Registration rights set forth in Sections 3.1 and 3.2 shall terminate seven (7) years after the effective date of the Company's Registration Statement

filed in connection with the Company's first Qualified Public Offering or, as to any Holder, at any time following the effective date of the Company's first Qualified Public Offering, when such Holder is entitled to sell all of such Investor's Registrable Securities pursuant to Rule 144 (including Rule 144(k)) of the Commission under the Securities Act.

SECTION 4. RIGHT OF FIRST REFUSAL

4.1 Right of First Refusal. The Company hereby grants to each Investor the right of first refusal to purchase such Investor's pro rata share of New Securities (as defined in Section 4.2) which the Company may from time to time propose to sell and issue (the "**Right of First Refusal**"); *provided* that the Investors may waive the Right of First Refusal as to all Investors with the consent of the Investors holding at least sixty-six and two-thirds percent (66 2/3%) of the Convertible Securities then outstanding. For purposes of the Right of First Refusal an Investor's pro rata share (the "**ROFR Pro Rata Share**") shall be equal to that number or amount of New Securities to be sold multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock owned by such Investors (including shares of Common Stock issuable upon the conversion of all Convertible Securities and the exercise of all options and warrants owned by such Investor) and the denominator of which shall be the total number of shares of the Company's Common Stock deemed to be outstanding assuming the conversion of all outstanding convertible securities. Notwithstanding the foregoing, any Investor (the "**Subscribing Investor**") may, at the time it accepts the Company's offer, subscribe to purchase any or all of the securities offered ("**Oversubscription Securities**") which may be available as a result of the rejection, or partial rejection, of the offer by other Investors. All such Oversubscription Securities shall be allocated on a pro rata basis among those Investors subscribing to purchase them. For purposes of the Oversubscription Securities a Subscribing Investor's pro rata share (the "**Oversubscription Pro Rata Share**") shall be equal to that number or amount of Oversubscription Securities to be sold multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock owned by such Subscribing Investor (including shares of Common Stock issuable upon the conversion of all Convertible Securities and the exercise of all options and warrants owned by such Investor) and the denominator of which shall be the total number of shares of the Common Stock owned in aggregate by all of the Subscribing Investors (including shares of Common Stock issuable upon the conversion of all Convertible Securities and the exercise of all options and warrants owned by such Investors). Notwithstanding the foregoing, the Company shall not be required to offer or sell such New Securities to any Investor who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale. The Right of First Refusal shall be subject to the following provisions:

4.2 Definition of New Securities. "**New Securities**" shall mean any shares of Common Stock or Preferred Stock of the Company, whether now authorized or not, and rights, options, or warrants to purchase such shares of Common Stock or Preferred Stock, and all other securities having equity features, such as convertible notes or notes issued in conjunction with options or warrants; *provided* that "**New Securities**" shall not include:

(a) securities issued upon the conversion of any shares of the Series A Preferred Stock;

(b) securities issued to the Company's employees or officers or directors or outside consultants or contractors pursuant to a plan, agreement or arrangement duly approved by the Board;

(c) securities issued pursuant to a Qualified Public Offering;

(d) securities issued or issuable pursuant to the exercise or conversion of options, warrants or convertible securities (including, without limitation, the Convertible Promissory Notes) outstanding as of the date hereof;

(e) securities issued to effect any stock split, stock dividend or recapitalization of the Company;

(f) securities issued in connection with any borrowings, direct or indirect, from financial institutions or other persons by the Company, *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board;

(g) securities issued in connection with the Company obtaining lease financing, whether issued to a lessor, guarantor or other person, *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board;

(h) securities issued in connection with the acquisition of all or a substantial portion of the assets or the business of another entity by the Company *provided* that such issuance is pursuant to an agreement or arrangement duly approved by the Board;

(i) securities issued in connection with a corporate partnering transaction, strategic alliance, technology acquisition or transfer, or similar transaction, *provided* such issuance is pursuant to an agreement or arrangement duly approved by the Board; and

(j) any right, option or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to subsections (a) through (i) above.

4.3 Notices. In the event the Company proposes to undertake an issuance of New Securities, it shall give each Investor written notice (the "**Notice**") of its intention, describing the type of New Securities, the price, and the principal terms upon which the Company proposes to issue the same. Each Investor shall have twenty (20) days from the delivery of the Notice to agree to purchase up to the Investor's ROFR Pro Rata Share plus any Oversubscription Pro Rata Share for the price and upon the terms specified in the Notice by giving written notice to the Company and stating therein the quantity of New Securities and Oversubscription Securities to be purchased.

4.4 Failure to Exercise Right. In the event an Investor does not elect to purchase all of such Investor's ROFR Pro Rata Share of the New Securities pursuant to Section 4.1 and such New Securities are not purchased by other Investors, the Company shall have sixty (60) days after the last date on which any Investor's right to purchase lapsed to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within twenty (20) days from the date of said agreement) to sell the New Securities respecting which such Investor's option was not exercised, at or above the price and upon terms not materially more favorable to the purchasers of such securities than the terms specified in the initial Notice given in connection with such sale. In the event the Company has not sold the New Securities within said 60-day period (or sold and issued New Securities in accordance with the foregoing within twenty (20) days from the date of said agreement), the Company shall not thereafter issue or sell any New Securities without first offering such New Securities to the Investors in the manner provided in this Section 4.

4.5 Rights of Affiliated Investors. For the purposes of this Section 4, Investors who are Affiliates of one or more other Investors shall, at the election of an Investor and one or more such Affiliates, be treated as a group (an "**Investor Group**"). Members of an Investor Group shall have the right to reallocate the rights granted by this Section 4 among themselves as they determine.

4.6 Assignment. The Right of First Refusal set forth in this Section 4 may not be assigned or transferred, except that each Investor shall have the right to assign its right to purchase securities under this Section 4 to any Affiliate of such Investor, partner, member, retired partner or retired member; *provided* such Affiliate agrees in writing with the Company and the Investors, prior to and as a condition precedent to such transfer, to be bound by all the provisions of Sections 3.9, 5 and 6 of this Agreement.

4.7 Termination. The Right of First Refusal granted under this Section 4 shall not apply to, and shall terminate on and be of no further force or effect upon the earlier of (a) the closing of the first Qualified Public Offering and (b) the date of the closing of a sale, lease, or other disposition of all or substantially all of the Company's assets or the Company's merger into or consolidation with any other corporation or other entity, or any other corporate reorganization, in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction, *provided* that this Section 4.7 shall not apply to a merger effected exclusively for the purpose of changing the domicile of the Company or a sale of shares by the Company for primarily equity financing purposes.

SECTION 5. TRANSFERS OF SECURITIES BY INVESTORS.

5.1 Notices. If any Investor (the "**Transferor**") proposes to sell, assign, hypothecate or otherwise transfer (a "**Transfer**") any securities of the Company owned by such Investor from and after the date of this Agreement, other than pursuant to the provisions of Section 5.6 of this Agreement, the Transferor shall first give each of the other Investors the right to purchase such securities by delivering to them a written offer which shall state the price and other terms and conditions of the proposed Transfer. If the Transferor proposes to Transfer the securities for consideration other than solely cash and/or promissory notes, the offer to the Investors shall, to the extent of such consideration, permit each Investor to pay in lieu thereof, cash equal to the fair market value of such consideration, and the offer shall state the estimate of such fair market value as determined by the Board. The Transferor shall fix the period of the offer which shall be a minimum of thirty (30) days or such longer period as is necessary to determine the fair market value of the consideration referred to in the preceding sentence.

5.2 Acceptance of Offer. An Investor may accept an offer ("**Purchasing Investor**") only by giving written notice to the Transferor before the offer expires that such Purchasing Investor has accepted the offer to purchase some or all of the securities offered (the "**Accepted Securities**"); *provided, however*, that the maximum number or amount of securities a Purchasing Investor shall be entitled to purchase shall be equal to that number or amount of securities to be transferred multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock owned by such Purchasing Investor (including shares of Common Stock issuable upon the conversion of all Convertible Securities and the exercise of all options and warrants owned by such Investor) and the denominator of which shall be the aggregate number of shares of Common Stock held by all Investors (including shares of Common Stock issuable upon the conversion of all Convertible Securities and the exercise of all options and warrants owned by all Investors), excluding the Transferor's shares of Common Stock. Notwithstanding the foregoing, any Purchasing Investor may, at the time it accepts the offer, subscribe to purchase any or all securities offered which may be available as a result of the rejection, or partial rejection, of the offer by other Investors, which securities shall be allocated on a pro rata basis among those Purchasing Investors subscribing to purchase them.

5.3 Allocation of Securities and Payment. Promptly following the expiration of an offer, the Transferor shall allocate the securities subscribed for among the Purchasing Investors accepting or partially accepting the offer, pro rata, based upon their respective holdings as aforesaid, and shall by written notice (the "**Acceptance Notice**") advise all Purchasing Investors of the number or amount of securities allocated to each of the Purchasing Investors. Within ten (10) days following receipt of the Acceptance Notice, each of the Purchasing Investors shall deliver to the Transferor payment in full for the Accepted Shares purchased by it against delivery by the Transferor to each Purchasing Investor of a certificate or certificates evidencing the Accepted Securities purchased by it.

5.4 Failure to Exercise. To the extent an offer pursuant to Section 5.1 is not accepted by the other Investors, the Transferor may, for a period of ninety (90) days thereafter, transfer the unaccepted securities, or any of them, at or above the price, and upon the other terms and conditions specified in such offer, to any Person or Persons; *provided* that such Person or Persons agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement and the provisions of the Voting Agreement.

5.5 Assignment. The right of first refusal set forth in this Section 5 may not be assigned or transferred, except that each Investor shall have the right to assign its rights to purchase such securities under this Section 5 to any Affiliate of such Investor; *provided* such Affiliate agrees in writing with the Company and the Investors, prior to and as a condition precedent to such assignment, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement and the provisions of the Voting Agreement.

5.6 Permitted Transfers.

(a) Notwithstanding anything to the contrary contained herein, any Investor which is a partnership may transfer, without first offering any securities of the Company to the other Investors, all or any of its securities to any of its Affiliates or successor funds or to a partner or retired partner or member or retired member of such partnership or limited liability company, as the case may be, or to one or more direct or indirect partners, members or other equity holders of any such Affiliates, successor funds, partners or retired partners, members or retired members, or to the estate of any of the foregoing or transfer by will or intestate succession to the spouse or to the siblings, lineal descendants or ancestors of any of the foregoing or the spouse of any of the foregoing; *provided* such transferee agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement and the provisions of the Voting Agreement.

(b) Notwithstanding anything to the contrary contained herein, any Investor which is a corporation may Transfer, without first offering any securities of the Company to the other Investors, all or any of its securities to any of its Affiliates; *provided* such Affiliate agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement and the provisions of the Voting Agreement.

(c) Notwithstanding anything to the contrary contained herein, any Investor who is an individual may Transfer, without first offering any securities of the Company to the other Investors, all or any of his or her securities to his or her spouse or their spouse's siblings, lineal descendants or ancestors, nieces or nephews, or any entity that is an Affiliate of such Investor; *provided* such transferee agrees in writing with the Company and the Investors, prior to and as a condition precedent to such Transfer, to be bound by all of the provisions of Sections 3.9, 5 and 6 of this Agreement and the provisions of the Voting Agreement.

(d) Notwithstanding the foregoing, any Investor may Transfer, without first offering any securities of the Company to the other Investors, all or any of its securities to one or more other Investors hereunder.

5.7 Termination. The right of first refusal granted under this Section 5 shall expire upon the closing of the first Qualified Public Offering and shall not be applicable to any shares sold pursuant thereto.

SECTION 6. MISCELLANEOUS.

6.1 Entire Agreement; Successors and Assigns. This Agreement constitutes the entire contract between the Company and the Investors relative to the subject matter hereof. Any previous agreement between the Company, the Investors and the Holders concerning Registration rights and the other matters set forth herein, is superseded by this Agreement. Subject to the exceptions specifically set forth in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective executors, administrators, heirs, successors and assigns of the parties.

6.2 Aggregation of Stock. All Convertible Securities and Registrable Securities held or acquired by affiliated entities or persons shall be aggregate together for the purpose of determining the availability of any rights under this Agreement.

6.3 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS ENTERED INTO AND WHOLLY TO BE PERFORMED WITHIN THE STATE OF CALIFORNIA BY CALIFORNIA RESIDENTS.

6.4 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.5 Headings. The headings of the Sections of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

6.6 Notices. Any notice required or permitted hereunder shall be given in writing and shall be conclusively deemed effectively given upon personal delivery, or five (5) days after deposit in the United States mail, by registered or certified mail (or airmail, if notice shall be sent outside the United States), postage prepaid, or two (2) days after delivery to a nationally known air courier company, addressed (i) if to the Company, to the Company's address as set forth below the Company's name on the signature page of this Agreement and (ii) if to an Investor, to such Investor's address as set forth on the signature page of this Agreement, or at such other address as the Company or such Investor may designate by ten (10) days, advance written notice to the other parties hereto. Any notice sent outside the United States shall also be telexed or telecopied.

6.7 Amendment of Agreement; Waivers. Subject to Section 3.7 and Section 4.1, any provision of this Agreement may be amended or waived by a written instrument signed by the Company and by Persons holding at least sixty-six and two-thirds percent (66 2/3%) of, prior to the closing of the first Qualified Public Offering, the Series A Preferred Stock, and after such closing, the Registrable Securities. Any amendment or waiver effected in accordance with Section 3.7, Section 4.1 or this Section 6.7 shall be binding upon the Company and all Holders and each of their respective successors and assigns.

6.8 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of its Series A Preferred Stock pursuant to the Purchase Agreement, any purchaser of such shares of Series A Preferred Stock shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor" hereunder and Schedule A shall be amended accordingly.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

COMPANY:

EVOKE PHARMA, INC.

By: /s/ DAVID A. GONYER
David A. Gonyer
President

Address: 12636 High Bluff Drive, Suite 400
San Diego, California 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTORS:

GARNER INVESTMENTS, L.L.C.

By: /s/ CAM L. GARNER
Name: Cam L. Garner
Title: President

Address: P.O. Box 675866
5949 Greenview Court
Rancho Santa Fe, CA 92067

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTORS:

WINDAMERE III, LLC

By: /s/ SCOTT L. GLENN
Name: Scott L. Glenn
Title: Managing Member

Address: 6402 Cardeno Drive
La Jolla, CA 92037
Fax No.: (858) 456-2295

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTORS:

HALE BIOPHARMA VENTURES, LLC

By: /s/ DAVID F. HALE
Name: David F. Hale
Title: Chief Executive Officer

Address: 1042-B El Camino Real, Suite 430
Encinitas, CA 92024-1322

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTORS:

DOMAIN PARTNERS VII, L.P.

By: One Palmer Square Associates VII, L.L.C.
Its: General Partner

By: /s/ KATHLEEN K. SCHOEMAKER
Name: Kathleen K. Schoemaker
Title: Managing Member

Address: One Palmer Square, Suite 515
Princeton, NJ 08542

DP VII ASSOCIATES, L.P.

By: One Palmer Square Associates VII, L.L.C.
Its: General Partner

By: /s/ KATHLEEN K. SCHOEMAKER
Name: Kathleen K. Schoemaker
Title: Managing Member

Address: One Palmer Square, Suite 515
Princeton, NJ 08542

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INVESTORS:

LATTERELL VENTURE PARTNERS III, L.P.

By: Latterell Capital Management III, L.L.C.
Its: General Partner

By: /s/ PATRICK F. LATTERELL
Name: Patrick F. Latterell
Its: Managing Member

LVP III ASSOCIATES, L.P.

By: Latterell Capital Management III, L.L.C.
Its: General Partner

By: /s/ PATRICK F. LATTERELL
Name: Patrick F. Latterell
Its: Managing Member

LVP III PARTNERS, L.P.

By: Latterell Capital Management III, L.L.C.
Its: General Partner

By: /s/ PATRICK F. LATTERELL
Name: Patrick F. Latterell
Its: Managing Member

Address: 1 Embarcadero Center
Suite 4050
San Francisco, CA 94111

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

CAM GALLAGHER

/s/ CAM GALLAGHER

Address: 3888 Quarter Mile Drive
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

STEPHEN F. GALLAGHER, TRUSTEE WITH FIRST NATIONAL BANK, N.A., AS SUCCESSOR TRUSTEE U/A DATED MARCH 21, 2005 AS MAY BE AMENDED

By: /s/ STEPHEN F. GALLAGHER, TRUSTEE
Name: Stephen F. Gallagher
Title: Trustee

Address: 4101 Beachside One Drive
Destin, FL 32550

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

MICHAEL J. POLLOCK

/s/ MICHAEL J. POLLOCK

Address: 3721 Roosevelt Blvd.
Middletown, OH 45044

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

ADAM COHEN

/s/ ADAM COHEN

Address: One McKittrick Court
Old Tappan, NJ 07675

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

LARRY TIFFANY

/s/ LARRY TIFFANY

Address: 21504 Quick Fox Lane
Gaithersburg, MD 20882

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

KEN WORMSER

/s/ KEN WORMSER

Address: 31 Boset Rd.
Demerst, NJ 07627

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

DAVID PARKS

/s/ DAVID PARKS

Address: 64 East 86th Street, #12C
New York, NY 10028

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

ROEY EYAL

/s/ ROEY EYAL

Address: 120 w. 21st St., # 1502
New York, NY 10011

EVOKE PHARMA, INC.
INVESTOR RIGHTS AGREEMENT
COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

NERVEDA, INC.

By: /s/ CAM GALLAGHER
Name: Cam Gallagher
Title: President and Chief Executive Officer

Address: 3888 Quarter Mile Drive
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

VP COMPANY INVESTMENTS 2008, LLC

By: /s/ ALAN C. MENDELSON
Name: Alan C. Mendelson
Title: Managing Member

Address: 555 W. Fifth Street, Suite, 800
Los Angeles, CA 90013-1010
Attn.: Alfred Harutunian

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

SCOTT N. WOLFE

/s/ SCOTT N. WOLFE

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

FAYE HUNTER RUSSELL TRUST U/T/D 7/11/88

By: /s/ FAYE H. RUSSELL

Name: Faye H. Russell
Title: Trustee

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

CHESTON J. LARSON

/s/ CHESTON J. LARSON

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

MATTHEW T. BUSH

/s/ MATTHEW T. BUSH

Address: c/o Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 16th day of June 2010.

INVESTORS:

WS INVESTMENT COMPANY, LLC (2010A)

By: /s/ [ILLEGIBLE]
Name:
Title:

Address: 60 Page Mill Road
Palo Alto, CA 94304-1050

SCHEDULE A

June 1, 2007

INVESTORS

Investors

GARNER INVESTMENTS, L.L.C.

WINDAMERE III, LLC

HALE BIOPHARMA VENTURES, LLC

DOMAIN PARTNERS VII, L.P.

DP VII ASSOCIATES, L.P.

LATTERELL VENTURE PARTNERS III, L.P.

LVP III ASSOCIATES, L.P.

LVP III PARTNERS, L.P

Additional Investors as of June 16, 2010

Investors

CAM GALLAGHER

STEPHEN F. GALLAGHER, TRUSTEE WITH FIRST NATIONAL BANK, N.A., AS SUCCESSOR TRUSTEE U/A DATED MARCH 21, 2005 AS MAY BE AMENDED

MICHAEL J. POLLOCK

ADAM COHEN

LARRY TIFFANY

KEN WORMSER

DAVID PARKS

ROEY EYAL

NERVEDA, INC.

VP COMPANY INVESTMENTS 2008, LLC

SCOTT N. WOLFE

FAYE HUNTER RUSSELL TRUST U/T/D 7/11/88

CHESTON J. LARSON

MATTHEW T. BUSH

WS INVESTMENT COMPANY, LLC (2010A)

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

WARRANT TO PURCHASE STOCK

Corporation:	Evoke Pharma, Inc.
Number of Shares:	25,000
Class of Stock:	Series A Preferred
Initial Exercise Price:	$1.50 per share
Issue Date:	February 7, 2007
Expiration Date:	February 7, 2014

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, the receipt of which is hereby acknowledged, **SQUARE 1 BANK** or its assignee ("***Holder***") is entitled to purchase the number of fully paid and nonassessable shares of the class of securities (the "***Shares***") of the corporation (the "***Company***") at the initial exercise price per Share (the "***Warrant Price***") all as set forth above and as adjusted pursuant to Article 2 of this warrant, subject to the provisions and upon the terms and conditions set forth in this warrant.

ARTICLE 1

EXERCISE

1.1 Method of Exercise. Holder may exercise this warrant by delivering this warrant and a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check or wire transfer of immediately available funds for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this warrant as specified in Section 1.1, Holder may from time to time convert this warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Section 1.3.

1.3 Fair Market Value. If the Shares are traded regularly in a public market, the fair market value of the Shares shall be the closing price of the Shares (or the closing price of the Company's stock into which the Shares are convertible) reported for the business day immediately before Holder delivers its Notice of Exercise to the Company. If the Shares are not regularly traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this warrant, the Company shall deliver to Holder certificates for the Shares acquired and, if this warrant has not been fully exercised or converted and has not expired, a new warrant representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this warrant, the Company at its expense shall execute and deliver, in lieu of this warrant, a new warrant of like tenor.

1.6 Repurchase on Sale, Merger, or Consolidation of the Company.

1.6.1 "***Acquisition***." For the purpose of this warrant, "Acquisition" means (a) any sale, license, or other disposition of all or substantially all of the assets (including intellectual property) of the Company, or (b) any reorganization, consolidation, merger or sale of the voting securities of the Company or any other transaction where the holders of the Company's securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction.

1.6.2 Assumption of Warrant. If upon the closing of any Acquisition the successor entity assumes the obligations of this warrant, then this warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price shall be adjusted accordingly. The Company shall use reasonable efforts to cause the surviving corporation to assume the obligations of this warrant.

1.6.3 Nonassumption. If upon the closing of any Acquisition the successor entity does not assume the obligations of this warrant and Holder has not otherwise exercised this warrant in full, then this warrant shall be deemed to have been automatically converted pursuant to Section 1.2 and thereafter Holder shall participate in the Acquisition on the same terms as other holders of the same class of securities of the Company.

1.7 Increase in Underlying Number of Shares. If, on or before the Maturity Date listed in the Loan and Security Agreement (the "LSA") entered into by the Company and the Holder on or about the same date as this warrant, the Borrower requests and receives an Advance(s), the number of Shares subject to this warrant shall be increased to equal: (i) 25,000; plus (ii) the Additional Number of Shares listed in the row corresponding to the Aggregate Amount of Advances made Under the Revolving Line prior to the Maturity Date in the table immediately below.

Aggregate Amount of Advances Under the Revolving Line	Additional Number of Shares
$0 - $499,999	5,000
$500,000 - $999,999	10,000
$1,000,000 - $1,499,999	15,000
$1,500,000 - $1,999,999	20,000
$2,000,000 or more	25,000

Regardless of any adjustments to the number of shares subject to this warrant made pursuant to this Section, all shares subject to this warrant shall of the same series and class and bearing the same rights, preferences, and privileges as the class of stock denoted in the above caption hereto. If not otherwise defined in this warrant, capitalized terms in this Section shall have the same meaning as assigned to them in the LSA. The adjustment set forth in this Section 1.7 shall be in addition to any adjustments hereto made pursuant to Article 2 hereof. For avoidance of doubt, Holder shall be entitled to the Number of Shares stated in the caption at the top of the first page of this warrant regardless of whether the Borrower requests and receives an Advance(s).

ARTICLE 2

ADJUSTMENTS TO THE SHARES

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on its common stock payable in common stock, or other securities, or subdivides the outstanding common stock into a greater amount of common stock, then upon exercise of this warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend or subdivision occurred.

2.2 Reclassification, Exchange or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this warrant, Holder shall be entitled to receive, upon exercise or conversion of this warrant, the number and kind of securities and property that Holder would have received for the Shares if this warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation upon the closing of a registered public offering of the Company's common stock. The Company or its successor shall promptly issue to Holder a new warrant for such new securities or other property. The new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the new warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Combinations, Etc. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a greater number of shares, the Warrant Price shall be proportionately decreased.

2.4 Adjustments for Diluting Issuances. In the event of the issuance (a "***Diluting Issuance***") by the Company after the Issue Date of securities at a price per share less than the Warrant Price, then the number of shares of common stock issuable upon conversion of the Shares shall be adjusted in accordance with those provisions of the Company's Certificate of Incorporation that apply to Diluting Issuances.

2.5 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, the Company at its expense shall promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price in effect upon the date thereof and the series of adjustments leading to such Warrant Price.

2.6 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this warrant and the Number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of this warrant, the Company shall eliminate such fractional share interest by paying Holder amount computed by multiplying the fractional interest by the fair market value of a full Share.

ARTICLE 3

REPRESENTATIONS AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company hereby represents and warrants to the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this warrant is not greater than the fair market value of the Shares as of the date of this warrant.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached to this warrant is true and complete as of the Issue Date.

3.2 Notice of Certain Events. The Company shall provide Holder with not less than 10 days prior written notice, including a description of the material facts surrounding, any of the following events: (a) declaration of any dividend or distribution upon its common stock,

whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) effecting any reclassification or recapitalization of common stock; or (c) the merger or consolidation with or into any other corporation, or sale, lease, license, or conveyance of all or substantially all of its assets, or liquidation, dissolution or winding up.

3.3 Information Rights. So long as the Company is not a public company and the Holder holds this warrant and/or any of the Shares, the Company shall deliver to the Holder (a) promptly after mailing, copies of all communiques to the shareholders of the Company, (b) within one hundred fifty (150) days after the end of each fiscal year of the Company, the annual audited financial statements of the Company certified by independent public accountants of recognized standing and (c) within forty-five (45) days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements.

3.4 Registration Under Securities Act of 1933, as amended (the "Act"). The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall be "Registrable Securities", and Holder shall be a "Holder" under the Investor Rights Agreement dated as of June 1, 2007.

3.5 No Shareholder Rights. Except as provided in this warrant, the Holder will not have any rights as a shareholder of the Company until the exercise of this warrant.

ARTICLE 4

REPRESENTATIONS AND COVENANTS OF THE HOLDER

4.1 Purchase for Own Account. This warrant and the securities to be acquired upon exercise of this warrant by the Holder will be acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that the Holder has not been formed for the specific purpose of acquiring this warrant or the Shares.

4.2 Disclosure of Information. The Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this warrant and its underlying securities. The Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to the Holder or to which the Holder has access.

4.3 Investment Experience. The Holder understands that the purchase of this warrant and its underlying securities involves substantial risk. The Holder has experience as an investor in securities of companies in the development stage and acknowledges that the Holder can bear the economic risk of such Holder's investment in this warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and

certain of its officers, directors or controlling persons of a nature and duration that enables the Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. The Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. The Holder understands that this warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5

MISCELLANEOUS

5.1 Term: Exercise Upon Expiration. This warrant is exercisable in whole or in part, at any time and from time to time on or before the Expiration Date set forth above; provided, however, that if the Company completes its initial public offering within the three-year period immediately prior to the Expiration Date, the Expiration Date shall automatically be extended until the third anniversary of the effective date of the Company's initial public offering. If this warrant has not been exercised prior to the Expiration Date, this warrant shall be deemed to have been automatically exercised on the Expiration Date by "cashless" conversion pursuant to Section 1.2.

5.2 Legends. This warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH APPLICABLE LAW.

5.3 Compliance with Securities Laws on Transfer. This warrant and the Shares issuable upon exercise of this warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee. The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder or if there is no material question as to the availability of Rule 144, including, without limitation, current information as referenced in Rule 144(c), Holder represents that it has complied with Rule 144 (d) and (e) in reasonable detail, the selling broker represents that it has complied with Rule 144(f), and the Company is provided with a copy of Holder's notice of proposed sale.

5.4 Transfer Procedure. Subject to the provisions of Section 5.3, Holder may transfer all or part of this warrant or the Shares issuable upon exercise of this warrant (or the securities issuable, directly or indirectly, upon conversion of the Shares, if any) by giving the Company notice of the portion of the warrant being transferred setting forth the name, address and taxpayer identification number of the transferee and surrendering this warrant to the Company for reissuance to the transferee(s) (and Holder, if applicable). No surrender or reissuance shall be required if the transfer is to an affiliate of Holder. The Company may refuse to transfer this warrant or the Shares to any person who directly competes with the Company (as reasonably determined in good faith by the Company's board of directors, but in no event shall an affiliate of Holder be deemed a competitor of the Company), unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid, at such address as may have been furnished to the Company or the Holder, as the case may be, in writing by the Company or such Holder from time to time. All notices to the Holder shall be addressed as follows:

Square 1 Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Crowe Building
Durham, NC 27701

Notice to the Company shall be addressed as follows until the Holder receives notice of a change in address:

Evoke Pharma, Inc.
12636 High Bluff Drive, Suite 400
San Diego, CA 92130
Attn: Matt D'Onofrio
Telephone: (858) 967-5454
Facsimile: (858) 523-5450

With a copy to:

Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130
Attn: Cheston J. Larson
Telephone: (858) 523-5400
Facsimile: (858) 523-5450

5.6 Amendments. This warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Governing Law. This warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

EVOKE PHARMA

By: /s/ David A. Gonyer

Name: David A. Gonyer

Title: CEO

SQUARE ONE BANK

By: /s/ Scott Foote

Name: Scott Foote

Title: SVP

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned hereby elects to purchase shares of the stock of **EVOKE PHARMA, INC.** pursuant to the terms of the attached warrant, and tenders herewith payment of the purchase price of such shares in full.

1. The undersigned hereby elects to convert the attached warrant into shares in the manner specified in the warrant. This conversion is exercised with respect to of the shares covered by the warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing said shares in the name of the undersigned or in such other name as is specified below:

Square 1 Bank
Attn: Warrant Administrator
406 Blackwell Street, Suite 240
Fowler Building
Durham, NC 27701

3. The undersigned represents it is acquiring the shares solely for its own account and not as a nominee for any other party and not with a view toward the resale or distribution thereof except in compliance with applicable securities laws.

SQUARE 1 BANK or Registered Assignee

_____
(Signature)

_____
(Date)

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: EVOKE PHARMA, INC.
Number of Shares: See Section 1.7 and Section 1.8
Type/Series of Stock: Series A Preferred Stock (Subject to Section 1.8)
Warrant Price: $1.50 per share (Subject to Section 1.8)
Issue Date: June 1, 2012
Expiration Date: June 1, 2022 See also Section 5.1(b).

Credit Facility: This Warrant to Purchase Stock ("**Warrant**") is issued in connection with that certain Loan and Security Agreement of even date herewith between Silicon Valley Bank and the Company (the "**Loan Agreement**").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SILICON VALLEY BANK (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, "**Holder**") is entitled to purchase the number of fully paid and nonassessable shares (the "**Shares**") of the above-stated Type/Series of Stock (the "**Class**") of the above-named company (the "**Company**") at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. Reference is made to Section 5.4 of this Warrant whereby Silicon Valley Bank shall transfer this Warrant to its parent company, SVB Financial Group.

SECTION 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

$$X = Y(A-B)/A$$

where:

X = the number of Shares to be issued to the Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);

A = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share; and

B = the Warrant Price.

1.3 Fair Market Value. If the Company's common stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "**Trading Market**") and the Class is common stock, the fair market value of a Share shall be the closing price or last sale price of a share of common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's common stock is then traded in a Trading Market and the Class is a series of the Company's convertible preferred stock, the fair market value of a Share shall be the closing price or last sale price of a share of the Company's common stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company multiplied by the number of shares of the Company's common stock into which a Share is then convertible. If the Company's common stock is not traded in a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, "**Acquisition**" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, consolidation or reorganization; or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company's then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "Cash/Public Acquisition"), either (i)

Holder shall exercise this Warrant pursuant to Section 1.1 and/or 1.2 and such exercise will be deemed effective immediately prior to and contingent upon the consummation of such Acquisition or (ii) if Holder elects not to exercise the Warrant, this Warrant will expire immediately prior to the consummation of such Acquisition.

(c) The Company shall provide Holder with written notice of its request relating to the Cash/Public Acquisition (together with such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such contemplated Cash/Public Acquisition giving rise to such notice), which is to be delivered to Holder not less than seven (7) Business Days prior to the closing of the proposed Cash/Public Acquisition. In the event the Company does not provide such notice, then if, immediately prior to the Cash/Public Acquisition, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon such exercise to the Holder and Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof.

(d) Upon the closing of any Acquisition other than a Cash/Public Acquisition defined above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(e) As used in this Warrant, "**Marketable Securities**" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market, and (iii) Holder would be able to publicly re-sell, within six (6) months following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder m such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition.

1.7 Number of Shares. The Number of Shares for which this Warrant shall be exercisable shall be equal to (i) the Applicable Warrant Coverage Amount divided by (ii) the Warrant Price (Subject to adjustment pursuant to Section 1.8 below). For purposes hereof, the "Applicable Warrant Coverage Amount" shall be an amount equal to three percent (3.00%) of the principal amount of Growth Capital Advances made by Silicon Valley Bank to the Company pursuant to the Loan Agreement.

1.8 Adjustment in Type/Series of Stock. Number of Shares and Warrant Price. If, anytime after the Issue Date but on or prior to December 31, 2012, the Company completes the sale of a new series of Preferred Stock having rights, preferences or privileges senior or pari passu to the Series A Preferred Stock ("New Preferred Shares") in a bona fide equity financing, this Warrant shall, concurrent with the issuance of such New Preferred Shares, automatically be adjusted to instead be exercisable for the New Preferred Shares, bearing the same rights, preferences, and privileges of such New Preferred Shares, the Warrant Price hereunder shall automatically be adjusted to equal the per share price of the New Preferred Shares and the Number of Shares for which this Warrant shall be exercisable shall automatically be adjusted to equal (i) the Applicable Warrant Coverage Amount (determined in accordance with Section 1.7 above), divided by (ii) the price per share of such New Preferred Shares.

SECTION 2. ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends. Splits, Etc. If the Company declares or pays a dividend or distribution on the outstanding shares of the Class payable in common stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of the Class are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 Conversion of Preferred Stock. If the Class is a class and series of the Company's convertible preferred stock, in the event that all outstanding shares of the Class are converted, automatically or by action of the holders thereof, into common stock pursuant to the provisions of the Company's Certificate of Incorporation, including, without limitation, in connection with the Company's initial, underwritten public offering and sale of its common stock pursuant to an effective registration statement under the Act (the "**IPO**"), then from and after the date on which all outstanding shares of the Class have been so converted, this Warrant shall be exercisable for such number of shares of common stock into which the Shares would have been converted had the Shares been outstanding on the date of such conversion, and the Warrant Price shall equal the Warrant Price in effect as of immediately prior to such conversion divided by the number of shares of common stock into which one Share would have been converted, all subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

2.4 Adjustments for Diluting Issuances. Without duplication of any adjustment otherwise provided for in this Section 2, the number of shares of common stock issuable upon conversion of the Shares shall be subject to anti-dilution adjustment from time to time in the manner set forth in the Company's Articles or Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.5 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (i) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (ii) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, Class and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Executive Officer or Chief Financial Officer, including computations of such adjustment and the Warrant Price, Class and number of Shares in effect upon the date of such adjustment.

SECTION 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) The initial Warrant Price referenced on the first page of this Warrant is not greater than the price per share at which shares of the Class were last sold and issued prior to the Issue Date hereof in an arms-length transaction in which at least $500,000 of such shares were sold.

(b) All Shares which may be issued upon the exercise of this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class, common stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into common stock or such other securities.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete, in all material respects, as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of the Class or common stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of the Class;

(d) effect an Acquisition or to liquidate, dissolve or wind up; or

(e) effect an IPO;

then, in connection with each such event, the Company shall give Holder:

(1) at least seven (7) Business Days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above;

(2) in the case of the matters referred to in (c) and (d) above at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and

(3) with respect to the IPO, at least seven (7) Business Days prior written notice of the date on which the Company proposes to file its registration statement in connection therewith.

Reference is made to Section 1.6(c) whereby this Warrant will be deemed to be exercised pursuant to Section 1.2 hereof if the Company does not give written notice to Holder of a Cash/Public Acquisition as required by the terms hereof. Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

SECTION 4. REPRESENTATIONS. WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom,

which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

4.6 Market Stand-off Agreement. The Holder agrees that the Shares shall be subject to the Market Standoff provisions in Section 3.9 of the Investor Rights Agreement by and between the Company and its investors dated as of June 1, 2007.

4.7 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5. MISCELLANEOUS.

5.1 Term and Automatic Conversion Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM, Pacific time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. The Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE ISSUER TO SILICON VALLEY BANK DATED JUNE 1, 2012, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to SVB Financial Group (Silicon Valley Bank's parent

company) or any other affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. After receipt by Silicon Valley Bank of the executed Warrant, Silicon Valley Bank will transfer all of this Warrant to its parent company, SVB Financial Group. By its acceptance of this Warrant, SVB Financial Group hereby makes to the Company each of the representations and warranties set forth in Section 4 hereof and agrees to be bound by all of the terms and conditions of this Warrant as if the original Holder hereof. Subject to the provisions of Section 5.3 and upon providing the Company with written notice, SVB Financial Group and any subsequent Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, SVB Financial Group or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable); and provided further, that any subsequent transferee other than SVB Financial Group shall agree m writing with the Company to be bound by all of the terms and conditions of this Warrant. Notwithstanding any contrary provision herein, at all times prior to the IPO, Holder may not, without the Company's prior written consent, transfer this Warrant or any portion hereof, or any Shares issued upon any exercise hereof, or any shares or other securities issued upon any conversion of any Shares issued upon any exercise hereof, to any person or entity who directly competes with the Company, except in connection with an Acquisition of the Company by such a direct competitor.

5.5 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3rd) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

SVB Financial Group
Attn: Treasury Department
3003 Tasman Drive, HC 215
Santa Clara, CA 95054
Telephone: (408) 654-7400
Facsimile: (408) 988-8317
Email address: derivatives@svb.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

EVOKE PHARMA, INC.
12671 High Bluff Drive, Suite 200
San Diego, CA 92130
Attn: Matt D'Onofrio
Email: mdonofrio@evokepharma.com

With a copy (which shall not constitute notice) to:

Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Attn: Haim Zaltzman
Fax: (415) 395-8095
Email: haim.zaltzman@lw.com

Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130
Attn: Scott Wolfe
Fax: 858-523-5450
Email: scott.wolfe@lw.com

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Counterparts: Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.9 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its principles regarding conflicts of law.

5.10 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

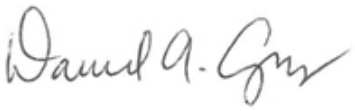
5.11 Business Days. "**Business Day**" is any day that is not a Saturday, Sunday or a day on which Silicon Valley Bank is closed.

[Remainder of page left blank intentionally]
[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

“COMPANY”

EVOKE PHARMA, INC.

By: 

Name: David A. Gonyer
(Print)
Title: President & CEO

“HOLDER”

SILICON VALLEY BANK

By: 

Name: David Huey
(Print)
Title: Relationship Manager

SCHEDULE 1

Company Capitalization Table

See attached

Schedule 1

APPENDIX 1

NOTICE OF EXERCISE

1. The undersigned Holder hereby exercises its right purchase shares of the Common/Series Preferred [circle one] Stock of EVOKE PHARMA, INC. (the "Company") in accordance with the attached Warrant To Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

☐ check in the amount of $ payable to order of the Company enclosed herewith

☐ Wire transfer of immediately available funds to the Company's account

☐ Cashless Exercise pursuant to Section 1.2 of the Warrant

☐ Other [Describe]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____

Holder's Name

_____

_____

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

HOLDER:

_____

By:

Name:

Title:

Date:

EVOKE PHARMA, INC.
2007 EQUITY INCENTIVE PLAN

ARTICLE 1
PURPOSE

1.1 General. The purpose of the Evoke Pharma, Inc. 2007 Equity Incentive Plan (the "***Plan***") is to promote the success and enhance the value of Evoke Pharma, Inc., a Delaware corporation (the "***Company***"), by linking the personal interests of the members of the Board, Employees and Consultants of the Company and any Parent or Subsidiary, to those of Company stockholders and by providing such individuals with an incentive for performance to generate returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, Employees and Consultants of the Company and any Parent or Subsidiary upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

ARTICLE 2
DEFINITIONS AND CONSTRUCTION

2.1 Definitions. The following words and phrases shall have the following meanings:

(a) "***Administrator***" means the Board or a committee of the Board as described in Article 12.

(b) "***Award***" means an Option, a Restricted Stock award, a Stock Appreciation Right award, a Dividend Equivalents award, a Stock Payment award, or a Restricted Stock Unit award granted to a Participant pursuant to the Plan.

(c) "***Award Agreement***" means any written or electronic agreement, contract, or other instrument or document evidencing an Award.

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

(e) "***Change in Control***" means and includes each of the following:

(i) the acquisition, directly or indirectly, by any "person" or "group" (as those terms are defined in Sections 3(a)(9), 13(d), and 14(d) of the Exchange Act and the rules thereunder) of "beneficial ownership" (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the election of directors ("***voting securities***") of the Company that represent 50% or more of the combined voting power of the Company's then outstanding voting securities, other than:

(A) an acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company, or

(B) an acquisition of voting securities by the Company or a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, or

(C) an acquisition of voting securities pursuant to a transaction described in subsection (iii) below that would not be a Change in Control under subsection (iii);

Notwithstanding the foregoing, the following event shall not constitute an "acquisition" by any person or group for purposes of this Section 2.1(e): an acquisition of the Company's securities by the Company which causes the Company's voting securities beneficially owned by a person or group to represent 50% or more of the combined voting power of the Company's then outstanding voting securities; *provided, however,* that if a person or group shall become the beneficial owner of 50% or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change in Control; or

(ii) during any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in subsections (a) or (c) of this Section 2.1(e)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(iii) the consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of a merger, consolidation, reorganization, or business combination, a sale or other disposition of all or substantially all of the Company's assets, or the acquisition of assets or stock of another entity, in each case, other than a transaction

(A) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "***Successor Entity***")) directly or indirectly, at least 50% of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(B) after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this paragraph (iii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(iv) the Company's stockholders approve a liquidation or dissolution of the Company.

For purposes of subsection (i) above, the calculation of voting power shall be made as if the date of the acquisition were a record date for a vote of the Company's stockholders, and for purposes of subsection (iii) above, the calculation of voting power shall be made as if the date of the consummation of the transaction were a record date for a vote of the Company's stockholders.

Notwithstanding the foregoing, a transaction shall not constitute a "***Change of Control***" if: (i) its sole purpose is to change the state of the Company's incorporation; (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction; (iii) it constitutes the Company's initial public offering of its securities; or (iv) it is a transaction effected primarily for the purpose of financing the Company with cash (as determined by the Administrator in its discretion and without regard to whether such transaction is effectuated by a merger, equity financing or otherwise).

The Administrator shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

(g) "***Committee***" means a committee of the Board described in Article 12.

(h) "***Consultant***" means any consultant or adviser if:

(i) The consultant or adviser renders bona fide services to the Company or any Parent or Subsidiary;

(ii) The services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities; and

(iii) The consultant or adviser is a natural person who has contracted directly with the Company or any Parent or Subsidiary to render such services.

(i) "***Disability***" means a permanent and total disability within the meaning of Section 22(e)(3) of the Code, as it may be amended from time to time.

(j) "***Dividend Equivalents***" means a right granted to a Participant pursuant to Article 8 to receive the equivalent value (in cash or Stock) of dividends paid on Stock.

(k) "***Eligible Individual***" means any person who is a member of the Board, a Consultant or an Employee, as determined by the Administrator.

(l) "***Employee***" means any officer or other employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Parent or Subsidiary.

(m) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended from time to time.

(n) "***Fair Market Value***" means, as of any date, the value of Stock determined as follows:

(i) If the Stock is listed on any established stock exchange, including without limitation The Nasdaq Global Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such Stock as quoted on such exchange

for such date, or if no sale occurred on such date, the first market trading day immediately prior to such date during which a sale occurred, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Stock is not traded on a stock exchange but is quoted on a national market or other quotation system, the last sales price on such date, or if no sales occurred on such date, then on the date immediately prior to such date on which sales prices are reported, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

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

(o) "***Incentive Stock Option***" means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(p) "***Misconduct***" means the commission of any commission of any act of fraud, embezzlement or dishonesty by the Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Company (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Company (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not in any way preclude or restrict the right of the Company (or any Parent or Subsidiary) to discharge or dismiss any Participant or other person in the service of the Company (or any Parent or Subsidiary) for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of the Plan, to constitute grounds for termination for Misconduct.

(q) "***Non-Employee Director***" means a member of the Board who is not an Employee.

(r) "***Non-Qualified Stock Option***" means an Option that is not intended to be or otherwise does not qualify as an Incentive Stock Option.

(s) "***Option***" means a right granted to a Participant pursuant to Article 5 of the Plan to purchase a specified number of shares of Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Non-Qualified Stock Option.

(t) "***Parent***" means any corporation in an unbroken chain of corporations ending with the Company if each of the corporations other than the Company then owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain at the relevant time, including after the Effective Date (as defined in Section 13.1).

(u) "***Participant***" means any Eligible Individual who, as a member of the Board, an Employee or a Consultant, has been granted an Award pursuant to the Plan.

(v) "***Plan***" means this Evoke Pharma, Inc. 2007 Equity Incentive Plan, as it may be amended from time to time.

(w) "***Public Trading Date***" means the first date upon which the issuer is subject to the reporting requirements of Section 13 or 15(d)(2) of the Exchange Act.

(x) "***Restricted Stock***" means Stock awarded to a Participant pursuant to Article 6 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

(y) "***Restricted Stock Unit***" means a right to receive a share of Stock during specified time periods granted pursuant to Section 8.3.

(z) "***Securities Act***" means the Securities Act of 1933, as amended from time to time.

(aa) "***Section 409A Award***" has the meaning set forth in Section 9.1.

(bb) "***Stock***" means the common stock of the Company and such other securities of the Company that may be substituted for Stock pursuant to Article 11.

(cc) "***Stock Appreciation Right***" or "***SAR***" means a right granted pursuant to Article 7 to receive a payment equal to the excess of the Fair Market Value of a specified number of shares of Stock on the date the SAR is exercised over the Fair Market Value of such number of shares of Stock on the date the SAR was granted as set forth in the applicable Award Agreement.

(dd) "***Stock Payment***" means (a) a payment in the form of shares of Stock, or (b) an option or other right to purchase shares of Stock, as part of any bonus, deferred compensation or other arrangement, made in lieu of all or any portion of the compensation, granted pursuant to Section 8.2.

(ee) "***Subsidiary***" means any corporation or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company at the relevant time, including after the Effective Date (as defined in Section 13.1).

(ff) "***Termination of Consultancy***" means the time when the engagement of a Participant as a Consultant to the Company or a Parent or Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, by resignation, discharge, death or retirement, but excluding terminations where there is a simultaneous commencement of employment with the Company or any Parent or Subsidiary. The Administrator, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Consultancy, including, but not by way of limitation, the question of whether a Termination of Consultancy resulted from a discharge for good cause, and all questions of whether a particular leave of absence constitutes a Termination of Consultancy. Notwithstanding any other provision of the Plan, the Company or any Parent or Subsidiary has an absolute and unrestricted right to terminate a Consultant's service at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in writing.

(gg) "***Termination of Directorship***" shall mean the time when a Participant who is a Non-Employee Director ceases to be a member of the Board for any reason, including, but not by way of limitation, a termination by resignation, failure to be elected, death or retirement. The Board, in its sole and absolute discretion, shall determine the effect of all matters and questions relating to Termination of Directorship with respect to Non-Employee Directors.

(hh) "***Termination of Employment***" shall mean the time when the employee-employer relationship between a Participant and the Company or any Parent or Subsidiary is terminated for any reason, with or without cause, including, but not by way of limitation, a termination by resignation, discharge, death, disability or retirement; but excluding: (a) terminations where there is a simultaneous reemployment or continuing employment of a Participant by the Company or any Parent or Subsidiary, (b) at the discretion of the Administrator, terminations which result in a temporary severance of the employee-employer relationship, and (c) terminations which are followed by the simultaneous establishment of a consulting relationship by the Company or a Parent or Subsidiary with the former employee. The Administrator, in its absolute discretion, shall determine the effect of all matters and

questions relating to Termination of Employment, including, but not by way of limitation, the question of whether a Termination of Employment resulted from a discharge for good cause, and all questions of whether a particular leave of absence constitutes a Termination of Employment.

(ii) "***Termination of Service***" shall mean the last to occur of a Participant's Termination of Employment, Termination of Directorship or Termination of Consultancy. A Participant shall not be deemed to have a Termination of Service merely because of a change in the capacity in which the Participant renders service to the Company or any Parent or Subsidiary (i.e., a Participant who is an Employee becomes a Consultant) or a change in the entity for which the Participant renders such service (i.e., an Employee of the Company becomes an Employee of a Subsidiary), unless such following such change in capacity or service the Participant is no longer serving as an Employee, Non-Employee Director or Consultant of the Company or any Parent or Subsidiary.

ARTICLE 3
SHARES SUBJECT TO THE PLAN

3.1 Number of Shares.

(a) Subject to Article 11, the aggregate number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan shall be 2,250,000 shares.

(b) To the extent that an Award terminates, expires, or lapses for any reason, any shares of Stock subject to the Award shall again be available for the grant of an Award pursuant to the Plan. Additionally, any shares of Stock tendered or withheld to satisfy the grant or exercise price or tax withholding obligation pursuant to any Award shall again be available for the grant of an Award pursuant to the Plan. If shares of Stock issued pursuant to Awards are forfeited by a Participant or repurchased by the Company pursuant to Section 6.3 hereof, such shares of Stock shall become available for future grant under the Plan (unless the Plan has terminated). The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan.

(c) Notwithstanding the provisions of this Section 3.1, no shares of Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an Incentive Stock Option under Section 422 of the Code.

3.2 Stock Distributed. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or, on and after the Public Trading Date, Stock purchased on the open market.

ARTICLE 4
ELIGIBILITY AND PARTICIPATION

4.1 Eligibility. Persons eligible to participate in this Plan include all Employees, Consultants and all members of the Board, as determined by the Administrator.

4.2 Actual Participation. Subject to the provisions of the Plan, the Administrator may, from time to time, select from among all Eligible Individuals those to whom Awards shall be granted and shall determine the nature and amount of each Award. No individual shall have any right to be granted an Award pursuant to this Plan.

4.3 Foreign Participants. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Parents or Subsidiaries operate or have Eligible Individuals, the Administrator, in its sole discretion, shall have the power and authority to: (i) determine which Parents or Subsidiaries shall be covered by the Plan; (ii) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to this Plan as appendices); *provided*, *however*, that no such subplans and/or modifications shall increase the share limitation contained in Section 3.1 of the Plan; and (v) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other applicable law.

ARTICLE 5
STOCK OPTIONS

5.1 General. The Administrator is authorized to grant Options to Eligible Individuals on the following terms and conditions:

(a) Exercise Price. The exercise price per share of Stock subject to an Option shall be determined by the Administrator and set forth in the Award Agreement; *provided* that the exercise price per share for any Option shall not be less than 100% of the Fair Market Value per share of the Stock on the date of the grant.

(b) Time and Conditions of Exercise. The Administrator shall determine the time or times at which an Option may be exercised in whole or in part; *provided* that the term of any Option granted under the Plan shall not exceed ten years. The Administrator shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised. The Administrator may extend the term of any outstanding Option in connection with any Termination of Employment, Termination of Directorship or Termination of Consultancy of the Participant holding such Option, or amend any other term or condition of such Option relating to such a Termination of Employment, Termination of Directorship or Termination of Consultancy.

(c) Payment. The Administrator shall determine the methods, terms and conditions by which the exercise price of an Option may be paid, and the form and manner of payment, including, without limitation, payment in the form of cash, a promissory note bearing interest at no less than such rate as shall then preclude the imputation of interest under the Code, shares of Stock previously owned by the Participant or otherwise issuable upon exercise of the Option, or other property acceptable to the Administrator and payment through the delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided* that payment of such proceeds is then made to the Company upon settlement of such sale, and the methods by which shares of Stock shall be delivered or deemed to be delivered to Participants. Notwithstanding any other provision of the Plan to the contrary, no Participant who is a member of the Board or an “executive officer” of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to pay the exercise price of an Option, or continue any extension of credit with respect to the exercise price of an Option with a loan from the Company or a loan arranged by the Company, in any method which would violate Section 13(k) of the Exchange Act.

(d) Evidence of Grant. All Options shall be evidenced by an Award Agreement between the Company and the Participant. The Award Agreement shall include such additional provisions as may be specified by the Administrator.

5.2 Incentive Stock Options. Incentive Stock Options may be granted only to employees (as defined in accordance with Section 3401(c) of the Code) of the Company or a Subsidiary which constitutes a "subsidiary corporation" of the Company within Section 424(f) of the Code or a Parent which constitutes a "parent corporation" of the Company within the meaning of Section 424(e) of the Code and the terms of any Incentive Stock Options granted pursuant to the Plan must comply with the following additional provisions of this Section 5.2 in addition to the requirements of Section 5.1:

(a) Ten Percent Owners. An Incentive Stock Option shall be granted to any individual who, at the date of grant, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or "parent corporation" of the Company (each within the meaning of Section 424 of the Code) only if such Option is granted at an exercise price per share that is not less than 110% of the Fair Market Value per share of the Stock on the date of the grant and the Option is exercisable for no more than five years from the date of grant.

(b) Transfer Restriction. An Incentive Stock Option shall not be transferable by the Participant other than by will or by the laws of descent or distribution.

(c) Right to Exercise. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.

(d) Failure to Meet Requirements. Any Option (or portion thereof) purported to be an Incentive Stock Option which, for any reason, fails to meet the requirements of Section 422 of the Code shall be considered a Non-Qualified Stock Option.

5.3 Early Exercisability. The Administrator may provide in the terms of a Participant's Award Agreement that the Participant may, at any time before the Participant's status as an Employee, member of the Board or Consultant terminates, exercise the Option(s) granted to such Participant in whole or in part prior to the full vesting of the Option(s); *provided, however*, shares of Stock acquired upon exercise of an Option which has not fully vested may be subject to any forfeiture, transfer or other restrictions as the Administrator may determine in its sole discretion.

5.4 Paperless Exercise. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Options by a Participant may be permitted through the use of such an automated system.

ARTICLE 6
RESTRICTED STOCK AWARDS

6.1 Grant of Restricted Stock. The Administrator is authorized to make Awards of Restricted Stock to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator. All Awards of Restricted Stock shall be evidenced by an Award Agreement.

6.2 Issuance and Restrictions. Restricted Stock shall be subject to such repurchase restrictions, forfeiture restrictions, restrictions on transferability and other restrictions as the

Administrator may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, pursuant to such circumstances or in such installments or otherwise as the Administrator determines at the time of the grant of the Award or thereafter.

6.3 Repurchase or Forfeiture. Except as otherwise determined by the Administrator at the time of the grant of the Award or thereafter, upon a Participant's Termination of Service during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited or subject to repurchase by the Company (or its assignee) under such terms as the Administrator shall determine; *provided*, *however*, that the Administrator may (a) provide in any Restricted Stock Award Agreement that restrictions or forfeiture conditions relating to Restricted Stock will be waived in whole or in part in the event of a Participant's Termination of Service, and (b) in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock.

6.4 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, at its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse or the Award Agreement may provide that the shares shall be held in escrow by an escrow agent designated by the Company.

ARTICLE 7
STOCK APPRECIATION RIGHTS

7.1 Grant of Stock Appreciation Rights. A Stock Appreciation Right may be granted to any Eligible Individual selected by the Administrator. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with the Plan as the Administrator shall impose and shall be evidenced by an Award Agreement.

7.2 Terms of Stock Appreciation Rights.

(a) A Stock Appreciation Right shall have a term set by the Administrator. A Stock Appreciation Right shall be exercisable in such installments as the Administrator may determine. A Stock Appreciation Right shall cover such number of shares of Stock as the Administrator may determine. The exercise price per share of Stock subject to each Stock Appreciation Right shall be set by the Administrator.

(b) A Stock Appreciation Right shall entitle the Participant (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying (i) the amount (if any) by which the Fair Market Value of a share of Stock on the date of exercise of the Stock Appreciation Right exceeds the exercise price per share of the Stock Appreciation Right, by (ii) the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised, subject to any limitations the Administrator may impose.

7.3 Payment and Limitations on Exercise.

(a) Subject to Sections 7.3(b) and (c), payment of the amounts determined under Section 7.2(b) above shall be in cash, in Stock (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Administrator.

(b) To the extent payment for a Stock Appreciation Right is to be made in cash, the Award Agreement shall, to the extent necessary to comply with the requirements of Section 409A of the Code, specify the date of payment, which may be different than the date of exercise of the Stock Appreciation Right. If the date of payment for a Stock Appreciation Right is later than the date of exercise, the Award Agreement may specify that the Participant be entitled to earnings on such amount until paid.

(c) To the extent any payment under Section 7.2(b) is effected in Stock, it shall be made subject to satisfaction of all provisions of Article 5 above pertaining to Options.

ARTICLE 8
OTHER TYPES OF AWARDS

8.1 Dividend Equivalents. Any Eligible Individual selected by the Administrator may be granted Dividend Equivalents based on the dividends declared on the shares of Stock that are subject to any Award, to be credited as of dividend payment dates, during the period between the date the Award is granted and the date the Award is exercised, vests or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional shares of Stock by such formula and at such time and subject to such limitations as may be determined by the Administrator.

8.2 Stock Payments.

Any Eligible Individual selected by the Administrator may receive Stock Payments in the manner determined from time to time by the Administrator; *provided* that, unless otherwise determined by the Administrator, such Stock Payments shall be made in lieu of base salary, bonus or other cash compensation otherwise payable to such Eligible Individual. The number of shares shall be determined by the Administrator and may be based upon the Performance Goals or other specific performance goals determined appropriate by the Administrator.

8.3 Restricted Stock Units. The Administrator is authorized to make Awards of Restricted Stock Units to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. Alternatively, Restricted Stock Units may become fully vested and nonforfeitable pursuant to the satisfaction of one or more Performance Goals or other specific performance goals as the Administrator determines to be appropriate at the time of the grant of the Restricted Stock Units or thereafter, in each case on a specified date or dates or over any period or periods determined by the Administrator. At the time of grant, the Administrator shall specify the maturity date applicable to each grant of Restricted Stock Units which shall be no earlier than the vesting date or dates of the Award and, to the extent permitted by the Administrator, may be determined at the election of the Eligible Individual to whom the Award is granted. On the maturity date, the Company shall transfer to the Participant one unrestricted, fully transferable share of Stock for each Restricted Stock Unit that is vested and scheduled to be distributed on such date and not previously forfeited. The Administrator shall specify the purchase price, if any, to be paid by the Participant to the Company for such shares of Stock.

8.4 Term. Except as otherwise provided herein, the term of any Award of Performance Shares, Dividend Equivalents, Stock Payments or Restricted Stock Units shall be set by the Administrator in its discretion.

8.5 Exercise or Purchase Price.

The Administrator may establish the exercise or purchase price, if any, of any Award of Restricted Stock Units or Stock Payments; *provided, however*, that such price shall not be less than the par value of a share of Stock on the date of grant, unless otherwise permitted by applicable state law.

8.7 Form of Payment.

Payments with respect to any Awards granted under Sections 8.1, 8.2 or 8.3 shall be made in cash, in Stock or a combination of both, as determined by the Administrator.

8.8 Award Agreement. All Awards under this Article 8 shall be subject to such additional terms and conditions as determined by the Administrator and shall be evidenced by a written Award Agreement.

ARTICLE 9

COMPLIANCE WITH SECTION 409A OF THE CODE

9.1 Awards Subject to Code Section 409A. Any Award that constitutes, or provides for, a deferral of compensation subject to Section 409A of the Code (a "***Section 409A Award***") shall satisfy the requirements of Section 409A of the Code and this Article 9, to the extent applicable. The Award Agreement with respect to a Section 409A Award shall incorporate the terms and conditions required by Section 409A of the Code and this Article 9.

9.2 Distributions Under a Section 409A Award.

(a) Subject to subsection (b), any shares of Stock or other property or amounts to be paid or distributed upon the grant, issuance, vesting, exercise or payment of a Section 409A Award shall be distributed in accordance with the requirements of Section 409A(a)(2) of the Code, and shall not be distributed earlier than:

(i) the Participant's separation from service, as determined by the Secretary of the Treasury;

(ii) the date the Participant becomes disabled;

(iii) the Participant's death;

(iv) a specified time (or pursuant to a fixed schedule) specified under the Award Agreement at the date of the deferral compensation;

(v) to the extent provided by the Secretary of the Treasury, a change in the ownership or effective control of the Company or a Parent or Subsidiary, or in the ownership of a substantial portion of the assets of the Company or a Parent or Subsidiary; or

(vi) the occurrence of an unforeseeable emergency with respect to the Participant.

(b) In the case of a Participant who is a "specified employee," the requirement of paragraph (a)(i) shall be met only if the distributions with respect to the Section 409A Award may not be made before the date which is six months after the Participant's separation from service (or, if earlier, the date of the Participant's death). For purposes of this subsection (b), a Participant shall be a "specified

employee" if such Participant is a key employee (as defined in Section 416(i) of the Code without regard to paragraph (5) thereof) of a corporation any stock of which is publicly traded on an established securities market or otherwise, as determined under Section 409A(a)(2)(B)(i) of the Code and the Treasury Regulations thereunder.

(c) The requirement of paragraph (a)(vi) shall be met only if, as determined under Treasury Regulations under Section 409A(a)(2)(B)(ii) of the Code, the amounts distributed with respect to the unforeseeable emergency do not exceed the amounts necessary to satisfy such unforeseeable emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such unforeseeable emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(d) For purposes of this Section, the terms specified therein shall have the respective meanings ascribed thereto under Section 409A of the Code and the Treasury Regulations thereunder.

9.3 Prohibition on Acceleration of Benefits. The time or schedule of any distribution or payment of any shares of Stock or other property or amounts under a Section 409A Award shall not be accelerated, except as otherwise permitted under Section 409A(a)(3) of the Code and the Treasury Regulations thereunder.

9.4 Elections Under Section 409A Awards.

(a) Any deferral election provided under or with respect to an Award to any Eligible Individual, or to the Participant holding a Section 409A Award, shall satisfy the requirements of Section 409A(a)(4)(B) of the Code, to the extent applicable, and, except as otherwise permitted under paragraph (i) or (ii) below, any such deferral election with respect to compensation for services performed during a taxable year shall be made not later than the close of the preceding taxable year, or at such other time as provided in Treasury Regulations.

(i) In the case of the first year in which an Eligible Individual or a Participant holding a Section 409A Award, becomes eligible to participate in the Plan, any such deferral election may be made with respect to services to be performed subsequent to the election with thirty days after the date the Eligible Individual, or the Participant holding a Section 409A Award, becomes eligible to participate in the Plan, as provided under Section 409A(a)(4)(B)(ii) of the Code.

(ii) In the case of any performance-based compensation based on services performed by an Eligible Individual, or the Participant holding a Section 409A Award, over a period of at least twelve months, any such deferral election may be made no later than six months before the end of the period, as provided under Section 409A(a)(4)(B)(iii) of the Code.

(b) In the event that a Section 409A Award permits, under a subsequent election by the Participant holding such Section 409A Award, a delay in a distribution or payment of any shares of Stock or other property or amounts under such Section 409A Award, or a change in the form of distribution or payment, such subsequent election shall satisfy the requirements of Section 409A(a)(4)(C) of the Code, and:

(i) such subsequent election may not take effect until at least twelve months after the date on which the election is made,

(ii) in the case such subsequent election relates to a distribution or payment not described in Section 9.2(a)(ii), (iii) or (vi), the first payment with respect to such election may be deferred for a period of not less than five years from the date such distribution or payment otherwise would have been made, and

(iii) in the case such subsequent election relates to a distribution or payment described in Section 9.2(a)(iv), such election may not be made less than twelve months prior to the date of the first scheduled distribution or payment under Section 9.2(a)(iv).

9.5 Compliance in Form and Operation. A Section 409A Award, and any election under or with respect to such Section 409A Award, shall comply in form and operation with the requirements of Section 409A of the Code and the Treasury Regulations thereunder.

ARTICLE 10
PROVISIONS APPLICABLE TO AWARDS

10.1 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

10.2 Award Agreement. Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include the term of an Award, the provisions applicable in the event of the Participant's Termination of Service, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.

10.3 Limits on Transfer.

(a) Except as otherwise provided by the Administrator pursuant to Section 10.3(b), no right or interest of a Participant in any Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or a Parent or Subsidiary, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or a Parent or Subsidiary. Except as otherwise provided by the Administrator pursuant to Section 10.3(b), no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution, unless and until such Award has been exercised, or the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed.

(b) Notwithstanding Section 10.3(a), the Administrator, in its sole discretion, may permit an Award (other than an Incentive Stock Option) to be transferred to, exercised by and paid to any one or more Permitted Transferees (as defined below), subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) any Award which is transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Participant (other than the ability to further transfer the Award); and (iii) the Participant and the Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal and state securities laws and (C) evidence the transfer. For purposes of this Section 10.3(b), "***Permitted Transferee***" shall mean, with respect to a Participant, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person

sharing the Participant's household (other than a tenant or employee), a trust in which these persons (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty percent of the voting interests, or any other transferee specifically approved by the Administrator.

10.4 Beneficiaries. Notwithstanding Section 10.3, a Participant may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary with respect to more than 50% of the Participant's interest in the Award shall not be effective without the prior written consent of the Participant's spouse. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Administrator.

10.5 Stock Certificates; Book Entry Procedures.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise or purchase of any Award, unless and until the Board has determined, with advice of counsel, that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed or traded. All Stock certificates delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state, or foreign jurisdiction, securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Administrator may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Administrator may require that a Participant make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(b) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing shares of Stock issued in connection with any Award or exercise of any Award and instead such shares of Stock will be recorded in the books of the Company (or as applicable, its transfer agent or stock plan administrator).

ARTICLE 11
CHANGES IN CAPITAL STRUCTURE

11.1 Adjustments.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization, distribution of Company assets to stockholders

(other than normal cash dividends), or any other corporate event affecting the Stock or the share price of the Stock, the Administrator shall make such proportionate adjustments to reflect such change with respect to (i) the aggregate number and type of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitation in Section 3.1); (ii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (iii) the grant or exercise price per share for any outstanding Awards under the Plan.

(b) In the event of any transaction or event described in Section 11.1(a) or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate (including without limitation any Change in Control), or of changes in applicable laws, regulations or accounting principles, and whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, the Administrator, in its sole discretion and on such terms and conditions as it deems appropriate, either by amendment of the terms of any outstanding Awards or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash and/or other property, if any, equal to the amount that would have been received upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 11.1(b) the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion;

(ii) To provide that such Award be assumed by the successor or survivor entity, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of shares of Stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Restricted Stock Units and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding options, rights and awards, and options, rights and awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

11.2 Acceleration Upon a Change in Control. Notwithstanding anything to the contrary contained in Section 11.1, and except as may otherwise be provided in any applicable Award Agreement or other written agreement entered into between the Company and a Participant, if a Change in Control occurs and a Participant's Awards are not continued, converted, assumed or replaced by (a) the Company or a Parent or Subsidiary, or (b) the surviving or successor entity or its parent or subsidiary, such Awards

shall become fully exercisable and/or payable, as applicable, and all forfeiture, repurchase and other restrictions on such Awards shall lapse immediately prior to such Change in Control. Upon, or in anticipation of, a Change in Control, the Administrator may cause any and all Awards outstanding hereunder to terminate at a specific time in the future, including without limitation, the date of such Change in Control, and shall give each Participant the right to exercise such Awards during a period of time as the Administrator, in its sole and absolute discretion, shall determine. The Administrator shall have sole discretion to determine whether an Award has been continued, converted, assumed or replaced in connection with a Change in Control.

11.3 No Other Rights. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Stock subject to an Award or the grant or exercise price of any Award.

ARTICLE 12
ADMINISTRATION

12.1 Administrator. The Plan shall be administered by the Board. The Board may delegate administration of the Plan to a Committee or Committees of one or more members of the Board, and the term "***Administrator***" shall apply to any person or persons who at the time have the authority to administer the Plan. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Notwithstanding the foregoing, however, from and after the Public Trading Date, a Committee of the Board shall administer the Plan and such Committee shall consist solely of two or more members of the Board each of whom is an "outside director," within the meaning of Section 162(m) of the Code and a Non-Employee Director. Notwithstanding the foregoing: (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to all Awards granted to Non-Employee Directors and for purposes of such Awards the term "***Administrator***" as used in this Plan shall be deemed to refer to the Board, and (b) the Board or the Committee may delegate its authority hereunder to the extent permitted by Section 12.5. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Administrator under the Plan except with respect to matters which, following the Public Trading Date, are required to be determined in the sole discretion of the Committee under Rule 16b-3 under the Exchange Act or Section 162(m) of the Code, or any regulations or rules issued thereunder. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may only be filled by the Board.

12.2 Action by the Administrator. A majority of the members of the Administrator shall constitute a quorum. The acts of a majority of the members of the Administrator present at any meeting at which a quorum is present, and, subject to applicable law, acts approved in writing by a majority of the members of the Administrator in lieu of a meeting, shall be deemed the acts of the Administrator. Each member of the Administrator is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Parent or Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

12.3 Authority of Administrator. Subject to any specific designation in the Plan, the Administrator has the exclusive power, authority and discretion to:

(a) Designate Eligible Individuals to receive Awards;

(b) Determine the type or types of Awards to be granted to each Eligible Individual;

(c) Determine the number of Awards to be granted and the number of shares of Stock to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any reload provision, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Participant;

(g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan or any Award Agreement; and

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

11.4 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

11.5 Delegation of Authority. Within the scope of such authority, the Board or the Committee may delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards to Participants other than Eligible Individuals who are either (a) "covered employees" at the time of recognition of income resulting from such Awards, and/or (b) persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (c) subject to Section 16 of the Exchange Act and/or (d) officers of the Company or members of the Board to whom authority to grant or amend Awards has been delegated pursuant to this Section 12.5. At all times, the delegate(s) appointed under this Section 12.5 shall serve in such capacity at the pleasure of the Board or the Committee.

ARTICLE 13
EFFECTIVE AND EXPIRATION DATE

13.1 Effective Date. The Plan will be effective on the date of the Board's initial adoption of the Plan (the "***Effective Date***"). If the Plan has not been approved by the Company's stockholders within twelve months prior to the Effective Date, the Plan will be submitted for the approval of the Company's stockholders within twelve months after the Effective Date. Awards may be granted or awarded prior to such stockholder approval, provided that such Awards shall not be exercisable, shall not vest and the restrictions thereon shall not lapse prior to the time when the Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve-month period, all Awards previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

13.2 Expiration Date. The Plan will expire on, and no Award may be granted pursuant to the Plan after, the tenth anniversary of the earlier of (i) the Effective Date or (ii) the date this Plan is approved by the Company's stockholders. Any Awards that are outstanding on the tenth anniversary of the Effective Date shall remain in force according to the terms of the Plan and the applicable Award Agreement.

ARTICLE 14
AMENDMENT, MODIFICATION, AND TERMINATION

14.1 Amendment, Modification, and Termination. The Board may terminate, amend or modify the Plan at any time and from time to time; *provided, however*, that to the extent necessary to comply with any applicable law, regulation, or stock exchange rule, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required. The Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected Option holders, the cancellation of any or all outstanding Awards under the Plan and to grant in substitution therefor new Awards covering the same or different number of shares of Stock and with a different or no exercise price per share.

14.2 Awards Previously Granted. No termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted pursuant to the Plan without the prior written consent of the Participant.

ARTICLE 15
GENERAL PROVISIONS

15.1 No Rights to Awards. No Participant, Employee, or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator is obligated to treat Participants, Employees, and other persons uniformly.

15.2 No Stockholder Rights. Except as otherwise provided herein, a Participant shall have none of the rights of a stockholder with respect to shares of Stock covered by any Award until the Participant becomes the record owner of such shares of Stock.

15.3 Withholding. The Company or any Parent or Subsidiary shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company an amount sufficient to satisfy federal, state, local and foreign taxes (including the Participant's employment tax obligations) required by law to be withheld with respect to any taxable event concerning a Participant arising as a result of this Plan. The Administrator may in its discretion and in satisfaction of the foregoing

requirement allow a Participant to elect to have the Company or a Parent or Subsidiary, as applicable, withhold shares of Stock otherwise issuable under an Award (or allow the return of shares of Stock) having a Fair Market Value equal to the sums required to be withheld. Notwithstanding any other provision of the Plan, the number of shares of Stock which may be withheld with respect to the issuance, vesting, exercise or payment of any Award (or which may be repurchased from the Participant of such Award within six months (or such other period as may be determined by the Administrator) after such shares of Stock were acquired by the Participant from the Company) in order to satisfy the Participant's federal, state, local and foreign tax liabilities with respect to the issuance, vesting, exercise or payment of the Award shall be limited to the number of shares which have a Fair Market Value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and employment tax purposes that are applicable to such supplemental taxable income.

15.4 No Right to Employment or Services. Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Parent or Subsidiary to terminate any Participant's employment or services at any time, nor confer upon any Participant any right to continue in the employ or service of the Company or any Parent or Subsidiary.

15.5 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Parent or Subsidiary.

15.6 Indemnification. To the extent allowable pursuant to applicable law, the Administrator (and each member thereof) shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; *provided* he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

15.7 Relationship to Other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits pursuant to any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Parent or Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

15.8 Expenses. The expenses of administering the Plan shall be borne by the Company and its Parents and Subsidiaries.

15.9 Titles and Headings. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

15.10 Fractional Shares. No fractional shares of Stock shall be issued and the Administrator shall determine, in its discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.

15.11 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any Participant who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 under the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

15.12 Government and Other Regulations. The obligation of the Company to make payment of awards in Stock or otherwise shall be subject to all applicable laws, rules, and regulations, and to such approvals by government agencies as may be required. The Company shall be under no obligation to register pursuant to the Securities Act any of the shares of Stock paid pursuant to the Plan. If the shares paid pursuant to the Plan may in certain circumstances be exempt from registration pursuant to the Securities Act, the Company may restrict the transfer of such shares in such manner as it deems advisable to ensure the availability of any such exemption.

15.13 Governing Law. The Plan and all Award Agreements shall be construed in accordance with and governed by the laws of the State of California, without regard to the conflicts of law principles thereof.

15.14 Compliance with California Securities Laws. Unless determined otherwise by the Administrator, prior to the Public Trading Date, this Plan is intended to comply with Section 25102(o) of the California Corporations Code and the regulations issued thereunder. Appendix I to the Plan sets forth the requirements under Section 25102(o) of the California Corporations Code and the regulations issued thereunder and is incorporated herein by reference. If any of the provisions contained in this Plan are inconsistent with such requirements or Appendix I, such provisions shall be deemed null and void. The invalidity of any provision of this Plan shall not affect the validity or enforceability of any other provision of this Plan, which shall remain in full force and effect.

15.15 Appendices. The Board may approve such supplements to, or amendments, or appendices to, the Plan as it may consider necessary or appropriate for purposes of compliance with applicable laws or otherwise and such supplements, amendments or appendices shall be considered a part of the Plan; *provided*, *however*, that no such supplements, amendments or appendices shall increase the share limitation contained in Section 3.1 of the Plan.

APPENDIX I

TO

EVOKE PHARMA, INC.

2007 EQUITY INCENTIVE PLAN

California State Securities Law Compliance

Notwithstanding anything to the contrary contained in the Plan and except as otherwise determined by the Administrator, the provisions set forth in this Appendix shall apply to all Awards granted under the Evoke Pharma, Inc. 2007 Equity Incentive Plan (the "***Plan***") prior to the Public Trading Date. This Appendix shall be of no further force and effect on or after the Public Trading Date. Definitions as set out in Article 2 of the Plan are applicable to this Appendix.

The purpose of this Appendix is to set forth those provisions of the Plan necessary to comply with Section 25102(o) of the California Corporations Code and the regulations issued thereunder. If any of the provisions contained in this Appendix are inconsistent with such requirements, such provisions shall be deemed amended to the extent necessary to be consistent with such requirements. The invalidity of any provision of this Appendix shall not affect the validity or enforceability of any other provision of this Appendix, which shall remain in full force and effect.

References to Articles and Sections set forth in this Appendix are to those Articles and Sections of the Plan.

1.1 Term of Awards. The term of each Award shall be no more than ten years from the date of grant thereof.

2.1 Award Exercise or Purchase Price. Except as provided in Article 11, the per share exercise or purchase price for the Stock to be issued upon exercise of an Award shall be such price as is determined by the Administrator, but in the case of an Award granted to a Participant who, at the time of grant of such Award, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any parent (as defined in Section 175 of the California Corporations Code) or Subsidiary, the per share exercise or purchase price shall be no less than 110% of the Fair Market Value per share on the date of the grant (100% in the case of an Award other than an Option). Notwithstanding the foregoing, subject to Section 5.1 of the Plan, Awards may be granted with a per share exercise or purchase price other than as required above pursuant to a merger or other corporate transaction or to the extent a lower per share exercise or purchase price is permitted by Section 260.140.41 or Section 260.140.42 of Title 10 of the California Code of Regulations.

3.1 Exercisability. To the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations, an Award granted hereunder become vested and exercisable at a rate of no less than 20% per year over five years from the date the Award is granted, subject to reasonable conditions, such as continuing to be a member of the Board, Employee or Consultant.

4.1 Exercisability Following Termination.

(a) Termination Other Than Death or Disability. If a Participant has a Termination of Service for any reason other than by reason of the Participant's Disability or death, such Participant may exercise his or her Award within such period of time as is specified in the Award Agreement to the extent that the Award is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than thirty days (but in no event later than the expiration of the term of the Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option shall remain exercisable for three months following the Participant's Termination of Service for any reason other than death or Disability.

(b) Death. If a Participant has a Termination of Service as a result of the Participant's death, the Award may be exercised within such period of time as is specified in the Award Agreement; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than six months (but in no event later than the expiration of the term of such Award as set forth in the Notice of Grant), by the Participant's estate or by a person who acquires the right to exercise the Award by bequest or inheritance, but only to the extent that the Award is vested on the date of death. In the absence of a specified time in the Award Agreement, the Award shall remain exercisable for twelve months following the Participant's Termination of Service for death.

(c) Disability of Participant. If a Participant has a Termination of Service as a result of the Participant's Disability, the Participant may exercise his or her Award within such period of time as is specified in the Award Agreement to the extent the Award is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than six months (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Award shall remain exercisable for twelve months following the Participant's Termination of Service for Disability.

(d) Misconduct of Participant. If a Participant has a Termination of Service as a result of the Participant's Misconduct, the Award shall terminate immediately and cease to remain outstanding.

5.1 Repurchase Provisions. In the event the Administrator provides that the Company may repurchase Stock acquired upon exercise of an Award upon the occurrence of certain specified events, including, without limitation, a Participant's Termination of Service, divorce, bankruptcy or insolvency, then any such repurchase right shall be set forth in the applicable Award Agreement or in another agreement referred to in such agreement and, to the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations (or any successor regulation, including, without limitation, Section 260.140.8 of Title 10 of the California Code of Regulations), any such repurchase right set forth in an Award granted prior to the Public Trading Date to a person who is not an officer, member of the Board, manager or consultant shall be upon the following terms: (i) if the repurchase option gives the Company the right to repurchase the shares upon the Participant's Termination of Service at not less than the Fair Market Value of the shares to be purchased on the date of termination of employment or service, then (A) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety days of termination (or in the case of shares issued upon exercise of Awards after such date of termination, within ninety days after the date of the exercise) or such longer period as may be agreed to by the Administrator and the Participant and (B) the right terminates on the Public Trading Date; and (ii) if the repurchase option gives the Company the right to repurchase the Stock upon the Participant's Termination of Service at the original purchase price for such Stock, then (A) the right to repurchase at the original purchase price shall lapse at the rate of at least 20% of the shares per year over five (5) years from the date the Award is granted

(without respect to the date the Award was exercised or became exercisable) and (B) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety days of termination (or, in the case of shares issued upon exercise of Awards, after such date of termination, within ninety days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant.

6.1 Information Rights. Prior to the Public Trading Date and to the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall provide to each Participant and to each individual who acquires Stock pursuant to the Plan, not less frequently than annually during the period such Participant has one or more Awards outstanding, and, in the case of an individual who acquires Stock pursuant to the Plan, during the period such individual owns such Stock, copies of annual financial statements. Notwithstanding the preceding sentence, the Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

7.1 Transferability. Prior to the Public Trading Date, no Award shall be assigned, transferred, or otherwise disposed of by a Participant other than by will or the laws of descent and distribution or, with respect to Awards other than Incentive Stock Options, as permitted by Rule 701 of the Securities Act.

8.1 Limitation on Number of Shares. Prior to the Public Trading Date and to the extent required by Section 260.140.45 of Title 10 of the California Code of Regulations, at no time shall the total number of shares of Stock issuable upon exercise of all outstanding Options under the Plan and any shares of Stock provided for under any bonus or similar plan or agreement of the Company exceed 30% of the then-outstanding shares of Stock of the Company, as calculated pursuant to Section 260.140.45 of Title 10 of the California Code of Regulations (or any successor regulation), unless a percentage higher than 30% is approved by at least two-thirds of the outstanding securities of the Company entitled to vote. The number of shares of Stock which may be issued or transferred pursuant to Awards under the Plan shall be reduced to the extent necessary to comply with this provision.

9.1 Amendment of Plan to Conform to California Code of Regulations. Subject to Article 14 of the Plan, the Administrator may delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to amend the Plan to the extent required to conform the Plan to any amendment to the California Code of Regulations adopted following the Effective Date resulting in the elimination of any requirements under such regulations that are applicable to the Plan or the application of less restrictive requirements under such regulations to the Plan.

EVOKE PHARMA, INC.

2007 EQUITY INCENTIVE PLAN

STOCK OPTION GRANT NOTICE AND
STOCK OPTION AGREEMENT

Evoke Pharma, Inc. (the "***Company***"), pursuant to its 2007 Equity Incentive Plan (the "***Plan***"), hereby grants to the holder listed below ("***Participant***"), an option to purchase the number of shares of the Company's Stock set forth below (the "***Option***"). This Option is subject to all of the terms and conditions as set forth herein and in the Stock Option Agreement attached hereto as Exhibit A (the "***Stock Option Agreement***") and the Plan, each of which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Stock Option Agreement.

Participant: _____

Grant Date: _____

Vesting Commencement Date: _____

Exercise Price per Share: $ _____

Total Exercise Price: $ _____

Total Number of Shares Subject to Option: _____

Expiration Date: _____

Type of Option: ☐ Incentive Stock Option ☐ Non-Qualified Stock Option

Vesting Schedule: 25% of the total number of shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest one year after the Vesting Commencement Date, and 1/48th of the total number of shares of Stock subject to the Option (rounded down to the next whole number of shares) shall vest on the last day of each one-month period of Participant's service as an Employee, Director or Consultant thereafter, so that all of the shares of Stock subject to the Option shall be vested on the fourth (4th) anniversary of the Vesting Commencement Date.

By his or her signature and the Company's signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Stock Option Agreement and this Grant Notice. Participant has reviewed the Stock Option Agreement, the Plan and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice and fully understands all provisions of this Grant Notice, the Stock Option Agreement and the Plan. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator of the Plan upon any questions arising under the Plan or the Option.

EVOKE PHARMA, INC.		**PARTICIPANT:**	
By:	_____	By:	_____
Print Name:	_____	Print Name:	_____
Title:	_____		
Address:	_____	Address:	_____
	_____		_____

EXHIBIT A

TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Stock Option Grant Notice ("***Grant Notice***") to which this Stock Option Agreement (this "***Agreement***") is attached, Evoke Pharma, Inc. (the "***Company***") has granted to Participant an option under the Company's 2007 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of Stock indicated in the Grant Notice.

ARTICLE I

GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice.

1.2 Incorporation of Terms of Plan. The Option is subject to the terms and conditions of the Plan which are incorporated herein by reference.

ARTICLE II

GRANT OF OPTION

2.1 Grant of Option. In consideration of Participant's past and/or continued employment with or service to the Company or a Parent or Subsidiary and for other good and valuable consideration, effective as of the Grant Date set forth in the Grant Notice (the "***Grant Date***"), the Company irrevocably grants to Participant the Option to purchase any part or all of an aggregate of the number of shares of Stock set forth in the Grant Notice, upon the terms and conditions set forth in the Plan and this Agreement. Unless designated as a Non-Qualified Stock Option in the Grant Notice, the Option shall be an Incentive Stock Option to the maximum extent permitted by law.

2.2 Exercise Price. The exercise price of the shares of Stock subject to the Option shall be as set forth in the Grant Notice, without commission or other charge; *provided*, *however*, that if this Option is designated as an Incentive Stock Option, the price per share of the shares subject to the Option shall not be less than the greater of (i) 100% of the Fair Market Value of a share of Stock on the Grant Date, or (ii) 110% of the Fair Market Value of a share of Stock on the Grant Date in the case of a Participant then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or any "parent corporation" of the Company (each within the meaning of Section 424 of the Code).

ARTICLE III

PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Sections 3.3 and 5.8, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) No portion of the Option which has not become vested and exercisable at the date of Participant's Termination of Service shall thereafter become vested and exercisable, except as may be otherwise provided by the Administrator or as set forth in a written agreement between the Company and Participant.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment which becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration of ten years from the Grant Date;

(b) If this Option is designated as an Incentive Stock Option and Participant owned (within the meaning of Section 424(d) of the Code), at the time the Option was granted, more than 10% of the total combined voting power of all classes of stock of the Company or any "subsidiary corporation" of the Company or "parent corporation" of the Company (each within the meaning of Section 424 of the Code), the expiration of five years from the date the Option was granted; or

(c) The expiration of three months following the date of Participant's Termination of Service, unless such termination occurs by reason of Participant's death, Disability or Misconduct;

(d) The expiration of one year following the date of Participant's Termination of Service by reason of Participant's death or Disability; or

(e) The date of Participant's Termination of Service as a result of Participant's Misconduct.

Participant acknowledges that an Incentive Stock Option exercised more than three months after Participant's termination of status as an Employee, other than by reason of death or Disability, will be taxed as a Non-Qualified Stock Option.

3.4 Special Tax Consequences. Participant acknowledges that, to the extent that the aggregate Fair Market Value (determined as of the time the Option is granted) of all shares of Stock with respect to which Incentive Stock Options, including the Option, are first exercisable for the first time by Participant in any calendar year exceeds $100,000 (or such other limitation as imposed by Section 422(d) of the Code), the Option and such other options shall be treated as not qualifying under Section 422 of the Code but rather shall be considered Non-Qualified Stock Options. Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking Options and other "incentive stock options" into account in the order in which they were granted.

ARTICLE IV

EXERCISE OF OPTION

4.1 Person Eligible to Exercise. Except as provided in Sections 5.2(b) and 5.2(c), during the lifetime of Participant, only Participant may exercise the Option or any portion thereof. After the death of Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

4.2 Partial Exercise. Any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3.

4.3 Manner of Exercise. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company or the Secretary's office of all of the following prior to the time when the Option or such portion thereof becomes unexercisable under Section 3.3:

(a) An Exercise Notice in writing signed by Participant or any other person then entitled to exercise the Option or portion thereof, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Administrator. Such notice shall be substantially in the form attached as Exhibit B to the Grant Notice (or such other form as is prescribed by the Administrator); and

(b) Subject to Section 5.1(c) of the Plan:

(i) Full payment (in cash or by check) for the shares with respect to which the Option or portion thereof is exercised; or

(ii) With the consent of the Administrator, by delivery of a full recourse promissory note on such terms and conditions as may be approved by the Administrator; or

(iii) With the consent of the Administrator, by delivery of shares of Stock then issuable upon exercise of the Option having a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof; or

(iv) On and after the Public Trading Date, such payment may be made, in whole or in part, through the delivery of shares of Stock which have been owned by Participant for at least six months, duly endorsed for transfer to the Company with a Fair Market Value on the date of delivery equal to the aggregate exercise price of the Option or exercised portion thereof; or

(v) On and after the Public Trading Date, through the delivery of a notice that Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price; *provided*, that payment of such proceeds is made to the Company upon settlement of such sale; or

(vi) Subject to any applicable laws, any combination of the consideration provided in the foregoing paragraphs (i), (ii) and (iii); and

(c) A bona fide written representation and agreement, in such form as is prescribed by the Administrator, signed by Participant or the other person then entitled to exercise such Option or portion thereof, stating that the shares of Stock are being acquired for Participant's own account, for investment and without any present intention of distributing or reselling said shares or any of them except as may be permitted under the Securities Act and then applicable rules and regulations thereunder, and that Participant or other person then entitled to exercise such Option or portion thereof will indemnify the Company against and hold it free and harmless from any loss, damage, expense or liability resulting to the Company if any sale or distribution of the shares by such person is contrary to the representation and

agreement referred to above. The Administrator may, in its absolute discretion, take whatever additional actions it deems appropriate to ensure the observance and performance of such representation and agreement and to effect compliance with the Securities Act and any other federal or state securities laws or regulations. Without limiting the generality of the foregoing, the Administrator may require an opinion of counsel acceptable to it to the effect that any subsequent transfer of shares acquired on an Option exercise does not violate the Securities Act, and may issue stop-transfer orders covering such shares. Share certificates evidencing Stock issued on exercise of the Option shall bear an appropriate legend referring to the provisions of this subsection (c) and the agreements herein. The written representation and agreement referred to in the first sentence of this subsection (c) shall, however, not be required if the shares to be issued pursuant to such exercise have been registered under the Securities Act, and such registration is then effective in respect of such shares; and

(d) The receipt by the Company of full payment for such shares, including payment of any applicable withholding tax, which may be in the form of consideration used by Participant to pay for such shares under Section 4.3(b), subject to Section 15.3 of the Plan; and

(e) In the event the Option or portion thereof shall be exercised pursuant to Section 4.1 by any person or persons other than Participant, appropriate proof of the right of such person or persons to exercise the Option.

4.4 Conditions to Issuance of Stock Certificates. The shares of Stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares or issued shares which have then been reacquired by the Company. Such shares shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any shares of Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such Stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its absolute discretion, determine to be necessary or advisable; and

(d) The lapse of such reasonable period of time following the exercise of the Option as the Administrator may from time to time establish for reasons of administrative convenience; and

(e) The receipt by the Company of full payment for such shares, including payment of any applicable withholding tax, which may be in the form of consideration used by Participant to pay for such shares under Section 4.3(b), subject to Section 15.3 of the Plan.

4.5 Rights as Stockholder. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any shares purchasable upon the exercise of any part of the Option unless and until such shares shall have been issued by the Company to such holder.

ARTICLE V

OTHER PROVISIONS

5.1 Administration. The Administrator shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator in good faith shall be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Option. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Administrator under the Plan and this Agreement.

5.2 Option Not Transferable.

(a) Subject to Section 5.2(b), the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the shares underlying the Option have been issued, and all restrictions applicable to such shares have lapsed. Neither the Option nor any interest or right therein shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

(b) Notwithstanding any other provision in this Agreement, with the consent of the Administrator and to the extent the Option is designated as a Non-Qualified Stock Option, the Option may be transferred to, exercised by and paid to one or more Permitted Transferees, subject to the terms and conditions set forth in Section 10.3 of the Plan.

(c) Unless transferred to a Permitted Transferee in accordance with Section 5.2(b), during the lifetime of Participant, only Participant may exercise the Option or any portion thereof. Subject to such conditions and procedures as the Administrator may require, a Permitted Transferee may exercise the Option or any portion thereof during Participant's lifetime. After the death of Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3, be exercised by Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

5.3 Lock-Up Period. Participant hereby agrees that, if so requested by the Company or any representative of the underwriters (the "***Managing Underwriter***") in connection with any registration of the offering of any securities of the Company under the Securities Act, Participant shall not sell or otherwise transfer any shares of Stock or other securities of the Company during such period as may be requested in writing by the Managing Underwriter and agreed to in writing by the Company (which period shall not be longer than one hundred eighty days) (the "***Market Standoff Period***") following the effective date of a registration statement of the Company filed under the Securities Act; *provided*, *however*, that such restriction shall apply only to the first registration statement of the Company to become effective under the Securities Act that includes securities to be sold on behalf of the Company to the public in an underwritten public offering under the Securities Act.

5.4 Restrictive Legends and Stop-Transfer Orders.

(a) The share certificate or certificates evidencing the shares of Stock purchased hereunder shall be endorsed with any legends that may be required by state or federal securities laws.

(b) Participant agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) The Company shall not be required: (i) to transfer on its books any shares of Stock that have been sold or otherwise transferred in violation of any of the provisions of this Agreement, or (ii) to treat as owner of such shares of Stock or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such shares shall have been so transferred.

5.5 Shares to Be Reserved. The Company shall at all times during the term of the Option reserve and keep available such number of shares of Stock as will be sufficient to satisfy the requirements of this Agreement.

5.6 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the address given beneath the signature of the Company's authorized officer on the Grant Notice, and any notice to be given to Participant shall be addressed to Participant at the address given beneath Participant's signature on the Grant Notice. By a notice given pursuant to this Section 5.6, either party may hereafter designate a different address for notices to be given to that party. Any notice which is required to be given to Participant shall, if Participant is then deceased, be given to the person entitled to exercise his or her Option pursuant to Section 4.1 by written notice under this Section 5.6. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.7 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.8 Stockholder Approval. The Plan will be submitted for approval by the Company's stockholders within twelve months before or after the date the Plan was initially adopted by the Board. The Option may not be exercised to any extent by anyone prior to the time when the Plan is approved by the stockholders, and if such approval has not been obtained within twelve months after the date the Plan was initially adopted by the Board, the Option shall thereupon be canceled and become null and void.

5.9 Governing Law; Severability. This Agreement shall be administered, interpreted and enforced under the laws of the State of Delaware, without regard to the conflicts of law principles thereof. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

5.10 Conformity to Securities Laws. Participant acknowledges that the Plan is intended to conform to the extent necessary with all provisions of the Securities Act and the Exchange Act and any and all regulations and rules promulgated by the Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

5.11 Amendments. This Agreement may not be modified, amended or terminated except by an instrument in writing, signed by Participant or such other person as may be permitted to exercise the Option pursuant to Section 4.1 and by a duly authorized representative of the Company.

5.12 No Employment Rights. If Participant is an Employee, nothing in the Plan or this Agreement shall confer upon Participant any right to continue in the employ of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which are expressly reserved, to discharge Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company and Participant.

5.13 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

5.13 Notification of Disposition. If this Option is designated as an Incentive Stock Option, Participant shall give prompt notice to the Company of any disposition or other transfer of any shares of Stock acquired under this Agreement if such disposition or transfer is made (a) within two years from the Grant Date with respect to such shares or (b) within one year after the transfer of such shares to him. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

5.14 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.15 Entire Agreement. The Plan and this Agreement (including all Exhibits hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

EXHIBIT B

TO STOCK OPTION GRANT NOTICE

FORM OF EXERCISE NOTICE

Effective as of today, , the undersigned *("**Participant**")* hereby elects to exercise Participant's option to purchase shares of the Stock (the "***Shares***") of Evoke Pharma, Inc. (the "***Company***") under and pursuant to the Evoke Pharma, Inc. 2007 Equity Incentive Plan (the "***Plan***") and the Stock Option Grant Notice and Stock Option Agreement dated , (the "***Option Agreement***"). Capitalized terms used herein without definition shall have the meanings given in the Option Agreement.

Grant Date: _____

Number of Shares as to which Option is Exercised: _____

Exercise Price per Share: $_____

Total Exercise Price: $_____

Certificate to be issued in name of: _____

Cash Payment delivered herewith: $____ (Representing the full Exercise Price for the Shares, as well as any applicable withholding tax)

Type of Option: ☐ Incentive Stock Option ☐ Non-Qualified Stock Option

1. Representations of Participant. Participant acknowledges that Participant has received, read and understood the Plan and the Option Agreement. Participant agrees to abide by and be bound by their terms and conditions.

2. Rights as Stockholder. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Shares subject to the Option, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Article 10 of the Plan.

Participant shall enjoy rights as a stockholder until such time as Participant disposes of the Shares or the Company and/or its assignee(s) exercises the Right of First Refusal hereunder. Upon such exercise, Participant shall have no further rights as a holder of the Shares so purchased except the right to receive payment for the Shares so purchased in accordance with the provisions of this Agreement, and Participant shall forthwith cause the certificate(s), if any issued, evidencing the Shares so purchased to be surrendered to the Company for transfer or cancellation.

3. Participant's Rights to Transfer Shares.

(a) Before any Shares held by Participant or any permitted transferee (each, a "***Holder***") may be sold, pledged, assigned, hypothecated, transferred, or otherwise disposed of (each, a "***Transfer***"), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares proposed to be Transferred on the terms and conditions set forth in this Section (the "***Right of First***

Refusal"). In the event that the Company's Bylaws contain a right of first refusal with respect to the Shares, such right of first refusal shall apply to the Shares to the extent such provisions are more restrictive than the Right of First Refusal set forth in this Section and the Right of First Refusal set forth in this Section shall not in any way restrict the operation of the Company's Bylaws.

(b) In the event any Holder desires to Transfer any Shares, the Holder shall deliver to the Company a written notice (the "***Notice***") stating: (i) the Holder's bona fide intention to sell or otherwise Transfer such Shares; (ii) the name of each proposed purchaser or other transferee ("***Proposed Transferee***"); (iii) the number of Shares to be Transferred to each Proposed Transferee; and (iv) the price for which the Holder proposes to Transfer the Shares (the "***Offered Price***"), and the Holder shall offer such Shares at the Offered Price to the Company or its assignee(s).

(c) Within twenty-five days after receipt of the Notice, the Company and/or its assignee(s) may elect in writing to purchase all, but not less than all, of the Shares proposed to be Transferred to any one or more of the Proposed Transferees by delivery of a written exercise notice to the Holder (a "***Company Notice***"). The purchase price will be determined in accordance with subsection (d) below.

(d) The purchase price ("***Purchase Price***") for the Shares repurchased under this Section shall be the Offered Price.

(e) Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within five days after delivery of the Company Notice or in the manner and at the times mutually agreed to by the Company and the Holder. Should the Offered Price specified in the Notice be payable in property other than cash, the Company shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Holder and the Company cannot agree on such cash value within ten days after the Company's receipt of the Notice, the valuation shall be made by the Board. The payment of the purchase price shall then be held on the later of (i) five days following delivery of the Company Notice or (ii) five days after such valuation shall have been made.

(f) If all or a portion of the Shares proposed in the Notice to be Transferred are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise Transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other Transfer is consummated within sixty days after the date of the Notice and provided further that any such sale or other Transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not Transferred to the Proposed Transferee within such sixty-day period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal as provided herein before any Shares held by the Holder may be sold or otherwise Transferred.

(g) Anything to the contrary contained in this Section notwithstanding, the Transfer of any or all of the Shares during Participant's lifetime or upon Participant's death by will or intestacy to Participant's Immediate Family or a trust for the benefit of Participant's Immediate Family shall be exempt from the Right of First Refusal. As used herein, "***Immediate Family***" shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister or stepchild (whether or not adopted). In such case, the transferee or other recipient shall receive and hold the Shares so Transferred subject to the provisions of this Section (including the Right of First Refusal) and the Restricted Stock Purchase Agreement, if applicable, and there shall be no further Transfer of such Shares except in accordance with the terms of this Section.

(h) The Right of First Refusal shall terminate as to all Shares upon the Public Trading Date.

(i) Any transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any Transfer or attempted Transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

4. Tax Consultation. Participant understands that Participant may suffer adverse tax consequences as a result of Participant's purchase or disposition of the Shares. Participant represents that Participant has consulted with any tax consultants Participant deems advisable in connection with the purchase or disposition of the Shares and that Participant is not relying on the Company for any tax advice.

5. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Participant understands and agrees that the Company shall cause any certificates issued evidencing the Shares shall have the legends set forth below or legends substantially equivalent thereto, together with any other legends that may be required by state or federal securities laws:

THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("ACT"), NOR HAVE THEY BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE. NO TRANSFER OF SUCH SECURITIES WILL BE PERMITTED UNLESS A REGISTRATION STATEMENT UNDER THE ACT IS IN EFFECT AS TO SUCH TRANSFER, THE TRANSFER IS MADE IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR IN THE OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) REGISTRATION UNDER THE ACT IS UNNECESSARY IN ORDER FOR SUCH TRANSFER TO COMPLY WITH THE ACT AND WITH APPLICABLE STATE SECURITIES LAWS.

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. SUCH TRANSFER RESTRICTIONS ARE BINDING ON TRANSFEREES OF THESE SHARES.

(b) Participant agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

6. Participant Representations. Participant hereby makes the following certifications and representations with respect to the Shares listed above:

(a) Participant is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Shares. Participant is acquiring these Shares for investment for Participant's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act.

(b) Participant acknowledges and understands that the Shares constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Participant's investment intent as expressed herein. Participant understands that the Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Participant further acknowledges and understands that the Company is under no obligation to register the Shares. Participant understands that the certificate evidencing the Shares will be imprinted with a legend which prohibits the transfer of the Shares unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(c) Participant is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to Participant, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, ninety days thereafter (or such longer period as any market stand-off agreement may require) the securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (i) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Exchange Act); and, in the case of an affiliate, (ii) the availability of certain public information about the Company, (iii) the amount of securities being sold during any three month period not exceeding the limitations specified in Rule 144(e), and (iv) the timely filing of a Form 144, if applicable.

(d) In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the securities were sold by the Company or the date the securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the securities by an affiliate, or by a non-affiliate who subsequently holds the securities less than two years, the satisfaction of the conditions set forth in sections (i), (ii), (iii) and (iv) of paragraph (c) above.

(e) Participant further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion

that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Participant understands that no assurances can be given that any such other registration exemption will be available in such event.

7. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.

8. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Participant or by the Company forthwith to the Administrator, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on the Company and on Participant.

9. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

10. Notices. Any notice required or permitted hereunder shall be given in accordance with the provisions set forth in Section 5.6 of the Option Agreement.

11. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this Agreement.

12. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan and the Option Agreement constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

ACCEPTED BY:
EVOKE PHARMA, INC.

By: _____
Print Name: _____
Title: _____

SUBMITTED BY PARTICIPANT:

By: _____
Print Name: _____

Address: _____
_____

CONSENT OF SPOUSE

I, , spouse of , have read and approve the Option Agreement and this Exercise Notice between my spouse and Evoke Pharma, Inc. In consideration of granting of the right to my spouse to purchase shares of Evoke Pharma, Inc. set forth in the Option Agreement and this Exercise Notice, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Option Agreement and this Exercise Notice and agree to be bound by the provisions of the Plan, the Option Agreement and this Exercise Notice insofar as I may have any rights in said agreements or any shares issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Exercise Notice.

Dated: ,

Signature of Spouse

Exhibit 10.10

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT (INDICATED BY ASTERISKS) HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

ASSET PURCHASE AGREEMENT

Dated as of June 1, 2007

by and among

Evoke Pharma, Inc.,
a Delaware corporation,

"PURCHASER"

and

Questcor Pharmaceuticals, Inc.,
a California corporation,

"SELLER"

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of June 1, 2007 (this "Agreement"), is by and among Evoke Pharma, Inc., a Delaware corporation ("Purchaser"), and Questcor Pharmaceuticals, Inc., a California corporation ("Seller").

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, certain Purchased Assets related to the Product, all upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" shall mean, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by or is under common Control with such first Person. A Person shall be deemed to "Control" another Person if such first Person has the power to direct or cause the direction of such other Person, whether through ownership of securities, by contract or otherwise.

"Assigned Contracts" shall mean the Contracts listed on Schedule 1.1(a).

"Assumed Contractual Obligations" shall mean the contractual obligations under the agreements listed on Schedule 1.1(a).

"Assumed Liabilities" shall have the meaning given such term in Section 2.4(a).

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks in the City of New York are permitted or required to close by law or regulation.

"Closing" shall mean the consummation of the transactions under this Agreement contemplated to be undertaken on the Closing Date.

"Closing Date" shall mean the date of this Agreement.

"Closing Purchase Price" shall have the meaning given such term in Section 3.2.

"Competitive Product" means a product, either for prescription or over-the-counter sale, that is intended for use in a comparable indication, contains the same or substantially equivalent active ingredients or is otherwise competitive with the Product.

"Confidentiality Agreement" shall have the meaning given such term in Section 8.8.

"Contracts" shall mean contracts, leases, indentures, agreements, purchase orders and all other legally binding arrangements, whether in existence on the date hereof or subsequently entered into, including all amendments thereto.

"Encumbrance" shall mean any mortgage, charge, lien, security interest, easement, right of way, pledge, option, lease, license, restriction, royalty or other payment obligation or encumbrance of any nature whatsoever.

"Evoke NDA" shall have the meaning given such term in Section 3.3(b).

"Excluded Assets" shall have the meaning given such term in Section 2.2(b).

"Excluded Intellectual Property" shall mean any intellectual property that is not useful to, used in, necessary to or related directly to the research, development, manufacture, use, sale or importation of the Product.

"Excluded Liabilities" shall have the meaning given such term in Section 2.4(b).

"Exhibits" shall mean, collectively, the Exhibits referred to throughout this Agreement.

"FDA" shall mean the United States Food and Drug Administration or any successor agency thereto.

"GAAP" shall mean United States generally accepted accounting principles consistently applied.

"Governmental Entity" shall mean any court, administrative agency or commission or other governmental authority or instrumentality, whether domestic or foreign.

"Governmental Rule" shall mean any law, judgment, order, decree, statute, ordinance, rule or regulation issued or promulgated by any Governmental Entity.

"IND" shall mean an investigational new drug application filed with the FDA as more fully defined in 21 C.F.R. § 312.3.

"Key Employee" shall mean Kim Lang.

"Knowledge" shall mean, with respect to any Person that is an entity, the actual knowledge that an executive officer of such Person or Key Employee has and, with respect to any Person that is an individual, the actual knowledge of that Person.

"Liabilities" shall mean any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, or determined or determinable, including those arising under any law, action or governmental order and those arising under any contract, agreement, arrangement, commitment or undertaking, or otherwise.

"Losses" shall mean, collectively, any and all damages, losses, Taxes, Liabilities, claims, judgments, penalties, costs and expenses (including reasonable attorneys' fees and litigation expenses).

"Material Adverse Effect" shall mean an effect which is materially adverse to the Purchased Assets, individually or taken as a whole, but shall not include (i) any adverse effect due to changes in conditions generally affecting (A) the healthcare industry or (B) the United States economy as a whole, so long as any such adverse effect does not affect the Purchased Assets in a disproportionate manner, or (ii) any adverse effect due to legal or regulatory changes enacted after the date of this Agreement.

"Milestone Payments" shall have the meaning given such term in Section 3.3.

"NDA" shall mean a new drug application filed with the FDA as more fully defined under 21 C.F.R. § 314.50 *et. seq*.

"Net Sales" shall mean the gross amount received by Purchaser or its Affiliates, licensees, sublicensees, joint ventures and assignees of the Product rights assigned hereunder, for Products sold in bona fide, arms-length transactions, less amounts (other than for bad debt) actually deducted by such selling party and recognized in its financial statements in calculating net sales of such Products in accordance with GAAP for the following items: (i) trade, quantity and/or cash discounts from the gross invoice price which are actually allowed, accrued or taken, (ii) freight, postage and other handling and transportation charges and insurance included in the invoice price, (iii) amounts repaid, credited or accrued by reasons of rejections or return of goods or because of retroactive price reductions specifically identifiable to the Product, (iv) amounts payable and/or accrued resulting from government (or agency thereof) mandated rebate programs, (v) third-party rebates, credits, allowances or chargebacks (including those to managed-care entities and Government Entities) to the extent actually allowed or taken, (vi) customs duties, tariffs, sales taxes, value-added taxes, excise taxes and other consumption taxes and compulsory payments to Government Entities and any other governmental charges imposed upon the sale of Product (excluding income taxes), if any, actually paid and directly related to the sale of Product that are not reimbursed by the buyer of such Product, (vii) any other accruals required for Product related deductions and allowances permitted by GAAP.

"Offer" shall have the meaning given such term in Section 6.8.

"Patents" shall mean all patents and patent applications, including reissues, divisions, continuations, continuations-in-part and extensions thereof and reexamination certificates therefore.

"Payment Rights" shall have the meaning given such term in Section 6.8.

"Permitted Encumbrance" shall mean (i) any Encumbrance disclosed on Schedule 1.1(b), (ii) any Encumbrance for Taxes, assessments and other governmental charges that are not yet due and payable or (iii) any statutory mechanics', carriers' or workmen's liens arising or incurred in the ordinary course of business which are not yet delinquent or that, individually or in the aggregate with other such imperfections and Encumbrances, would not have a Material Adverse Effect.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Entity or other entity.

"Product Books and Records" shall mean all books, records and recorded information, including, but not limited to, laboratory books, batch records, stability data and pre-clinical and clinical studies and regulatory files and supplier lists, held in Seller's name or in any Affiliate's or licensor's name on Seller's behalf and in each case used primarily in, necessary to or related directly to the research, development, manufacture, use, sale or importation of the Product.

"Product Intellectual Property" shall mean all intellectual property, technical, clinical, manufacturing and testing information, data and know-how used primarily in, necessary to or related

directly to the research, development, manufacture, use, sale or importation of the Product, whether or not patentable, owned or controlled by Seller as of the Closing Date including, without limitation, the Transferred Patents and any and all divisions, continuations, continuations-in-part and extensions thereof and reexamination certificates therefore and all applicable foreign counterparts, and all manufacturing information, processes, testing methods, formulae, discoveries and inventions, whether relating to biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical safety, quality control and clinical data.

"Product Regulatory Filings" shall mean Investigational New Drug Application No. 25,512 and the (rejected) New Drug Application No. 19,203, as filed with the FDA, and all supplements, amendments and revisions thereto.

"Product Trademarks" shall mean each of the unregistered marks "Emitasol" and "Pramidin" and the goodwill of the business symbolized thereby.

"Product" shall mean any and all formulations, dosage forms and dosage strengths of nasally administered metaclopromide or other pharmaceutical product covered by the claims set forth in U.S. Patent Nos. 5,760,086 and 6,770,262, in each case whether as a single agent or in combination with other active ingredients or excipients.

"Purchased Assets" shall have the meaning given such term in Section 2.2(a).

"Purchaser" shall have the meaning given such term in the recitals.

"Purchase Price" shall have the meaning given such term in Article 3.

"Royalty Term" shall mean the period of time from the Closing Date through the date upon which there is no Valid Claim in the United States covering the Product sold by Purchaser, its Affiliates or sublicensees, as applicable.

"Schedules" shall mean, collectively, the Schedules referred to throughout this Agreement.

"Seller" shall have the meaning given such term in the recitals.

"Tax" shall mean all Federal, state, local and foreign taxes and assessments, including all interest, penalties and additions with respect thereto.

"Tax Return" shall mean any report, return, election, notice, estimate, declaration, information statement and other forms and documents (including all schedules, exhibits and other attachments thereto) relating to and filed or required to be filed with a taxing authority in connection with any Taxes (including estimated Taxes).

"Territory" shall mean the entire world.

"Transferred Patents" shall mean U.S. patent Nos. 5,760,086 and 6,770,262.

"United States" or "U.S." shall mean the United States of America and its territories and commonwealths, including Puerto Rico and the District of Columbia.

"Valid Claim" shall mean an issued claim of an unexpired Patent, or a claim of a pending Patent application in the United States, that shall not have been withdrawn, canceled or disclaimed, or held invalid or unenforceable by a court of competent jurisdiction in an unappealed or unappealable decision. On a country-by-country basis, a Patent application pending for more than five (5) years shall not be considered to have any Valid Claim for purposes of this Agreement unless and until a Patent with respect to such application issues with such claim.

2. SALE AND PURCHASE OF PURCHASED ASSETS

2.1 Purchase and Sale; Assignment. Upon the terms and subject to the conditions of this Agreement, Seller sells, conveys, assigns, transfers and delivers to Purchaser, and Purchaser purchases and accepts, all right, title and interest of Seller in, to and under the Purchased Assets.

2.2 Purchased Assets.

(a) The term "Purchased Assets" shall mean the following, and only the following, properties, assets and rights within the Territory of whatever kind and nature, tangible or intangible, other than the Excluded Assets, of Seller existing on the Closing Date:

(i) the Product Intellectual Property;

(ii) the Product Regulatory Filings;

(iii) the Product Trademarks;

(iv) the Assigned Contracts;

(v) the Product Books and Records; and

(vi) all claims, counterclaims, credits, causes of action, choses in action, rights of recovery and rights of setoff relating to the foregoing, including, but not limited to, claims for past infringement or misappropriation of any of the rights and interest included in the foregoing, with the right to enforce, sue for and collect damages for the same.

(b) Seller and Purchaser expressly agree and acknowledge that the Purchased Assets shall not include any other assets of Seller (the "Excluded Assets"), including, without limitation, those assets specifically described on Schedule 2.2(b) hereto.

(c) Purchaser acknowledges and agrees that Seller may retain solely for archival purposes one (1) copy of all or any part of the Product Books and Records that it delivers to Purchaser hereunder.

2.3 Back-up License. To the extent the Seller is unable to transfer and assign the Product Intellectual Property, Seller hereby grants to Purchaser a worldwide, exclusive, royalty-free (other than the royalty provided by Section 3.4) paid-in-full (other than the payment obligations under Article 3) license, with the right to grant sublicenses, under the Product Intellectual Property, to research, develop, make, have made, use, offer to sell, sell, have sold and import the Product. Each item of Product Intellectual Property, if any, that is the subject of this Section 2.3 is set forth on Schedule 2.3 hereto.

2.4 Assumption of Certain Liabilities and Obligations. (a) Purchaser shall assume, be responsible for and pay, perform and discharge when due all Liabilities (including any Liabilities arising in respect of Taxes) arising from the ownership, possession and/or use after the Closing of the Purchased Assets by Purchaser, its Affiliates, successors or assigns and the sale of the Product in the Territory by Purchaser, its Affiliates, successors or assigns, including (i) any Liabilities arising from any product liability or patent or trademark infringement claim or lawsuit brought by any third party, the FDA or any other Governmental Entity with respect to the activities of, or sales of the Product by, Purchaser, its Affiliates, successors or assigns after the Closing, (ii) any Liabilities arising from any FDA or any other Governmental Entity action or notification with respect to the activities of, or sales of the Products by, Purchaser, its Affiliates, successors or assigns after the Closing, and (iii) any Liabilities under the Assigned Contracts and the Assumed Contractual Obligations arising or resulting from events, occurrences or circumstances after the Closing (collectively, the "Assumed Liabilities").

(b) Except for the Assumed Liabilities, Purchaser shall not assume or be liable for any Liabilities arising in connection with the Product, the Assigned Contracts or the other Purchased Assets to the extent any such Liability arises from events, occurrences or circumstances on or prior to the Closing, including, but not limited to (i) the activities of, or sales of the Products by Seller or its Affiliates on or prior to the Closing, (ii) any Liabilities arising in respect of Taxes arising from the ownership, possession and/or use on or prior to the Closing of the Product or any of the Purchased Assets, (iii) any Liabilities arising from any product liability or patent or trademark infringement claim or lawsuit brought by any third party, the FDA or any other Governmental Entity with respect to the activities of, or sales of the Product on or prior to the Closing, (iv) any Liabilities arising from any FDA or any other Governmental Entity action or notification with respect to the activities of, or sales of the Products on or prior to the Closing, (v) any Liabilities under the Assigned Contracts arising or resulting from events, occurrences or circumstances on or prior to the Closing, and (vi) any Liability for any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby identified on Schedule 4.12 (collectively, the "Excluded Liabilities").

3. PURCHASE PRICE

3.1 Purchase Price Components. The purchase price for the Purchased Assets shall consist of (i) the Closing Purchase Price, (ii) the Milestone Payments, and (iii) the Royalty Payments.

3.2 The Closing Purchase Price. Concurrently herewith, Purchaser delivers to Seller by bank check or wire transfer, Six Hundred and Fifty Thousand Dollars ($650,000) (the "Closing Purchase Price").

3.3 Milestone Payments. In addition, Purchaser, shall pay Seller non-refundable milestone payments within thirty (30) days of achievement of the following events (collectively, the "Milestone Payments"):

(a) [***] dollars) [***];

(b) [***] dollars) [***];

(c) [***] dollars) [***];

(d) [***] dollars) [***];

(e) [***] dollars) [***];

(f) [***] dollars) [***]; and

(g) [***] dollars) [***].

For the avoidance of doubt, each of the payments under Sections 3.3(a), (b), (c), (d), (e), (f) and (g) shall be due, if at all, only once upon the first such applicable [***] or [***], up to an aggregate maximum of $52,000,000 (fifty-two million dollars) and no additional milestones are due upon subsequent such [***].

3.4 Royalty Payments. Purchaser shall pay Seller a royalty of [***] of Net Sales in the United States; provided that the royalty rate shall be reduced to [***] of Net Sales in the United States during such time as there is an FDA approved substitutable generic of the Product being commercialized by a party other than Purchaser or any Affiliate or sublicensee of Purchaser in the United States; and provided further that no royalty payments shall be due hereunder after the expiration of the Royalty Term. Royalty payments shall be subject to Section 6.9 of this Agreement.

3.5 Allocation of Purchase Price. Each of the parties hereto agrees to report (and to cause its Affiliates to report) for Tax purposes, the allocation of the Purchase Price as set forth in Exhibit C, and agrees not to take any position inconsistent therewith in any Tax Return, in any Tax refund claim or in any Tax related litigation.

*** Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

3.6 Transfer Taxes. All transfer, sales, value added, stamp duty and similar Taxes (other than income Taxes) payable in connection with the transactions contemplated hereby shall be borne equally by the parties.

4. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows:

4.1 Seller's Organization; Good Standing. Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of California. Seller has the requisite power and authority to own the Purchased Assets and to carry on its business as currently conducted. Seller is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not have a Material Adverse Effect.

4.2 Authority; Execution and Delivery. Seller has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery of this Agreement by Purchaser, constitutes the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing) regardless of whether considered in a proceeding in equity or at law.

4.3 Consents; No Violation, Etc. Except as set forth on Schedule 4.3, the execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby and the compliance with the terms hereof will not (i) violate any Governmental Rule applicable to Seller or the Purchased Assets, (ii) conflict with any provision of the articles of incorporation or bylaws of Seller, (iii) conflict with, result in a violation or breach of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a material breach or default) under, or result in the termination of, or accelerate the performance required under, any Assigned Contract or any other Contract set forth on Schedule 4.9, or (iv) require any approval, authorization, consent, license, exemption, filing or registration with any court, arbitrator or Governmental Entity, except, with respect to the foregoing clauses (ii) and (iii), for such violations or conflicts which would not have a Material Adverse Effect or materially interfere with Seller's performance of its obligations hereunder or, with respect to the foregoing clause (iv), for such approvals, authorizations, consents, licenses, exemptions, filings or registrations which have been obtained or made or which, if not obtained or made, would not have a Material Adverse Effect or materially interfere with Seller's performance of its obligations hereunder.

4.4 Title to Purchased Assets. Except as set forth on Schedule 4.4, Seller has good, valid and marketable title to all of the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

4.5 Scope of Purchased Assets. The Purchased Assets constitute (i) all of the assets owned or licensed by Seller that are used primarily in, necessary to or related directly to the research, develop, make, have made, use, offer to sell, sell, have sold and import of the Product and (ii) to the Knowledge of Seller, no other asset is used primarily in, necessary to or related directly to the research, develop, make, have made, use, offer to sell, sell, have sold or import of the Product.

4.6 Litigation. Except as disclosed on Schedule 4.6, as of the date hereof, there is no suit, claim, action, investigation or proceeding pending or, to the Knowledge of Seller, threatened against Seller, that relates to the Purchased Assets which (i) if adversely determined would result in a Material Adverse Effect or (ii) challenges or seeks to prevent or enjoin the transactions contemplated by this Agreement.

4.7 Regulatory Issues. (a) Except as set forth on Schedule 4.7, or as would not have a Material Adverse Effect, during the last three (3) years prior to the date of this Agreement, with respect to the Product, and generic equivalents thereto, only, neither Seller nor any Affiliate thereof has received or been subject to: (i) any FDA Form 483's relating to the Product, or generic equivalents thereto, (ii) any FDA Notices of Adverse Findings relating to the Product, or generic equivalents thereto, or (iii) any warning letters or other written correspondence from the FDA concerning the Product, or generic equivalents thereto, in which the FDA asserted that the operations of Seller were not in compliance with applicable Governmental Rules or guidelines with respect to the Product, and generic equivalents thereto.

(b) The Product Regulatory Filings included in the Purchased Assets constitute each IND and other product registration, application and other filing related to the Product with the FDA or any other Governmental Entity, whether by Seller, its Affiliates or any licensor or predecessor in interest with respect to the Product or the Purchased Assets. Each such Product Regulatory Filing has been prepared, filed and maintained in accordance with all applicable laws and regulations and does not contain any material misstatement or omission.

(c) Seller has provided to Purchaser true, correct and complete copies of all correspondence, meeting minutes, notices, supplemental applications and annual or other reports or documents received from or provided to the FDA relating to the Product in Seller's possession, including without limitation any Product Regulatory Filing, whether by Seller, its Affiliates or any licensor or predecessor in interest with respect to the Product or the Purchased Assets.

4.8 No Defaults Under Contracts. (a) The Assigned Contracts are all the Contracts of the Seller relating to the Products or the Purchased Assets, including any licenses or customer Contracts with respect to the research, development, sale or distribution of the Products in the Territory, except for standard non-disclosure agreements executed in connection with the potential sale of the Products.

(b) Schedule 4.8 identifies: (i) all Contracts involving a royalty payment, milestone payment, sharing of profits or other payment with respect to the Product or the Purchased Assets which may become due after the Closing; (ii) all Contracts involving a non-compete, field or indication limitation, territory limitation or other restriction on the ability to research, develop, manufacture, distribute, market or sell the Product; (iii) all Contracts relating to the manufacture of the Product, including the supply of raw materials used to manufacture the Product; and (iv) all Contracts, including licenses, relating to any technology used in the research, development, manufacture, distribution, marketing or sale of the Product.

(c) Each of the Assigned Contracts (not identified as a "Terminated Agreement" on Schedule 1.1(a)) is in effect and constitutes a legal, valid and binding agreement of Seller or its Affiliate party to such Contract and, to the Knowledge of Seller, the other party to such Contract, and is enforceable in accordance with its terms except as may be limited by applicable bankruptcy or similar insolvency laws or by general equitable principles, and to the Knowledge of Seller, the other parties to the Assigned Contracts are not in default under or in breach of such Contracts.

(d) Except as would not have a Material Adverse Effect, to the Knowledge of Seller, it is not in default under or in breach of any Assigned Contract, and it has not received notice that it is in default under or in breach of any Assigned Contract.

(e) Seller has delivered to Purchaser complete and correct copies of all Assigned Contracts.

4.9 Intellectual Property Rights. Schedule 4.9 contains a true and correct list of all Patents and all trademarks (or applications for trademarks) (other than Excluded Intellectual Property) owned by Seller and used primarily in, necessary to or related directly to the research, development, manufacture, use, sale or importation of the Product in the Territory.

(a) To the Knowledge of Seller, no third party is infringing or misappropriating in the Territory any of the Product Intellectual Property.

(b) There are no outstanding claims asserted in writing against Seller, or to the Knowledge of Seller, otherwise threatened, alleging that the research, development, manufacture, marketing, distribution, sale or use of the Product in the Territory infringes or misappropriates any intellectual property or other proprietary rights of any other Person, and, to the Knowledge of Seller, Seller's research, development, manufacture, marketing, distribution, sale or use of the Product in the Territory does not infringe or misappropriate any intellectual property or other proprietary rights of any other Person.

(c) To the Knowledge of Seller, each of the Transferred Patents is valid and subsisting, and all necessary registration, maintenance and renewal fees in connection with such Transferred Patents have been paid.

(d) No present or former employee or consultant of Seller and no other Person owns or has any proprietary financial or other interest, direct or indirect, in the Product Intellectual Property. Neither Seller nor any of its Affiliates or other Person acting on Seller's behalf has entered into any Contract granting any Person the right to control the prosecution of any of the Patents included in the Product Intellectual Property.

(e) There are no actions, proceedings or other claims before any Governmental Entity (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) other than proceedings related to usual and customary patent prosecutions in the ordinary course of business relating to any Product Intellectual Property, and no Product Intellectual Property is subject to any outstanding order restricting in any manner the use, transfer or licensing thereof or that may affect the validity, use or enforceability of the Product Intellectual Property.

4.10 Books and Records. To the Knowledge of Seller, the Product Books and Records included in the Purchased Assets are all of the books, records and recorded information primarily related to the Product.

4.11 Competitive Products. Neither Seller nor any of its Affiliates is presently engaged in the research, development, manufacture, distribution, marketing, sale or promotion of a Competitive Product.

4.12 No Brokers. Except as set forth on Schedule 4.12, Seller has not entered into any agreement, arrangement or understanding with any Person or firm which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

4.13 Full Disclosure. No statement by Seller contained in this Agreement, or the attached exhibits or schedules or any written statement or certificate furnished or to be furnished to Purchaser pursuant to this Agreement or in connection with the transactions contemplated hereby when read together contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements contained therein or herein, in view of the circumstances under which they were made, not misleading.

4.14 Exclusive Representations and Warranties. Other than the representations and warranties set forth in this Article 4, Seller is not making any other representation or warranty, express or implied, with respect to the Products or the Purchased Assets.

5. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as follows:

5.1 Purchaser's Organization; Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser has all requisite corporate power and authority to carry on its business as it is currently being conducted. Purchaser is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not have a material adverse effect on Purchaser or its ability to perform its obligations hereunder.

5.2 Authority; Execution and Delivery. Purchaser has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Purchaser and the consummation of the transactions contemplated hereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery of this Agreement by Seller, constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing) regardless of whether considered in a proceeding in equity or at law.

5.3 Consents; No Violations, Etc. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby and the compliance with the terms hereof will not (i) violate any Governmental Rule applicable to Purchaser, (ii) conflict with any provision of the articles of incorporation or bylaws of Purchaser, (iii) conflict with any material Contract to which Purchaser is a party or by which it is otherwise bound or (iv) require any approval, authorization, consent, license, exemption, filing or registration with any court, arbitrator or Governmental Entity, except with respect to the foregoing clauses (i) and (iii), for such violations or conflicts which would not materially interfere with Purchaser's performance of its obligations hereunder or, with respect to the foregoing clause (iv), for such approvals, authorizations, consents, licenses, exemptions, filings or registrations which have been obtained or made or which, if not obtained or made, would not materially interfere with Purchaser's performance of its obligations hereunder.

5.4 Litigation. As of the date hereof, there is no suit, claim, action, investigation or proceeding pending or, to the knowledge of Purchaser, threatened against Purchaser or any of its Affiliates which if adversely determined would delay the ability of Purchaser to perform its obligations hereunder.

5.5 No Brokers. Purchaser has not entered into any agreement, arrangement or understanding with any Person or firm which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated hereby.

6. COVENANTS AND AGREEMENTS OF PURCHASER AND SELLER

6.1 Semi-Annual Development Reports. Upon Seller's request, not more frequently than twice per calendar year, Purchaser shall provide a written summary of the status of its material research and development activities with respect to the Product. Any such reports provided pursuant to this Section 6.1 shall be deemed to be confidential information for purposes of the Confidentiality Agreement or any subsequent agreement concerning confidentiality which Purchaser may reasonably request in connection with the provision of such reports.

6.2 Notification of Sublicensees. Seller shall notify its sublicensees, each of which is listed on Schedule 6.2 hereto, within ten (10) Business Days after the Closing Date, in a form of notice that is reasonably acceptable to Purchaser, that Purchaser has acquired and Seller has transferred the Purchased Assets and that all payments under applicable sublicenses or distribution agreements be paid directly to Purchaser.

6.3 Records. Purchaser shall preserve all Product Books and Records (including financial information) included within the Purchased Assets for a period of at least five (5) years from the Closing Date and make such books and records available for inspection and copying by Seller or its agents upon reasonable request and upon reasonable notice. Any Product Books and Records or other information provided pursuant to this Section 6.3 shall be deemed to be confidential information for purposes of the Confidentiality Agreement or any subsequent agreement concerning confidentiality which Purchaser may reasonably request in connection with the inspection or copying of such materials.

6.4 Product Safety. After the Closing Date, Purchaser shall have all responsibility for investigating and reporting adverse experiences and complaints for the Products, and addressing any FDA inquiries relating to the safety of the Products.

6.5 Transfer of Product Regulatory Filings. For the period from the Closing Date through one year thereafter, Seller shall cooperate with Purchaser in disclosing and copying any relevant records and reports which are required to be made, maintained and reported pursuant to Governmental Rules in the Territory. The parties agree to use their reasonable efforts to take any other actions required by the FDA or other regulatory agencies to effect the transactions contemplated hereby. On the Closing Date, each of the parties hereto shall take any actions necessary to effect the transfer of the INDs included in the Product Regulatory Filings from Seller to Purchaser, including notices to the FDA regarding such transfer from Seller to Purchaser. Except as otherwise expressly provided for herein, all costs related to the transfer and subsequent prosecution of any such INDs or other regulatory filings (including trademark filings) shall be borne by Purchaser.

6.6 Further Action; Consents; Filings. Upon the terms and subject to the conditions hereof, each of Seller and Purchaser shall use its commercially reasonable efforts to (i) obtain from the requisite Governmental Entities any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made in connection with the consummation of the transactions contemplated by this Agreement and (ii) make all necessary filings, and thereafter make any other advisable submissions, with respect to this Agreement and the transactions contemplated by this Agreement required under any applicable Governmental Rules. The parties hereto shall cooperate with each other in connection with the making of all such filings, including by providing copies of all such non-confidential documents to the other party hereto and its advisors prior to filing and, if requested, by accepting all reasonable additions, deletions or changes suggested in connection therewith. Seller and Purchaser each shall furnish all information required for any application or other filing to be made pursuant to the rules and regulations of any applicable Governmental Rules in connection with the transactions contemplated by this Agreement.

6.7 Royalty and Net Sales Reports, Payments.

(a) No later than forty-five (45) days after the end of each calendar quarter for which a royalty payment is due under Section 4.3(a), Purchaser shall report to Seller the Net Sales of the Product in the United States in the previous calendar quarter, and the royalty due thereon, including a complete and detailed accounting of its gross sales and deductions thereto made to arrive at Net Sales in sufficient detail (including but not limited to discounts, product returns, allowances, rebates, fees; and of units sold, samples distributed, and units disposed of other than by sale) to enable Seller to confirm the amounts due under this Agreement.

(b) Each such quarterly report shall be accompanied by payment of the royalty, and if applicable, any Milestone Payment under Sections 3.3 (d), (e), (f) and (g), due. Each payment shall be in U.S. Dollars. Payment shall be made via wire transfer to a bank designated by Seller. Purchaser shall keep true and accurate books of account and shall keep and maintain all records and documents necessary for Seller to ascertain the royalties and Milestone Payments due under this Agreement for a period of three (3) years after the underlying sales were made.

(c) In the event of a late payment, Purchaser shall pay to Seller interest calculated on a daily basis on the overdue payment from the date such payment was due to the date such payment is received by Seller at a rate of 1.0% per calendar month.

(d) If taxes, assessments, fees or other charges are required to be withheld from payments to Seller, Purchaser shall make such payments to the applicable Taxing authority as

required to fulfill such requirement and pay to Seller the net amount of the Royalties due. Receipts, if available, for all such withholdings shall be provided to Seller. Purchaser shall be responsible for establishing its right to claim any exemption to such charges or to its withholding, shall keep Seller advised in writing of the basis and status of all such exemption claims, and shall be liable for any penalty, interest or other assessment against Seller for failing to pay or withhold such charges in reliance on any such exemption claim.

(e) Upon the provision of reasonable notice, Seller shall have the right, exercisable only once with respect to any given quarterly period during the Royalty Term, to designate a firm of certified public accountants to inspect Purchaser's books of account, records, documents and instruments for each quarterly period in the previous three calendar years, and to make copies thereof, at any time during Purchaser's regular business hours, to ascertain the accuracy of any report under Section 6.7(a) above. The auditing party shall be required to sign a confidentiality agreement for the benefit of Purchaser, and the results of such audit shall be made available to both Seller and Purchaser. The expense of such audit shall be Seller's unless the audit shall demonstrate a discrepancy greater than five percent (5%) between Royalties reported and paid and those which were actually due, in which event the reasonable expenses of audit shall be borne by Purchaser. Regardless of the amount, absent manifest error, all discrepancies, whether in the form of an underpayment by Purchaser, or an overpayment to Seller, shall be due and payable from either Purchaser or Seller, as applicable, to the other party within thirty (30) days from the date the independent accounting firm notifies both parties in writing of any discrepancy, such notice to include conclusions in form and content reasonably satisfactory to Purchaser.

6.8 Assignment of Payment Obligations. In the event Seller or any of its Affiliates proposes to sell, assign or otherwise transfer to any third party any right to receive any Royalty Payments, Milestone Payments or other payments hereunder (the "Payment Rights") other than to a successor of the relevant portion of Seller's business by reason of merger, sale of all or substantially all of Seller's assets or any similar transaction, Seller shall first offer, or cause its applicable Affiliate to offer, to Buyer the opportunity to make a proposal to acquire such Payment Rights. Such offer shall be made in writing and shall describe the Payment Rights proposed to be sold (the "Offer"). Within fifteen (15) business days following Buyer's receipt of the Offer, Buyer may elect to submit a proposal to acquire such Payment Rights, which proposal shall be in writing and shall identify the Payment Rights to be acquired and the price to be paid for such Payment Rights as well as other material terms necessary to allow Seller to make an informed decision as to whether to proceed to negotiations with Buyer regarding Buyer's proposal. Seller shall negotiate with Buyer in good faith toward a definitive agreement in respect of such Payment Rights for a period of sixty (60) days. Failure by Buyer to give written notice of its interest in negotiating for the Payment Rights within fifteen (15) business days after its receipt of the Offer from Seller shall be deemed a waiver by Buyer of its right to submit a proposal with respect to the particular Payment Rights described in the Offer, but not with respect to any other remaining Payment Rights not described in the Offer.

7. INDEMNIFICATION

7.1 Survival. All representations and warranties of Seller and Purchaser contained herein or made pursuant hereto shall survive the Closing Date for a period of twenty-four (24) months after the Closing Date (except for Sections 4.1, 4.2, 4.3, 4.4, 5.1 and 5.2, which shall survive until expiration of the applicable statute of limitations or, if no applicable statute of limitations, indefinitely). The covenants and agreements of the parties contained in this Agreement

shall survive and remain in full force for the applicable periods described therein or, if no such period is specified, indefinitely. Any right of indemnification pursuant to this Article 7 with respect to a claimed breach of a (i) representation or warranty shall expire at the date of termination of the representation or warranty claimed to be breached, and (ii) covenant shall expire twenty-four (24) months after the date of termination of the covenant claimed to be breached, unless in both cases on or prior to such date the party from whom indemnification is sought shall have received notice in accordance with the provisions of Section 7.6 hereof. By way of clarification, there shall be no time limit, other than the applicable statute of limitations, for indemnification claims brought by Seller arising from any Assumed Liability and by Purchaser arising from any Excluded Liability. The provisions of this Section 7.1 shall survive for so long as any other Section of this Agreement shall survive.

7.2 Indemnification by Seller. Seller hereby agrees to indemnify Purchaser and its Affiliates and their respective officers, directors, stockholders, employees and agents (the "Purchaser Indemnified Parties") against, and agrees to hold them harmless from, any Loss to the extent such Loss arises from or in connection with the following:

(i) any breach by Seller of any representation or warranty contained in this Agreement;

(ii) any breach by Seller of any of its covenants contained in this Agreement; or

(iii) any Excluded Liability.

Notwithstanding the foregoing, the indemnifications in favor of the Purchaser Indemnified Parties contained in this Section 7.2: (A) shall not be effective until the aggregate dollar amount of all Losses indemnified against under this Section 7.2 exceeds two percent (2%) of the amount actually paid under Article 3 (the "Threshold Amount"), in which event Seller shall be liable for all Losses including the Threshold Amount; and (B) shall terminate once the aggregate dollar amount of all Losses indemnified against under this Section 7.2 aggregates fifty percent (50%) of the amount actually paid under Article 3 (the "Cap Amount") and Seller shall thereafter have no further obligations or liabilities with respect to any of such Losses referred to in this Section 7.2; provided, however, that the foregoing limitations on Seller's indemnification obligations pursuant to this Section 7.2 shall not apply to any indemnification by Seller for any breach of the representations and warranties contained in Sections 4.1, 4.2, 4.3, 4.4 or any Losses asserted against, imposed upon or incurred by the Purchaser Indemnified Parties resulting from any Excluded Liability.

7.3 Indemnification by Purchaser. Purchaser hereby agrees to indemnify Seller and its Affiliates and their respective officers, directors and employees (the "Seller Indemnified Parties") against, and agrees to hold them harmless from, any Loss to the extent such Loss arises from or in connection with the following:

(i) any breach by Purchaser of any representation or warranty contained in this Agreement;

(ii) any breach by Purchaser of any covenant contained in this Agreement; or

(iii) any Assumed Liability.

Notwithstanding the foregoing, the indemnifications in favor of the Seller Indemnified Parties contained in this Section 7.3: (A) shall not be effective until the aggregate dollar amount of all Losses indemnified against under this Section 7.2 exceeds the Threshold Amount, in which event Purchaser shall be liable for all Losses including the Threshold Amount; and (B) shall terminate once the aggregate dollar amount of all Losses indemnified against under this Section 7.3 aggregates the Cap Amount and Purchaser shall thereafter have no further obligations or liabilities with respect to any of such Losses referred to in this Section 7.3; provided, however, that the foregoing limitations on Purchaser's indemnification obligations pursuant to this Section 7.3 shall not apply to any indemnification by Seller for any breach of the representations and warranties contained in Sections 5.1 or 5.2 or any Losses asserted against, imposed upon or incurred by the Purchaser Indemnified Parties resulting from any Assumed Liability.

7.4 Exclusive Remedy. Purchaser and Seller acknowledge and agree that the indemnification provided in this Article 7 shall be the sole and exclusive remedy for all Losses related to or arising at law, under any statute or in equity, or otherwise out of this Agreement or the transactions contemplated hereby (other than claims of or causes of action arising from fraud and other than actions for specific performance). In furtherance thereof, each of Purchaser and Seller waives, from and after the Closing, to the fullest extent permitted under applicable law, any and all rights, claims, actions or causes of action (other than claims or causes of action arising from fraud and other than actions for specific performance) it may have against the other or its Affiliates relating to the subject matter of this Agreement other than the remedies provided in this Article 7.

7.5 Losses Net of Insurance; Limitations. The amount of any Loss for which indemnification is provided under this Article 7 shall be net of any amounts recovered by the Indemnified Party under insurance policies with respect to such Loss, after giving effect to any premium adjustments related to such Loss, provided that an Indemnified Party shall have no obligation to seek recovery under any insurance policies prior to seeking recovery from the Indemnifying Party. In no event shall any party be liable to any other party, whether for breach of contract, in tort or otherwise, for incidental, indirect, special or consequential damages, such as losses of revenues or profits, except to the extent that such damages are asserted and recovered by a Third Party.

7.6 Termination of Indemnification. The obligations to indemnify and hold harmless any party (a) pursuant to Sections 7.2(i) (solely with respect to representations and warranties other than Sections 4.1, 4.2, 4.3 and 4.4), 7.2(ii), 7.3(i) and 7.3(ii) shall terminate as set forth in Section 7.1 above, and (b) pursuant to the other clauses of Sections 7.2 and 7.3 shall not terminate.

7.7 Procedure.

(a) In order for an indemnified party under this Article 7 (an "Indemnified Party") to be entitled to any indemnification provided for under this Agreement, such Indemnified Party shall, promptly following the discovery of the matters giving rise to any Loss, notify the indemnifying party under this Article 7 (the "Indemnifying Party") in writing of its claim for indemnification for such Loss, specifying in reasonable detail the nature of such Loss and the amount of the liability estimated to accrue therefrom; provided, however, that failure to give such prompt notification shall not affect the indemnification provided hereunder except to the extent the

Indemnifying Party shall have been actually prejudiced as a result of such failure (except that the Indemnifying Party shall not be liable for any expenses incurred during the period in which the Indemnified Party failed to give such notice). Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within five Business Days after the Indemnified Party's receipt of such request, all information and documentation reasonably requested by the Indemnifying Party with respect to such Loss.

(b) If the indemnification sought pursuant hereto involves a claim made by a third party against the Indemnified Party (a "Third Party Claim"), the Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim and, if it so chooses, to assume the defense of such Third Party Claim with counsel selected by the Indemnifying Party. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof (other than during any period in which the Indemnified Party shall have failed to give notice of the Third Party Claim as provided above). If the Indemnifying Party chooses to defend or prosecute a Third Party Claim, all of the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Indemnified Party will agree to any settlement, compromise or discharge of such Third Party Claim which the Indemnifying Party may recommend and which by its terms (i) obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third Party Claim, (ii) includes a full release in favor of the Indemnified Party with respect to the Third Party Claim, does not include any admission of liability and contains reasonable provisions maintaining the confidentiality of the settlement, compromise or discharge, and (iii) does not impair the rights of the Indemnified Party. Whether or not the Indemnifying Party shall have assumed the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the Indemnifying Party's prior written consent, which will not be unreasonably withheld or delayed.

8. GENERAL PROVISIONS

8.1 Amendments and Waivers. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, Purchaser, on the one hand, or Seller, on the other hand, may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform.

8.2 Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

8.3 Further Assurances and Actions. Each of the parties hereto, upon the request of the other party hereto, whether before or after the Closing and without further consideration, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary to effect complete consummation of the transactions contemplated by this Agreement. Seller and Purchaser each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

8.4 Notices. All notices, requests and other communications hereunder shall be in writing and shall be sent, delivered or mailed, addressed as follows:

(a) if to Purchaser, to:

Evoke Pharma, Inc.
12636 High Bluff Drive, Suite 400
San Diego, California 92130
Telephone: (619) 572-8233
Telecopy: (858) 523-5450
Attention: President

with a copy, which shall not alone constitute notice, to:

Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, California 92130
Telephone: (858) 523-5400
Telecopy: (858) 523-5450
Attention: Faye H. Russell, Esq. and Cheston J. Larson, Esq.

(b) if to Seller, to:

Questcor Pharmaceuticals, Inc.
3260 Whipple Road
Union City, California 94587
Telephone: (510) 400-0735
Facsimile: (510) 400-0710
Attn: Steve Cartt, Executive Vice President,
Corporate Development

with a copy, which shall not alone constitute notice, to:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Telephone: (949) 725-4000
Telecopy: (949) 725-4100
Attention: Michael H. Mulroy, Esq.

Each such notice, request or other communication shall be given (i) by hand delivery, (ii) by certified mail or (iii) by nationally recognized courier service. Each such notice, request or communication shall be effective when delivered at the address specified in this Section 8.4 (or in accordance with the latest unrevoked direction from the receiving party).

8.5 Headings. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

8.6 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

8.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

8.8 Entire Agreement; No Third Party Beneficiaries. This Agreement and the Confidentiality Agreement dated May 24, 2007 (the "Confidentiality Agreement") constitute the entire agreement and supersede all prior agreements and understandings, both written and oral (including that certain Non-Binding Term Sheet, dated February 7, 2007, between Purchaser and Seller, between or among the parties hereto with respect to the subject matter hereof. Except as specifically provided herein or therein, such agreements are not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder or thereunder.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflict of law principles thereof.

8.10 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity without the necessity of demonstrating the inadequacy of monetary damages and without the posting of a bond.

8.11 Publicity. Neither party shall make any public announcement concerning, or otherwise publicly disclose, any information with respect to the transactions contemplated by this Agreement or any of the terms and conditions hereof without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, (i) either party may make any public disclosure concerning the transactions contemplated hereby that in the opinion of such party's counsel may be required by law or the rules of any stock exchange on which such party's or its Affiliates' securities; provided that, the party making such disclosure shall provide

the non-disclosing party with a copy of the intended disclosure reasonably, and to the extent practicable, prior to public dissemination, and the parties shall coordinate with one another regarding the timing, form and content of such disclosure; and (ii) Purchaser may disclose the existence of this Agreement and its contents to potential and actual investors, licensees, collaborators and their respective representatives bound by customary obligations of confidentiality to Purchaser.

8.12 Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that (i) subject to Section 6.8, Seller may assign its rights to receive Royalty Payments and Milestone Payments without the prior written consent of Buyer, and (ii) either party may assign its rights and obligations under this Agreement, without the prior written consent of the other party, to an Affiliate or to a successor of the relevant portion of the assigning party's business by reason of merger, sale of all or substantially all of its assets or any similar transaction, provided that such successor agrees in writing to be bound by this Agreement. Any permitted assignee other than under clause (i) above shall assume all obligations of its assignor under this Agreement. No assignment shall relieve either party of its responsibility for the performance of any obligation. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

EVOKE PHARMA, INC.

By: /s/ David A. Gonyer
Name: David A. Gonyer
Title: President and CEO

QUESTCOR PHARMACEUTICALS, INC.

By: /s/ Steve Cartt
Name: Steve Cartt
Title: Executive Vice-President

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "**Agreement**") dated as of June 1, 2012 (the "**Effective Date**") between **SILICON VALLEY BANK**, a California corporation ("**Bank**"), and EVOKE PHARMA, INC., a Delaware corporation ("**Borrower**"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 Growth Capital Advances.

(a) Availability. Subject to the terms and conditions of this Agreement, during the Draw Period, Bank shall make advances (each, a "**Growth Capital Advance**" and, collectively, "**Growth Capital Advances**") not exceeding the Growth Capital Line. After repayment, no Growth Capital Advance may be reborrowed.

(b) Repayment. Growth Capital Advances outstanding on the last day of the Draw Period are payable in twenty four (24) consecutive equal monthly installments of principal and unpaid interest, beginning on the first of each month following the last day of the Draw Period and ending on the Growth Capital Maturity Date. Notwithstanding the foregoing, all unpaid principal and accrued but unpaid interest on each Growth Capital Advance shall be due on the Growth Capital Maturity Date.

(c) Mandatory Prepayments. If the Growth Capital Advances are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Bank an amount equal to the sum of: (i) all outstanding principal of the Growth Capital Advances plus accrued unpaid interest thereon through such date, plus (ii) all other sums, that shall have become due and payable but have not been paid, including Bank Expenses and interest at the Default Rate with respect to any past due amounts. For the avoidance of doubt, payments under this Section 2.1.1(c) shall be made without premium or penalty.

(d) Permitted Prepayment of Growth Capital Advances. Borrower shall have the option to prepay all, but not less than all, of the Growth Capital Advances advanced by Bank under this Agreement, provided Borrower (i) provides written notice to Bank of its election to prepay the Growth Capital Advances at least three (3) Business Days prior to such prepayment, and (ii) pays to Bank on the date of such prepayment, an amount equal to the sum of (A) all outstanding principal of the Growth Capital Advances plus accrued but unpaid interest thereon through the prepayment date plus (B) all other sums, that shall have become due and payable, including Bank Expenses, if any, and interest at the Default Rate with respect to any past due amounts. For the avoidance of doubt, payments under this Section 2.1.1(d) shall be made without premium or penalty.

2.2 Intentionally Omitted.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate for Growth Capital Advances. Subject to Section 2.3(b), the principal amount outstanding for each Growth Capital Advance shall accrue interest at a fixed per annum rate equal to the greater of (i) four and one half percent (4.50%) or (ii) the Basic Rate, fixed on the Funding Date of such Growth Capital Advance, which interest shall be payable monthly, in accordance with Section 2.3(f) below.

(b) Default Rate. At Bank's election, upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**") unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Intentionally Omitted.

(d) Computation; 360-Day Year. In computing interest, the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; *provided, however*, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. Interest shall be computed on the basis of a 360-day year for the actual number of days elapsed.

(e) Debit of Accounts. Bank may debit, first the Designated Deposit Account, and if insufficient funds are in the Designated Deposit Account, then any of Borrower's deposit accounts for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

(f) Interest Payment Date. Unless otherwise provided, interest is payable monthly on the first calendar day of each month.

2.4 Bank Expenses. Borrower shall pay to Bank all Bank Expenses (including (i) all costs and expenses for UCC, IP, Good Standing and other diligence searches and (ii) reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement, which attorney's fees for the documentation and negotiation of this Agreement will not exceed Fifteen Thousand Dollars ($15,000) as of the Effective Date) incurred through and after the Effective Date, when due. Bank acknowledges receipt of a good faith deposit from Borrower of Seven Thousand Five Hundred Dollars ($7,500), which shall be used to pay Bank Expenses on the Effective Date.

2.5 Payments; Application of Payments.

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Subject to the next sentence, Bank shall apply the whole or any part of collected funds against the Growth Capital Line or credit such collected funds to a depository account of Borrower with Bank (or an account maintained by an Affiliate of Bank), the order and method of such application to be in the sole discretion of Bank. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement (including pursuant to Section 2.3(a)).

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

(a) duly executed original signatures to the Loan Documents;

(b) duly executed original signatures to the Warrant;

(c) Borrower's Operating Documents and a good standing certificate of Borrower certified by the Secretary of State of the State of Delaware as of a date no earlier than thirty (30) days prior to the Effective Date;

(d) duly executed original signatures to the completed Borrowing Resolutions for Borrower;

(e) certified copies, dated as of a recent date, of financing statement searches, as Bank shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(f) the Perfection Certificate of Borrower, together with the duly executed original signatures thereto;

(g) Borrower's audited financial statements for the 2010 fiscal year;

(h) a copy of its Investors' Rights Agreement and any amendments thereto;

(i) evidence satisfactory to Bank that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses and cancellation notice to Bank (or endorsements reflecting the same) in favor of Bank; and

(j) payment of the Bank Expenses then due as specified in Section 2.4 hereof.

3.2 Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent.

(a) except as otherwise provided in Section 3.5(a), timely receipt of an executed Payment/Advance Form;

(b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and

(c) in Bank's sole but reasonable discretion, there has not been material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank.

3.3 Covenant to Deliver. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Growth Capital Advance set forth in this Agreement, to obtain a Growth Capital Advance, Borrower must notify Bank (which notice shall be irrevocable) by electronic mail or facsimile no later than 12:00 p.m. Pacific time one (1) Business Day before the proposed Funding Date. The notice shall be a Payment/Advance Form and must be signed by a Responsible Officer or designee. If Borrower satisfies the conditions of each Growth Capital Advance, Bank shall disburse such Growth Capital Advance by transfer to the Designated Deposit Account.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that may have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are satisfied in full, and at such time, Bank shall, at Borrower's sole cost and expense, terminate its security interest in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral reasonably to Bank in its good faith business judgment consistent with Bank's then current practice for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (i) one hundred five percent (105%) if the Letter of Credit is denominated in Dollars or (ii) one hundred ten percent (110%) if the Letter of Credit is denominated in a Foreign Currency of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as reasonably estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Priority of Security Interest. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that may have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire one or more commercial tort claims in an aggregate amount of One Hundred Thousand Dollars ($100,000), Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate". Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a material default under or violate any material Requirement of Law, (iii) materially contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect or which would reasonably be expected to have a material adverse effect on Borrower's business) or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) nonexclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Intentionally Omitted.

5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Two Hundred and Fifty Thousand Dollars ($250,000).

5.5 Financial Statements. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations.

5.6 Solvency. The fair salable value of Borrower's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable law. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted except to the extent the failure to do so would reasonably be expected to have a material adverse effect on Borrower's business.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all federal, material foreign, state and local taxes, assessments, deposits and contributions owed by Borrower. Borrower may defer payment of any contested taxes, provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.10 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could reasonably be expected to have a material adverse effect on Borrower's business.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Upon Bank's request, Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 Financial Statements, Reports, Certificates. Deliver to Bank:

(a) Monthly Financial Statements. As soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "**Monthly Financial Statements**");

(b) Monthly Compliance Certificate. Within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank shall reasonably request;

(c) Annual Audited Financial Statements. As soon as available, but no later than one hundred eight (180) days after the last day of Borrower's fiscal year (beginning with the 2012 fiscal year), audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Bank in its reasonable discretion;

(d) Other Statements. Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt (other than any materials provided to the Borrower's board of directors or management solely in their roles as a member of Borrower's board of directors or management and not in their role as a security holder or holder of Subordinated Debt);

(e) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Two Hundred Thousand Dollars ($200,000) or more;

(f) Annual Financial Projections. As soon as available, but no later than the earlier of (i) sixty (60) days after the last day of Borrower's fiscal year or (ii) seven (7) days after board approval, annual financial projections approved by Borrower's board of directors; and

(g) Other Financial Information. Such other Budgets, sales projections, operating plans and other financial information reasonably requested by Bank.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date. Borrower must promptly notify Bank of all returns, recoveries, disputes and claims that involve more than Two Hundred Fifty Thousand Dollars ($250,000).

6.4 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all federal, material foreign, state and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.5 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as a lender loss payee and waive subrogation against Bank. All liability policies shall show, or have endorsements showing, Bank as an additional insured. All policies (or their respective endorsements) shall provide that the insurer shall give Bank at least twenty (20) days notice before canceling, amending, or declining to renew its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Bank's option, be payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Fifty Thousand Dollars ($50,000) with respect to any loss, but not exceeding One Hundred Thousand Dollars ($100,000) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; *provided* that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Bank deems prudent.

6.6 Operating Accounts.

(a) No later than ten (10) days after the Effective Date, and at all times thereafter, maintain its primary operating and other deposit accounts and securities accounts with Bank and Bank's Affiliates.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall, no later than ten (10) days after the Effective Date, cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

6.7 Intentionally Omitted.

6.8 Protection of Intellectual Property Rights.

(a) (i) Protect, defend and maintain the validity and enforceability of its Intellectual Property material to its business; (ii) promptly advise Bank in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within thirty (30) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such commercially reasonable steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.9 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.10 Access to Collateral; Books and Records. Allow Bank, or its agents, at reasonable times, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be Eight Hundred Fifty Dollars ($850) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies), Borrower shall pay Bank any out-of-pocket expenses reasonably incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

6.11 Formation or Acquisition of Subsidiaries. At the time that Borrower forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Effective Date, Borrower shall (a) cause such new Subsidiary to provide to Bank either a joinder to the Loan Agreement to cause such Subsidiary to become a co-borrower hereunder or a Guaranty, together with such appropriate financing statements and/or Control Agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance satisfactory to Bank which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.11 shall be a Loan Document.

6.12 Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority material to the conduct of Borrower's business regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) in connection with Permitted Liens and Permitted Investments; and (d) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business and licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States.

7.2 Changes in Business, Management, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) permit any Key Person to cease holding such office with Borrower unless a replacement satisfactory to the Borrower's Board of Directors is made within ninety (90) days after any such Key Person's departure from Borrower; or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty-nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower's equity securities in a public offering or to venture capital investors so long as Borrower identifies to Bank the venture capital investors prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction).

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain (a) less than Three Hundred Thousand Dollars ($300,000) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Three Hundred Thousand Dollars ($300,000) to a location other than (i) to a bailee at a location already disclosed in the Perfection Certificate, or (ii) to a customer that stores / holds such Collateral in the normal course of business, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Three Hundred Thousand Dollars ($300,000) to a bailee and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its reasonable discretion.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person except where (a) total consideration including cash and the value of any non-cash consideration, for all such transactions does not in the aggregate exceed Two Hundred Fifty Thousand Dollars ($250,000) in any fiscal year of Borrower; (b) no Event of Default has occurred and is continuing or would exist after giving effect to the transactions; and (c) Borrower is the surviving legal entity. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning,

mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; and (iii) Borrower may repurchase the stock of employees, directors, officers or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided such repurchase does not exceed in the aggregate of Two Hundred Fifty Thousand Dollars ($250,000) per fiscal year; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person and transactions permitted pursuant to the terms of Section 7.2 hereof and in connection with equity investments and Subordinated Debt.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Bank.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Growth Capital Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (a) or (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.4, 6.5, 6.6 or 6.11 or violates any covenant in Section 7; or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any other Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 Intentionally Omitted;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary) on deposit or otherwise maintained with Bank or any Bank Affiliate, or (ii) a notice of lien or levy is filed against any of Borrower's assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business;

8.5 Insolvency (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Two Hundred Fifty Thousand Dollars ($250,000); or (b) any default by Borrower, the result of which could have a material adverse effect on Borrower's business.

8.7 Judgments. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars ($250,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person (other than Bank) shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement; or

8.10 Governmental Approvals. Any Governmental Approval shall have been (a) revoked, rescinded, suspended, modified in an adverse manner or not renewed in the ordinary course for a full term or (b) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Governmental Approval or that could result in the Governmental Authority taking any of the actions described in clause (a) above, and such decision or such revocation, rescission, suspension, modification or non-renewal adversely affects the legal qualifications of Borrower or any of its Subsidiaries to hold such Governmental Approval in any applicable jurisdiction and such revocation, rescission, suspension, modification or non-renewal could reasonably be expected to affect the status of or legal qualifications of Borrower or any of its Subsidiaries to hold any Governmental Approval in any other jurisdiction.

9 BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. While an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to one hundred five percent (105%) of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, notify any Person owing Borrower money of Bank's security interest in such funds, and verify the amount of such account;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available in a location as Bank reasonably designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower by credit to the Designated Deposit Account or other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect,

or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. To the extent permitted by applicable law, Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: EVOKE PHARMA, INC.
12671 High Bluff Drive, Suite 200
San Diego, CA 92130
Attn: Matt D'Onofrio
Email: mdonofrio@evokepharma.com

With copies to: Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Attn: Haim Zaltzman
Fax: (415) 395-8095
Email: haim.zaltzman@lw.com

Latham & Watkins LLP
12636 High Bluff Drive, Suite 400
San Diego, CA 92130
Attn: Scott Wolfe
Fax: 858-523-5450
Email: scott.wolfe@lw.com

If to Bank: Silicon Valley Bank
4370 La Jolla Village Drive, Suite 860
San Diego, CA 92122
Attn: R. Michael White
Fax: (858) 622-1424
Email: mwhite@svb.com

11 CHOICE OF LAW, VENUE, JURY TRIAL WAIVER, AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California, provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) Business Days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12 GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrant, as to which assignment, transfer and other such actions are governed by the terms of the Warrant). Notwithstanding the foregoing, prior the occurrence of an Event of Default, Bank shall not assign any interest in the Loan Documents to an operating company which is a direct competitor of Borrower.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties so long as Bank provides Borrower with written notice of such correction and allows Borrower at least ten (10) days to object to such correction. In the event of such objection, such correction shall not be made except by an amendment signed by both Bank and Borrower.

12.6 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. Without limiting the foregoing, except as otherwise provided in Section 4.1, the grant of security interest by Borrower in Section 4.1 shall survive until the termination of all Bank Services Agreements. The obligation of Borrower in Section 12.2 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "Bank Entities"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, that any prospective transferee or purchaser shall have entered into a confidentiality agreement containing terms substantially the same as those in this Section); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less

restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) disclosed to Bank by a third party if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use the confidential information for reporting purposes and the development and distribution of databases and market analysis so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.10 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.11 Electronic Execution of Documents. The words "execution," "signed" "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.13 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.14 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.15 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

12.16 Termination Prior to Growth Capital Maturity Date. This Agreement may be terminated prior to the Growth Capital Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank and repayment in full in cash of all Obligations (other than inchoate indemnity obligations). Bank's lien and security interest in the Collateral shall continue until Borrower fully satisfies all outstanding Obligations (other than inchoate indemnity obligations).

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Bank**" is defined in the preamble hereof.

"**Bank Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

"**Bank Services**" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a "**Bank Services Agreement**").

"Basic Rate" is the per annum rate of interest (based on a year of 360 days) equal to the sum of (a) U.S. Treasury note yield to maturity for a term equal to the Treasury Note Maturity as reported in the Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading "U.S. Government Securities/Treasury Constant Maturities" on the Funding Date of such Advance, plus (b) the Loan Margin. (In the event Release H.15 is no longer published, Bank shall select a comparably reputable publication, in its reasonable discretion, to determine the Treasury Note Maturity.)

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Borrowing Resolutions**" are, with respect to any Person, those resolutions substantially in the form attached hereto as Exhibit C.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Bank is closed.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "**Code**" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on Exhibit A.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Compliance Certificate**" is that certain certificate in the form attached hereto as Exhibit D.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Credit Extension**" is any Growth Capital Advance or any other extension of credit by Bank for Borrower's benefit under this Agreement.

"**Default Rate**" is defined in Section 2.3(b).

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is Borrower's deposit account, account number , maintained with Bank.

"**Dollars**," "**dollars**" or use of the sign "**$**" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"**Dollar Equivalent**" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"**Domestic Subsidiary**" means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

"**Draw Period**" is the period of time from the Effective Date through the earlier to occur of (a) December 31, 2013 or (b) at Bank's election, an Event of Default.

"**Effective Date**" is defined in the preamble hereof.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, and its regulations.

"**Event of Default**" is defined in Section 8.

"**Exchange Act**" is the Securities Exchange Act of 1934, as amended.

"**Foreign Currency**" means lawful money of a country other than the United States.

"**Foreign Subsidiary**" means any Subsidiary which is not a Domestic Subsidiary.

"**Funding Date**" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"**FX Contract**" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Growth Capital Advance**" is defined in Section 2.1.1(a).

"**Growth Capital Line**" is a Growth Capital Advance or Growth Capital Advances in an aggregate amount of up to Three Million Dollars ($3,000,000).

"**Growth Capital Maturity Date**" is December 1, 2015.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.2.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Intellectual Property**" means all of Borrower's right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to a Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"**Key Person**" is any of Borrower's Chief Executive Officer or Executive Vice President, Corporate Development.

"**Letter of Credit"** is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"**Loan Documents**" are, collectively, this Agreement, the Perfection Certificate, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement between Borrower and/or for the benefit of Bank, all as amended, restated, or otherwise modified.

"**Loan Margin**" is four hundred nineteen (419) basis points.

"**Monthly Financial Statements**" is defined in Section 6.2(a).

"**Obligations**" are Borrower's obligation to pay when due any debts, principal, interest, Bank Expenses, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents (other than Borrower's obligations under any warrant to purchase stock issued by Borrower to Bank, if any, including conversion of any shares of Borrower's capital stock under a warrant into other equity securities of

Borrower and Bank's right to make equity investments in Borrower, if any), including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and the performance of Borrower's duties under the Loan Documents.

"Operating Documents" are, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment/Advance Form**" is that certain form attached hereto as Exhibit B.

"**Perfection Certificate**" is defined in Section 5.1.

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;

(g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (f) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be; and

(h) other unsecured Indebtedness not exceeding Twenty Five Thousand Dollars ($25,000) in the aggregate outstanding amount at any time.

"**Permitted Investments**" are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;

(b) (i) Investments consisting of Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Bank has a perfected security interest;

(e) Investments accepted in connection with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary; and

(i) Investments in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000) in any fiscal year consisting of cash investments by Borrower in connection with joint ventures or strategic alliances or collaborations of Borrower or a Subsidiary, and, (y) investments by Borrower of property permitted to be transferred under Section 7.1 in connection with joint ventures or strategic alliances or collaborations of Borrower or a Subsidiary.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens (i) on Equipment (other than Financed Equipment) acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate amount outstanding, or (ii) existing on Equipment (other than Financed Equipment) when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, nonexclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;

(h) non-exclusive license of Intellectual Property granted to third parties in the ordinary course of business, and licenses of Intellectual Property that could not result in a legal transfer of title of the licensed property that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discreet geographical areas outside of the United States;

(i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;

(j) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts; and

(k) Licenses permitted under Section 7.1.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the Chief Executive Officer, President, Chief Financial Officer, Executive Vice President, Corporate Development and Controller of Borrower.

"**Restricted License**" is any material license or other material agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Bank's right to sell any Collateral.

"**SEC**" shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Subordinated Debt**" is indebtedness incurred by Borrower subordinated to all of Borrower's Obligations to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

"**Subsidiary**" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

"**Trademarks**" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"**Transfer**" is defined in Section 7.1.

"**Treasury Note Maturity**" is twenty four (24) months.

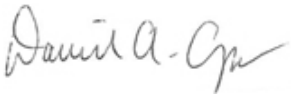
"**Warrant**" is that certain Warrant to Purchase Stock dated as of the Effective Date and executed by Borrower in favor of Bank.

[Signature page follows.**]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

EVOKE PHARMA, INC.



By _____
Name: David Gonyer, Rph.
Title: Chief Executive Officer

BANK:

SILICON VALLEY BANK

By _____
Name: David Huey
Title: Relationship Manager

EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) more than 65% of the presently existing and hereafter arising issued and outstanding shares of capital stock owned by Borrower of any foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, (ii) nonassignable licenses or contracts, which by their terms require the consent of the licensor thereof or another party (but only to the extent such prohibition on transfer is enforceable under applicable law, including, without limitation, Sections 9406 and 9408 of the UCC), (iii) contracts where the granting of a security interest therein is contrary to applicable law, provided that upon the cessation of any such restriction or prohibition, such property shall automatically become part of the Collateral; provided that in no case shall the definition of Collateral exclude any Accounts, proceeds of the disposition of any property, or general intangibles consisting of rights to payment; or (iv) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

EXHIBIT B – LOAN PAYMENT/ADVANCE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS NOON PACIFIC TIME*

Fax To: Date: _____

LOAN PAYMENT

EVOKE PHARMA, INC.

From Account # _____ To Account # _____
(Deposit Account #) (Loan Account #)

Principal $ _____ and/or Interest $ _____

Authorized Signature: _____ Phone Number: _____

Print Name/Title: _____

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____ To Account # _____
(Loan Account #) (Deposit Account #)

Amount of Advance $ _____

All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: _____ Phone Number: 858-967-5454

Print Name/Title: Matthew J. D'Onofrio, Executive Vice President, Corporate Development

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Deadline for same day processing is noon, Pacific Time

Beneficiary Name: _____ Amount of Wire: $ _____

Beneficiary Bank: _____ Account Number: _____

City and State: _____

Beneficiary Bank Transit (ABA) #: _____ Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Bank: _____ Transit (ABA)#: _____

For Further Credit to: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).

Authorized Signature: _____ 2nd Signature (if required): _____

Print Name/Title: _____ Print Name/Title: _____

Telephone #: _____ Telephone #: _____

* Unless otherwise provided for an Advance bearing interest at LIBOR.

EXHIBIT C

BORROWING RESOLUTIONS

SVB Silicon Valley Bank
A Member of SVB Financial Group

CORPORATE BORROWING CERTIFICATE

BORROWER: **EVOKE PHARMA, INC.** **DATE**: June 1, 2012
BANK: **Silicon Valley Bank**

I hereby certify in my capacity as a duly authorized officer of Borrower and not in any individual capacity as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of the Borrower. My title is as set forth below.

2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.

3. Attached hereto are true, correct and complete copies of Borrower's Articles/Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above. Such Articles/Certificate of Incorporation have not been amended, annulled, rescinded, revoked or supplemented, and remain in full force and effect as of the date hereof.

4. The following resolutions were duly and validly adopted by Borrower's Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and Bank may rely on them until Bank receives written notice of revocation from Borrower.

RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
Matthew J. D'Onofrio	EVP, Corporate Development		☐
Dave Gonyer	Chief Executive Officer		☐
			☐
			☐

RESOLVED FURTHER, that **any one** of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

RESOLVED FURTHER, that such individuals may, on behalf of Borrower:

Borrow Money. Borrow money from Silicon Valley Bank ("Bank").

Execute Loan Documents. Execute any loan documents Bank requires.

Grant Security. Grant Bank a security interest in any of Borrower's assets.

Negotiate Items. Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.

Letters of Credit. Apply for letters of credit from Bank.

Foreign Exchange Contracts. Execute spot or forward foreign exchange contracts.

Issue Warrants. Issue warrants for Borrower's capital stock.

Further Acts. Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrowers right to a jury trial) they believe to be necessary to effectuate such resolutions.

RESOLVED FURTHER, that all acts authorized by the above resolutions and any prior acts relating thereto are ratified.

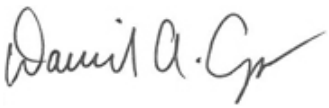
5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

EVOKE PHARMA, INC

By: _____
Name: Matthew J. D'Onofrio
Title: EVP, Corporate Development

*** *If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the Chief Executive Officer of Borrower, in such capacity and not in any personal capacity hereby certify as to paragraphs 1 through 5 above, as
[print title]
of the date set forth above.



By: _____
Name: Dave Gonyer
Title: Chief Executive Officer

EXHIBIT D

COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK Date: _____
FROM: EVOKE PHARMA. INC.

The undersigned authorized officer of EVOKE PHARMA, INC. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"):

(1) Borrower is in complete compliance for the period ending with all required covenants except as noted below; (2) there are no Events of Default; (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement; and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenant	Required	Complies
Monthly financial statements with Compliance Certificate	Monthly within 30 days	Yes No
Annual financial statements (CPA Audited) + CC	FYE within 180 days	Yes No
Annual Projections	Earlier of FYE within 60 days or 7 days after board approval	Yes No

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

_____

_____

_____

EVOKE PHARMA, INC.

By: _____
Name: _____
Title: _____

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER
Date: _____

Verified: _____
AUTHORIZED SIGNER
Date: _____

Compliance Status: Yes No