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

# FORM 10-QSB

☒ **QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the Quarterly Period Ended June 30, 2003**

**Commission file number 000-28637**

o **TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the Transition Period From To .**

# BIOSANTE PHARMACEUTICALS, INC.
(Exact name of small business issuer as specified in its charter)

| **Delaware** | **58-2301143** |
|---|---|
| (State of Incorporation) | (IRS Employer Identification No.) |

**111 Barclay Boulevard**
**Lincolnshire, Illinois 60069**
(Address of principal executive offices)

**(847) 478-0500**
(Issuer's telephone number, including area code)

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock as of the latest practicable date.

| **Class** | **Outstanding as of August 13, 2003** |
|---|---|
| Common stock, $0.0001 par value | 13,482,764 |

Transitional Small Business Disclosure Format (check one): Yes o No ☒

**BIOSANTE PHARMACEUTICALS, INC.**

**FORM 10-QSB**
**JUNE 30, 2003**

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### ITEM 1 - FINANCIAL STATEMENTS

**BIOSANTE PHARMACEUTICALS, INC.**
**(a development stage company)**
**Balance Sheets**
**June 30, 2003 and December 31, 2002 (Unaudited)**

| | June 30, 2003 | December 31, 2002 |
|---|---|---|
| **ASSETS** | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | $ 2,334,937 | $ 4,883,697 |
| Due from Teva Pharmaceuticals USA, Inc. | — | 520,063 |
| Prepaid expenses and other sundry assets | 119,991 | 144,155 |
| | 2,454,928 | 5,547,915 |
| PROPERTY AND EQUIPMENT, NET | 284,793 | 331,889 |
| | $ 2,739,721 | $ 5,879,804 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| CURRENT LIABILITIES | | |
| Accounts payable | $ 478,752 | $ 470,871 |
| Accrued compensation | 144,837 | 313,287 |
| Other accrued expenses | 80,117 | 236,758 |
| Due to Antares | 16,925 | 235,303 |
| | 720,631 | 1,256,219 |
| COMMITMENTS | | |
| STOCKHOLDERS' EQUITY | | |
| Capital stock | | |
| Issued and Outstanding | | |
| 466,602 (2002 - 466,602) Class C special stock | 467 | 467 |
| 8,690,782 (2002 - 8,571,169) Common stock | 26,941,127 | 26,684,841 |
| | 26,941,594 | 26,685,308 |
| Deficit accumulated during the development stage | (24,922,504) | (22,061,723) |
| | 2,019,090 | 4,623,585 |
| | $ 2,739,721 | $ 5,879,804 |

See accompanying notes to the financial statements.



**BIOSANTE PHARMACEUTICALS, INC.**
**(a development stage company)**
**Statements of Operations**
**Three and six months ended June 30, 2003 and 2002 and the cumulative period from August 29, 1996 (date of incorporation) to June 30, 2003 (Unaudited)**

| | Cumulative period from August 29, 1996 |
|---|---|

| | Three Months Ended June 30, | | Six Months Ended June 30, | | (date of incorporation) to June 30, 2003 |
|---|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 | |
| REVENUE | | | | | |
| Licensing income | $ — | $ — | $ 65,494 | $ — | $ 4,582,943 |
| Interest income | 11,490 | 6,712 | 30,309 | 29,971 | 1,015,049 |
| | 11,490 | 6,712 | 95,803 | 29,971 | 5,597,992 |
| EXPENSES | | | | | |
| Research and development | 939,124 | 987,528 | 1,742,277 | 1,631,922 | 12,955,411 |
| General and administration | 664,918 | 491,851 | 1,167,211 | 950,980 | 11,041,732 |
| Depreciation and amortization | 23,548 | 22,697 | 47,096 | 45,359 | 613,589 |
| Loss on disposal of capital assets | — | — | — | — | 157,545 |
| Costs of acquisition of Structured Biologicals Inc. | — | — | — | — | 375,219 |
| Purchased in-process research and development | — | — | — | — | 5,377,000 |
| | 1,627,590 | 1,502,076 | 2,956,584 | 2,628,261 | 30,520,496 |
| NET LOSS | $ (1,616,100) | $ (1,495,364) | $ (2,860,781) | $ (2,598,290) | $ (24,922,504) |
| BASIC AND DILUTED NET LOSS PER SHARE | $ (0.18) | $ (0.22) | $ (0.32) | $ (0.38) | |
| WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING | 9,076,880 | 6,788,343 | 9,057,434 | 6,788,412 | |

See accompanying notes to the financial statements.



**BIOSANTE PHARMACEUTICALS, INC.**
**(a development stage company)**
**Statements of Cash Flows**
**Six months ended June 30, 2003 and 2002 and the cumulative period from August 29, 1996 (date of incorporation) to June 30, 2003**
**(Unaudited)**

| | Six Months Ended June 30, | | Cumulative period from August 29, 1996 (date of incorporation) to June 30, 2003 |
|---|---|---|---|
| | 2003 | 2002 | |
| **CASH FLOWS USED IN OPERATING ACTIVITIES** | | | |
| Net loss | $ (2,860,781) | $ (2,598,290) | $ (24,922,504) |
| Adjustments to reconcile net loss to net cash used in operating activities | | | |
| Depreciation and amortization | 47,096 | 45,359 | 613,589 |
| Amortization of deferred unearned compensation | — | — | 42,290 |
| Repurchase of licensing rights | — | — | 125,000 |
| Employee compensation paid in shares of common stock | — | — | 151,000 |
| Director compensation paid in shares of common stock | 181,500 | — | 181,500 |
| Purchased in-process research and development | — | — | 5,377,000 |
| Loss on disposal of equipment | — | — | 157,545 |
| Changes in other assets and liabilities affecting cash flows from operations | | | |
| Prepaid expenses and other sundry assets | 24,164 | 19,646 | (117,023) |
| Due from licensee (Teva Pharmaceuticals USA, Inc.) | 520,063 | — | — |
| Accounts payable and accrued expenses | (239,663) | (46,948) | 41,066 |
| Due to licensor (Antares/Regents) | (218,378) | (145,119) | 16,925 |
| Due from SBI | — | — | (128,328) |
| **Net cash used in operating activities** | (2,545,999) | (2,725,352) | (18,461,940) |
| **CASH FLOWS USED IN INVESTING ACTIVITIES** | | | |
| Purchase of capital assets | — | (25,836) | (1,021,817) |
| **CASH FLOWS (USED IN) FINANCING ACTIVITIES** | | | |
| Issuance of convertible debenture | — | — | 500,000 |
| Proceeds from sales or conversion of shares | (2,761) | (46,704) | 21,318,694 |
| **Net cash (used in) financing activities** | (2,761) | (46,704) | 21,818,694 |
| **NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS** | (2,548,760) | (2,797,892) | 2,334,937 |

| | | | |
|---|---|---|---|
| **CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD** | **4,883,697** | **4,502,387** | **—** |
| **CASH AND CASH EQUIVALENTS AT END OF PERIOD** | **$ 2,334,937** | **$ 1,704,495** | **$ 2,334,937** |
| | | | |
| **SUPPLEMENTAL SCHEDULE OF CASH FLOW INFORMATION** | | | |
| Acquisition of SBI | | | |
| Purchased in-process research and development | **$ —** | **$ —** | **$ 5,377,000** |
| Other net liabilities assumed | **—** | **—** | **(831,437)** |
| | **—** | **—** | **4,545,563** |
| Less: common stock issued therefor | **—** | **—** | **4,545,563** |
| | **$ —** | **$ —** | **$ —** |
| | | | |
| Income tax paid | **$ —** | **$ —** | **$ —** |
| | | | |
| Interest paid | **$ —** | **$ —** | **$ —** |

See accompanying notes to the financial statements.



**BIOSANTE PHARMACEUTICALS, INC.**
**FORM 10-QSB**
**JUNE 30, 2003**

**Notes to the Financial Statements (Unaudited)**

## 1. INTERIM FINANCIAL INFORMATION

In the opinion of management, the accompanying unaudited financial statements contain all necessary adjustments, which are of a normal recurring nature, to present fairly the financial position of BioSante Pharmaceuticals, Inc. (the "Company") as of June 30, 2003, the results of operations for the three and six months ended June 30, 2003 and 2002 and for the cumulative period from August 29, 1996 (date of incorporation) to June 30, 2003, and the cash flows for the six months ended June 30, 2003 and 2002 and for the cumulative period from August 29, 1996 (date of incorporation) to June 30, 2003, in conformity with accounting principles generally accepted in the United States of America. Operating results for the three and six month periods ended June 30, 2003 are not necessarily indicative of the results that may be expected for the year ending December 31, 2003.

On May 31, 2002, the Company effected a one-for-ten reverse split of its issued and outstanding shares of common stock and class C stock. All share and per share stock numbers in this Form 10-QSB have been adjusted to reflect the reverse stock split.

These unaudited interim financial statements should be read in conjunction with the financial statements and related notes contained in the Company's Annual Report on Form 10-KSB for the year ended December 31, 2002.

## 2. BASIC AND DILUTED NET LOSS PER SHARE

The basic and diluted net loss per share is computed based on the weighted average number of shares of common stock and class C stock outstanding, all being considered as equivalent of one another. Basic net loss per share is computed by dividing the net loss by the weighted average number of shares outstanding for the reporting period. Diluted net loss per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. Because the Company has incurred net losses from operations in each of the periods presented, there is generally no difference between basic and diluted net loss per share amounts. The computation of diluted net loss per share does not include options and warrants with dilutive potential that would have an antidilutive effect on net loss per share.

## 3. LICENSE AGREEMENTS

In June 1997, the Company entered into a licensing agreement with the Regents of the University of California, which has subsequently been amended, pursuant to which the University has granted the Company an exclusive license to seven United States patents owned by the University, including rights to sublicense such patents. The license agreement with the University of California requires the Company to undertake various obligations, including but not limited to, the payment of royalties based on net sales, when and if they occur, and the payment of minimum annual royalties.

In June 2000, the Company entered into a license agreement with Antares Pharma Inc. covering four hormone therapy products for the treatment of men and women. The license agreement requires the Company to pay Antares a percentage of future net sales, if any, as a royalty. Under the terms of the license agreement, the Company is also obligated to make milestone payments upon the occurrence of certain events.



In August 2001, the Company entered into a sub-license agreement with Solvay Pharmaceuticals, B.V. covering the U.S. and Canadian rights to the estrogen/progestogen combination transdermal hormone therapy gel product licensed from Antares. Under the terms of the agreement, Solvay sub-licensed the Company's estrogen/progestogen combination transdermal hormone therapy gel product for an initial payment of $2.5 million ($1.7 million net of the related payments due to Antares and Paladin Labs Inc.), future milestone payments and escalating sales-based royalties. During the third quarter ended September 30, 2002, the Company received a $950,000 milestone payment pursuant to the Solvay sub-license agreement.

In October 2001, the Company sub-licensed its BioVantÔ calcium phosphate based vaccine adjuvant on a non-exclusive basis to Corixa Corporation for use in several potential vaccines to be developed by Corixa. Under the agreement, Corixa has agreed to pay the Company milestone payments upon the achievement of certain milestones plus royalty payments on sales if and when vaccines are approved using BioVantÔ and sold on a commercial basis. If

Corixa sub-licenses vaccines that include BioVantÔ, the Company will share in milestone payments and royalties received by Corixa. The sub-license agreement covers access to BioVantÔ for a variety of cancer, infectious and autoimmune disease vaccines.

In April 2002, the Company exclusively in-licensed from Wake Forest University and Cedars-Sinai Medical Center three issued U.S. patents claiming triple hormone therapy (the combination use of estrogen plus progestogen plus androgen, *e.g.* testosterone) and an option for triple hormone contraception. The financial terms of the license include an upfront payment by the Company, regulatory milestones, maintenance payments and royalty payments by the Company if a product incorporating the licensed technology is approved and subsequently marketed.

In December 2002, the Company signed a development and license agreement with Teva Pharmaceuticals USA, Inc., a wholly owned subsidiary of Teva Pharmaceutical Industries Ltd. under which Teva USA and the Company will collaborate on the development of a hormone therapy product for the U.S. market. Upon signing the U.S. development and license agreement, the Company received an upfront payment of $1.5 million. In addition, Teva will pay the Company development and sales-related milestone payments plus royalties on sales of the product commercialized in this collaboration. In exchange, the Company granted Teva exclusive rights to develop and market a certain hormone therapy product. Teva also is responsible for continued development, regulatory filings and all manufacturing and marketing associated with the product.

**4. COMMITMENTS**

*University of California License*

The Company's license agreement with the University of California requires the Company to undertake various obligations, including:

- Payment of royalties to the University based on a percentage of the net sales of any products incorporating the licensed technology;
- Payment of minimum annual royalties beginning for the year 2004 to be paid by February 28 of the following year in the amounts set forth below, to be credited against earned royalties, for the life of the agreement;



| Year | Minimum Annual Royalty Due |
|---|---|
| 2004 | $ 50,000 |
| 2005 | 100,000 |
| 2006 | 150,000 |
| 2007 | 200,000 |
| 2008 | 400,000 |
| 2009 | 600,000 |
| 2010 | 800,000 |
| 2011 | 1,500,000 |
| 2012 | 1,500,000 |
| 2013 | 1,500,000 |
| | $ 6,800,000 |

- Development of products incorporating the licensed technology until a product is introduced to the market;
- Payment of the costs of patent prosecution and maintenance of the patents included in the agreement, which for the year ended December 31, 2002 amounted to $12,240;
- Meeting performance milestones relating to:
  - Hiring or contracting with personnel to perform research and development, regulatory and other activities relating to the commercial launch of a proposed product;
  - Testing proposed products and obtaining government approvals;
  - Conducting clinical trials; and
  - Introducing products incorporating the licensed technology into the market;
- Entering into partnership or alliance arrangements or agreements with other entities regarding commercialization of the technology covered by the license; and
- Indemnifying, holding harmless and defending the University of California and its affiliates, as designated in the license agreement, against any and all claims, suits, losses, damage, costs, fees and expenses resulting from or arising out of the license agreement, including but not limited to, any product liability claims. The Company has not recorded any liability related to this obligation as no events occurred that would require indemnification.

*Antares Pharma, Inc. License*

The Company's license agreement with Antares Pharma, Inc. required the Company to make a $1.0 million upfront payment to Antares. The Company expects to fund the development of the products, has made and will continue to make milestone payments and once regulatory approval to market is received, pay royalties on the sales of products.

*Wake Forest License*

In April 2002, the Company exclusively in-licensed from Wake Forest University and Cedars-Sinai Medical Center three issued U.S. patents claiming triple hormone therapy (the combination use of



estrogen plus progestogen plus androgen, *e.g.* testosterone) and an option for triple hormone contraception. The financial terms of the license include an upfront payment by the Company in exchange for exclusive rights to the license, and regulatory milestones, maintenance payments and royalty payments by the Company if a product incorporating the licensed technology gets approved and subsequently marketed.

Future minimum payments due under this agreement are as follows:

| Year | Minimum Amount Due |
|---|---|
| 2004 | $ 10,000 |
| 2005 | 45,000 |
| 2006 | 80,000 |
| 2007 | 65,000 |
| 2008 | 90,000 |
| 2009 | 140,000 |
| 2010 | 90,000 |
| 2011 | 40,000 |
| 2012 | 140,000 |
| 2013 | 240,000 |
| Thereafter | 800,000 |

The Company has agreed to indemnify, hold harmless and defend Wake Forest University against any and all claims, suits, losses, damages, costs, fees and expenses resulting from or arising out of exercise of the license agreement, including but not limited to, any product liability claims. The Company has not recorded any liability in connection with this obligation as no events occurred that would require indemnification.

## 5. STOCK BASED COMPENSATION

The Company follows the provisions of APB Opinion No. 25, “Accounting For Stock-Based Compensation” (APB No. 25) which requires compensation cost for stock-based employee compensation plans be recognized based on the difference, if any, between the quoted market price of the stock on the measurement date (generally the date of grant) and the amount the employee must pay to acquire the stock. As a result of the Company’s application of APB No. 25, SFAS No. 148, “Accounting for Stock-Based Compensation - Transition and Disclosure” (SFAS 148), requires certain additional disclosures of the pro forma compensation expense arising from the Company’s fixed and performance stock compensation plans. The expense is measured as the fair value of the award at the date it was granted using an option-pricing model that takes into account the exercise price and the expected term of the option, the current price of the underlying stock, its expected volatility, expected dividends on the stock and the expected risk-free rate of return during the term of the option. The compensation cost is recognized over the service period, usually the period from the grant date to the vesting date. The following table illustrates the effect on net loss and net loss per share if the Company had applied fair value based method.



| | Six Months Ended June 30, 2003 | Six Months Ended June 30, 2002 |
|---|---|---|
| Net loss | | |
| As reported | **$ (2,860,781)** | $ (2,598,290) |
| Total stock-based employee compensation determined under fair value based method for all awards | **(294,937)** | (263,851) |
| Net loss, pro forma | **$ (3,155,718)** | $ (2,862,141) |
| | | |
| Basic and diluted net loss per share | | |
| As reported | **$ (0.32)** | $ (0.38) |
| Pro forma | **$ (0.35)** | $ (0.42) |
| | | |
| Cumulative net loss | | |
| As reported | **$ (24,922,504)** | |
| Total stock-based employee compensation determined under fair value based method for all awards | **(3,112,992)** | |
| Pro forma | **$ (28,035,496)** | |

| | Three Months Ended June 30, 2003 | Three Months Ended June 30, 2002 |
|---|---|---|
| Net loss | | |
| As reported | **$ (1,616,100)** | $ (1,495,364) |
| Total stock-based employee compensation determined under fair value based method for all awards | **(155,971)** | (222,357) |
| Net loss, pro forma | **$ (1,772,071)** | $ (1,717,721) |

| | | | | |
|---|---|---|---|---|
| Basic and diluted net loss per share | | | | |
| As reported | **$** | **(0.18)** | $ | (0.22) |
| Pro forma | **$** | **(0.20)** | $ | (0.25) |

There were 22,000 options granted during the three and six month periods ended June 30, 2003, with a weighted average fair value at the date of grant of $1.57. The weighted average fair value of the options at the date of grant for options granted during 2002 was $2.44. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

| | 2003 |
|---|---|
| Expected option life (years) | 10 |
| Risk free interest rate | 3.98% |
| Expected stock price volatility | 64.17% |
| Dividend yield | — |



In addition, during the second quarter of 2003, BioSante issued 285,000 options to certain officers of BioSante which vest only upon the achievement of certain milestones in connection with BioSante's evaluation of strategic alternatives.

Warrants issued to non-employees as compensation for services rendered are valued at their fair value on the date of issue. No warrants were issued in 2002 or during the six month period ended June 30, 2003.

**6. STOCKHOLDERS' EQUITY**

In June 2003, BioSante issued 119,613 shares of common stock to its officers and directors as partial payment of the officers' 2002 annual bonus (approximately $78,000) and payment of fees to BioSante's directors for their significant involvement during 2002 and 2003 for various director-related services rendered, including attendance at board and committee meetings (approximately $180,000). The 2002 officer bonuses of approximately $78,000 had been previously accrued at December 31, 2002.

BioSante paid directors with shares of common stock, which related to their efforts for 2002 and 2003. However, as BioSante had historically not paid fees to directors, the $180,000 of fees paid to directors was expensed in the three month period ended June 30, 2003.

The number of shares issued was determined by dividing the dollar amount of bonus or director fees owed to the officer or director, respectively, by the closing market price of BioSante's common stock on the date of issuance. The share price used in computing the number of shares to issue was approximately $2.16. Shares were issued in lieu of cash in order to conserve the cash funds of BioSante.

Each of our non-employee directors are paid a $10,000 annual retainer to be paid in shares of our common stock and $1,000 for each board or committee meeting attended in person and $500 for each board or committee meeting attended via telephone to be paid in shares of our common stock.

**7. SUBSEQUENT EVENT**

On August 4, 2003, BioSante closed a private placement, raising approximately $10.3 million, ($9.7 million net of estimated transaction costs) upon the issuance of units, which consisted of an aggregate of approximately 4.8 million shares of common stock and five-year warrants to purchase an aggregate of approximately 2.8 million shares of common stock (includes placement agent warrants issued in conjunction with the financing). The price of each unit, which consisted of one share of common stock plus a warrant to purchase one half-share of common stock, was $2.15. The exercise price of the warrants is $2.15 per share.



**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*This Form 10-QSB contains forward-looking statements relating to our financial condition, results of operations and business, including statements pertaining to:*

- our substantial and continuing losses;
- our spending capital on research and development programs, pre-clinical studies and clinical trials, regulatory processes, establishment of marketing capabilities and licensure or acquisition of new products;
- our existing cash and whether and how long these funds will be sufficient to fund our operations; and
- our need to raise additional capital through future equity and other financings.

*For this purpose, any statements contained in this Form 10-QSB that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, words such as "may," "will," "expect," believe," "anticipate," "estimate" or "continue" or the negative or other variations thereof or comparable terminology are intended to identify forward-looking statements. These statements by their nature involve substantial risks and uncertainties, and actual results may differ materially depending on a variety of factors, including those described under this section and the section entitled "Certain Important Factors" below and those contained under the caption "Certain Important Factors" contained in BioSante's Annual Report on Form 10-KSB for the fiscal year ended December 31, 2002. We are not obligated to publicly update or revise any forward-looking statement, whether as a*

*result of new information, future events or otherwise, except as otherwise required by law. For these statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.*

The following discussion of the results of the operations and financial condition of BioSante should be read in conjunction with BioSante's financial statements and the related notes thereto.

**Overview**

We are a development stage biopharmaceutical company that is developing a pipeline of hormone therapy products to treat men and women. We also are engaged in the development of our proprietary calcium phosphate, nanoparticulate-based platform technology, or CAP, for vaccine adjuvants or immune system boosters, drug delivery systems and the purification of the milk of transgenic animals.

Our hormone therapy products, most which we license on an exclusive basis from Antares Pharma, Inc., address a variety of hormone therapies for symptoms that affect both men and women. Symptoms addressed by these hormone therapies include impotence, lack of sex drive, muscle weakness and osteoporosis in men and menopausal symptoms in women including hot flashes, vaginal atrophy, decreased libido and osteoporosis.

The products we in-license from Antares are gel formulations of testosterone (the natural male hormone), estradiol (the natural female hormone), combinations of estradiol and testosterone and estradiol and progestogen (another female hormone). The gels are designed to be quickly absorbed through the skin after application on the arms, abdomen or thighs, delivering the required hormone to the bloodstream evenly and in a non-invasive, painless manner. The gels are formulated to be applied once per day and to be absorbed into the skin without a trace of residue.



Under the terms of our license agreement with Antares, we acquired exclusive marketing rights, with the right to grant sub-licenses, to the single active ingredient testosterone and estradiol products for all therapeutic indications in the U.S., Canada, Mexico, Israel, Indonesia, Malaysia, Australia, New Zealand, China and South Africa. We acquired exclusive marketing rights, with the right to grant sub-licenses, for the combination estradiol and progestogen product in the U.S. and Canada. In partial consideration for the license of the hormone therapy products, we paid Antares an upfront license fee of $1.0 million in June 2000. In addition, under the terms of the license agreement, we agreed to fund the development of the proposed products, make milestone payments and, after all necessary regulatory approvals are received, pay royalties to Antares on sales of the products.

In a series of amendments executed during 2001 between BioSante and Antares, BioSante returned to Antares the license rights to one of four previously licensed hormone products, namely the estradiol patch, in all countries of the licensed territory. Additionally, BioSante returned to Antares the license rights to the single entity estrogen and testosterone gel products in Malaysia and Australia. In exchange for the return to Antares of the estradiol patch in all the countries and the estradiol and testosterone gel products in Malaysia and Australia, Antares granted BioSante a credit for approximately $600,000 of manufacturing and formulation services, which have been fully utilized, and a license for the combination estradiol plus testosterone gel product for all countries described above.

In August 2001, BioSante entered into a sub-license agreement with Solvay Pharmaceuticals, B.V. covering the U.S. and Canadian rights to the estrogen/progestogen combination transdermal hormone therapy gel product licensed from Antares. Under the terms of the agreement, Solvay sub-licensed BioSante's estrogen/progestogen combination transdermal hormone therapy gel product for an initial payment of $2.5 million ($1.7 million net of the related payments due to Antares and Paladin Labs Inc.), future milestone payments and escalating sales-based royalties. During the third quarter ended September 30, 2002, BioSante received a $950,000 milestone payment pursuant to the Solvay sub-license agreement. Solvay will be responsible for all costs of development and marketing of the product. BioSante has retained co-promotion rights to the product and will be compensated for sales generated by BioSante over and above those attributable to Solvay's marketing efforts. As described further below, the Canadian rights to this product had previously been sub-licensed to Paladin as part of that sub-license arrangement and were repurchased by BioSante prior to the Solvay transaction in exchange for $125,000, paid by the issuance of 17,361 shares of BioSante common stock with a market value of $125,000 at the date of the transaction.

In September 2000, we sub-licensed the marketing rights to our portfolio of female hormone therapy products in Canada to Paladin Labs Inc. In exchange for the sub-license, Paladin agreed to make an initial investment in our company, make future milestone payments and pay royalties on sales of the products in Canada. The milestone payments were in the form of a series of equity investments by Paladin in BioSante common stock at a 10 percent premium to the market price of our stock at the time the equity investment is made. Upon execution of the sub-license agreement, Paladin made an initial investment of $500,000 in our company in the form of a convertible debenture, convertible into our common stock at $10.50 per share. In August 2001, BioSante exercised its right and declared the debenture converted in full. Accordingly, 47,619 shares of BioSante common stock were issued to Paladin in August 2001. During the third quarter 2001, Paladin made a series of equity investments in BioSante as a result of certain sub-licensing transactions and BioSante reaching certain milestones. These equity investments resulted in BioSante issuing an additional 18,940 shares of its common stock to Paladin.

In April 2002, we exclusively in-licensed from Wake Forest University and Cedars-Sinai Medical Center three issued U.S. patents claiming triple hormone therapy (the combination use of estrogen plus progestogen plus androgen, *e.g.* testosterone) and an option for triple hormone contraception. The



financial terms of the license include an upfront payment by us, regulatory milestones, maintenance payments and royalty payments by us if a product incorporating the licensed technology gets approved and subsequently marketed.

In December 2002, we entered into a development and license agreement with Teva Pharmaceuticals USA, Inc., a wholly-owned subsidiary of Teva Pharmaceutical Industries Ltd., under which we will collaborate with Teva USA on the development of a hormone therapy product for the U.S. market. The financial terms of the development and license agreement included a $1.5 million upfront payment by Teva USA, future development and sales related milestone payments and royalties on sales of the commercialized product in exchange for rights to develop and market a hormone therapy product. Teva USA will also be responsible for continued development, regulatory filings and all manufacturing and marketing associated with the product.

Our strategy with respect to our hormone therapy product portfolio is to conduct human clinical trials of our proposed hormone therapy products, which are required to obtain approval from the FDA and to market the products in the United States.

We have initiated a Phase II clinical trial of our LibiGel™ for the treatment of female sexual dysfunction. The ongoing Phase II trial, being conducted in the United States, is a double-blind, placebo-controlled study that will enroll approximately 120 patients to determine the effect of LibiGel on a women's sexual desire and activity.

We have completed a Phase II/III clinical trial of Bio-E-Gel™, a topical gel for the treatment of menopausal symptoms, including hot flushes. The trial, conducted in the United States and Canada, was a double-blind placebo-controlled study of 161 patients. The data from the Phase II/III Bio-E-Gel clinical trial have been analyzed. The objective of the Phase II/III clinical trial was to identify an effective dose of Bio-E-Gel to study in Phase III development. The Phase II/III trial demonstrated that Bio-E-Gel effectively reduces the severity and frequency of moderate-to-severe hot flushes in menopausal women, according to Food and Drug Administration (FDA) guidances for development of estrogen products. We expect to initiate the one required pivotal Phase III Bio-E-Gel clinical trial in the second half of 2003.

Our CAP technology, which we license on an exclusive basis from the University of California, is based on the use of extremely small, solid, uniform particles, which we call "nanoparticles," as immune system boosters, for drug delivery and to purify the milk of transgenic animals, among other uses. We have identified three potential initial applications for our CAP technology:

- the creation of improved versions of current vaccines and of new vaccines by the "adjuvant" activity of our proprietary nanoparticles that enhance the ability of a vaccine to stimulate an immune response;

- the creation of inhaled and oral forms of drugs that currently must be given by injection (*e.g.*, insulin); and

- the purification of the milk of transgenic animals, in which protein pharmaceuticals are grown.

Our strategy with respect to CAP over the next 12 months is to continue development of our nanoparticle technology and actively to seek collaborators and licensees to accelerate the development and commercialization of products incorporating this technology. We received clearance in August 2000 from the FDA to initiate a Phase I clinical trial of our CAP as a vaccine adjuvant and delivery system based on an Investigational New Drug Application that we filed in July 2000. The Phase I trial was a double-blind, placebo-controlled trial in 18 subjects to determine the safety of CAP as a vaccine adjuvant.



The trial was completed in October 2000. The results showed that there was no apparent difference in side effect profile between CAP and placebo.

In October 2001, we licensed our Bio-VantÔ calcium phosphate based vaccine adjuvant on a non-exclusive basis to Corixa Corporation for use in several potential vaccines to be developed by Corixa. Under the agreement, Corixa has agreed to pay BioSante milestone payments upon the achievement by Corixa of certain milestones plus royalty payments on sales by Corixa if and when vaccines are approved using Bio-VantÔ and sold on a commercial basis. If Corixa sub-licenses vaccines that include Bio-VantÔ, BioSante will share in milestone payments and royalties received by Corixa. The license agreement covers access to Bio-VantÔ for a variety of cancer, infectious and autoimmune disease vaccines.

In January 2003, we announced the signing of a Cooperative Research and Development Agreement (CRADA) with the U.S. Navy's Naval Medical Research Center's (NMRC) Malaria Program for the development of a malaria vaccine. The development agreement leverages our expertise with NMRC's expertise to develop an enhanced vaccine for malaria. Under the agreement, we will provide the NMRC with BioVant, our proprietary vaccine adjuvant and delivery system, and the NMRC will provide DNA plasmids or proteins encoding antigens for *Plasmodium spp.*, the parasite that causes malaria. It is hoped that the resulting DNA vaccine will improve the effectiveness of the ensuing humoral and cell-mediated immunity against malaria and therefore be more effective as it activates both arms of the immune system.

In June 2003, we announced the signing of another CRADA with the U.S. Army's Medical Research Institute of Infectious Disease (USAMRIID) for the development of biodefense vaccines, including anthrax, staph and ricin. The USAMRIID has agreed to grant us an exclusive license to any U.S. patent application or issued patent as a result of the work under the CRADA.

Our goal is to develop and commercialize our portfolio of hormone therapy products and CAP technology into a wide range of pharmaceutical products and to expand this product portfolio as appropriate. Our strategy to obtain this goal is to:

- Actively manage the development of our hormone therapy products;

- Continue the development of our nanoparticle-based CAP platform technology and seek assistance in the development through corporate partner sub-licenses;

- Implement business collaborations or joint ventures with other pharmaceutical and biotechnology companies; and

- License or otherwise acquire other drugs that will add value to our current product portfolio and consider the sub-license of certain hormone therapy products.

All of our revenue to date has been derived from interest earned on invested funds and upfront and milestone payments earned on sub-licensing transactions. We have not commercially introduced any products. Since our inception, we have experienced significant operating losses. We incurred a net loss of $3,810,690 for the year ended December 31, 2002, resulting in an accumulated deficit of $22,061,723. We incurred a net loss of $2,860,781 for the six months ended June 30, 2003, and as of June 30, 2003, our accumulated deficit was $24,922,504. We expect to incur substantial and continuing losses for the foreseeable future as our product development programs expand and various preclinical and clinical trials commence and continue. The amount of these losses may vary significantly from year-to-year and quarter-to-quarter and will depend upon, among other factors:



- the timing and cost of product development;

- the progress and cost of preclinical and clinical development programs;
- the costs of licensure or acquisition of new products;
- the timing and cost of making necessary regulatory filings and obtaining approvals; and
- the timing and cost of obtaining third party reimbursement.

**Critical Accounting Policies**

***Revenue Recognition***

We recognize revenue from licensing arrangements in the form of upfront license fees, milestone payments, royalties and other fees. Revenue is recognized when cash is received and we have completed all of our obligations under our licensing arrangement which are required for the payment to be non-refundable. Revenue also includes reimbursement for certain research and development expenses which we recognize as both revenue and expense at the time the expense is incurred. Any ancillary payment related to the products being licensed, such as royalties to the head licensor, are netted against revenues at the time of revenue recognition. To date, there has been no royalty revenue recognized. Interest income on invested cash balances is recognized on the accrual basis as earned.

***Research and Development***

Research and development costs are charged to expenses as incurred. Research and development costs are capitalized only when FDA approval has occurred. To date, no research and development expenses have been capitalized.

**Results of Operations**

*Three Months Ended June 30, 2003 Compared to Three Months Ended June 30, 2002*

We earned no licensing income during either of the three month periods ended June 30, 2003 and 2002. Interest income increased from $6,712 during the three month period ended June 30, 2002 to $11,490 during the three month period ended June 30, 2003 as a result of higher invested cash balances during the three months ended June 30, 2003.

Research and development expenses decreased from $987,528 during the three month period ended June 30, 2002 to $939,124 during the three month period ended June 30, 2003. This overall decrease is the result of decreased expenses associated with the clinical development of certain of our hormone therapy products. We expect that our research and development expenses will continue to be significant in future periods as a result of human clinical trials of certain of our hormone therapy products. We are required under the terms of our license agreement with the University of California to have available certain amounts of funds dedicated to research and development activities. The amount of our research and development expenditures, however, may fluctuate from quarter-to-quarter and year-to-year depending on: (1) available resources; (2) our development schedule; (3) results of studies, clinical trials and regulatory decisions; and (4) competitive developments.

General and administrative expenses increased 35% from $491,851 during the three month period ended June 30, 2002 to $664,918 during the three month period ended June 30, 2003. This increase is the result of an increase in expenses related to BioSante common stock paid to our directors as compensation



for serving on the board and committees. Prior to 2003, BioSante did not pay fees to directors and this initial payment of common stock recognizes the significant involvement by directors in 2002 and 2003 for various director-related services, including attendance at board and committee meetings..

We incurred a net loss of $1,616,100 for the three month period ended June 30, 2003, compared to a net loss of $1,495,364 for the three month period ended June 30, 2002. The increase in net loss is largely the result of increased expenses associated with the aforementioned director stock recorded during the three month period ended June 30, 2003 compared to the same period last year. We anticipate that our operating losses will continue for the foreseeable future.

*Six Months Ended June 30, 2003 Compared to Six Months Ended June 30, 2002*

We earned licensing income of $65,494 during the six month period ended June 30, 2003 due to the reimbursement revenue from a licensee for certain clinical development expenses. There was no licensing income during the six month period ended June 30, 2002. Interest income increased slightly from $29,971 during the six month period ended June 30, 2002 to $30,309 during the six month period ended June 30, 2003 as a result of higher invested cash balances during the six months ended June 30, 2003.

Research and development expenses increased from $1,631,922 during the six month period ended June 30, 2002 to $1,742,277 during the six month period ended June 30, 2003. This overall increase is the result of increased expenses associated with the clinical development of certain of our hormone therapy products.

General and administrative expenses increased 23% from $950,980 during the six month period ended June 30, 2002 to $1,167,211 during the six month period ended June 30, 2003. This increase is the result of an increase in expenses associated with BioSante common stock paid to our directors as compensation recorded during the six month period ended June 30, 2003 compared to no similar expense in the same period last year as described above.

We incurred a net loss of $2,860,781 for the six month period ended June 30, 2003, compared to a net loss of $2,598,290 for the six month period ended June 30, 2002. The increase in net loss is largely the result of increased general and administrative expenses as mentioned above during the six month period ended June 30, 2003 compared to the same period last year.

**Liquidity and Capital Resources**

As of June 30, 2003, we have raised equity financing and received licensing income to fund our operations, and we expect to continue this practice to fund our ongoing operations. Since inception, we have raised net proceeds of approximately $21.3 million from equity financings, class A and class C stock conversions, warrant exercises and the issuance of a $500,000 convertible debenture. Since inception, we have received $4.6 million, net of sublicensing costs, as a result of licensing upfront payments and milestones.

Our cash and cash equivalents were $2,334,937 and $4,883,697 at June 30, 2003 and December 31, 2002, respectively. We used cash in operating activities of $2,545,999 for the six month period ended June 30, 2003 versus cash used in operating activities of $2,725,352 for the six month period ended June 30, 2002. The decrease in cash used in operating activities largely reflects payments from a licensee during the six month period ended June 30, 2003 related to the clinical development of a product within our hormone therapy product portfolio. The $218,378 reduction in Due to Antares during the six month period ended June 30, 2003 represents expenses related to manufacturing and formulation services provided by Antares. This reduction was primarily offset by the increase in cash related to the payments



from licensees with respect to cash used in operating activities. There was no net cash used in investing activities for the six month period ended June 30, 2003 versus $25,836 used in investing activities for the six month period ended June 30, 2002 which was used for the purchase of computer equipment and filing cabinets. There was $2,761 net cash used in financing activities as a result of transaction costs incurred during the six months ended June 30, 2003 associated with our private placement financing, which closed in August 2003, compared to net cash used in financing activities of $46,704 for the six months ended June 30, 2002. The net cash used in financing activities during the six month period ended June 30, 2002 reflects the transaction costs associated with a previous financing.

On August 4, 2003, BioSante closed a private placement, raising approximately $10.3 million, ($9.7 million net of estimated transaction costs) upon the issuance of units, which consisted of an aggregate of approximately 4.8 million shares of common stock and five-year warrants to purchase an aggregate of approximately 2.8 million shares of common stock (includes placement agent warrants issued in conjunction with the financing). The price of each unit, which consisted of one share of common stock plus a warrant to purchase one-half share of common stock was $2.15. The exercise price of the warrants is $2.15 per share.

We did not have any material commitments for capital expenditures as of June 30, 2003. We have, however, several potential financial commitments, including product development milestone payments to the licensors of our hormone therapy products, payments under our license agreements with the University of California and Wake Forest University, as well as minimum annual lease payments.

The following table summarizes the timing of these future contractual obligations and commitments as of June 30, 2003:

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| **Contractual Obligations** | **Total** | **Less Than 1 Year** | **1-3 Years** | **4-5 Years** | **After 5 Years** |
| Operating Leases | $ 61,122 | $ 61,122 | $ — | $ — | $ — |
| Commitments Under License Agreement with UCLA | 6,800,000 | — | 150,000 | 350,000 | 6,300,000 |
| Commitments Under License Agreement with Wake Forest | 1,740,000 | 10,000 | 125,000 | 155,000 | 1,450,000 |
| Total Contractual Cash Obligations | $ 8,601,122 | $ 71,122 | $ 275,000 | $ 505,000 | $ 7,750,000 |

We expect to continue to spend capital on:

- research and development programs;
- pre-clinical studies and clinical trials;
- regulatory processes;
- establishment of our own marketing capabilities or a search for third party marketing partners to market our products for us; and
- the licensure or acquisition of new products.

The amount of capital we may need will depend on many factors, including the:

- progress, timing and scope of our research and development programs;
- progress, timing and scope of our pre-clinical studies and clinical trials;



- time and cost necessary to obtain regulatory approvals;
- time and cost necessary to establish our own sales and marketing capabilities or to seek marketing partners to market our products for us;
- time and cost necessary to respond to technological and market developments;
- changes made or new developments in our existing collaborative, licensing and other commercial relationships; and
- new collaborative, licensing and other commercial relationships that we may establish.

In addition, our license agreement with the licensor of our hormone therapy products requires us to make certain payments as development milestones are achieved, and our license agreement with the University of California requires us to have available minimum amounts of funds each year for research and development activities relating to our licensed technology and to achieve research and development milestones. Moreover, our fixed expenses, such as rent, license payments and other contractual commitments, may increase in the future, as we may:

- enter into additional leases for new facilities and capital equipment;
- enter into additional licenses and collaborative agreements; and
- incur additional expenses associated with being a public company.

Our cash on hand as of June 30, 2003 was $2,334,937 and on August 4, 2003, we closed a private placement financing raising approximately $9.7 million in net proceeds. We believe our cash on hand will be sufficient to fund our operations through December 2004. We have based this estimate, however, on assumptions that may prove to be wrong. As a result, we may need to obtain additional financing prior to that time. In addition, we may need to raise additional capital at an earlier time to fund our ongoing research and development activities, acquire new products or take advantage of other unanticipated opportunities. We currently do not have sufficient resources to complete the commercialization of any of our proposed products. We cannot be certain that any financing will be available when needed or will be on terms acceptable to us. Insufficient funds may require us to delay, scale back or eliminate some or all of our programs designed to facilitate the commercial introduction of our proposed products, prevent commercial introduction of our products altogether or restrict us from acquiring new products that we believe may be beneficial to our business. We are also in the process of exploring strategic alternatives, which could include selling some or all of our assets or entering into a business combination, but we have not entered into any definitive agreements for such a strategic alternative.

**Certain Important Factors**

There are several important factors that could cause our actual results to differ materially from those anticipated by us or which are reflected in any of our forward-looking statements. These factors, and their impact on the success of our operations and our ability to achieve our goals, include the following and those listed under the caption “Certain Important Factors” in our Annual Report on Form 10-KSB for the fiscal year ended December 31, 2002:

*We have a history of operating losses, expect continuing losses and may never achieve profitability.*

We have incurred losses in each year since our amalgamation in 1996 and expect to incur substantial and continuing losses for the foreseeable future. We incurred a net loss of $2,860,781 for the six month period ended June 30, 2003, and as of June 30, 2003, our accumulated deficit was $24,922,504.

All of our revenue to date has been derived from interest earned on invested funds and upfront and milestone payments earned on sub-licensing transactions. We have not commercially introduced any



products. We expect to incur substantial and continuing losses for the foreseeable future as our own product development programs expand and various preclinical and clinical trials commence. The amount of these losses may vary significantly from year-to-year and quarter-to-quarter and will depend on, among other factors:

- the timing and cost of product development;
- the progress and cost of preclinical and clinical development programs;
- the costs of licensure or acquisition of new products;
- the timing and cost of obtaining necessary regulatory approvals; and
- the timing and cost of obtaining third party reimbursement.

In order to generate revenues, we must successfully develop and commercialize our proposed products or enter into collaborative agreements with others who can successfully develop and commercialize them. Even if our proposed products and the products we may license or otherwise acquire are commercially introduced, they may never achieve market acceptance and we may never generate revenues or achieve profitability.

*We will need to raise substantial additional capital in the near future to fund our operations and we may be unable to raise such funds when needed and on acceptable terms.*

We currently do not have sufficient resources to complete the commercialization of any of our proposed products. Therefore, we will need to raise substantial additional capital to fund our operations sometime in the future. We cannot be certain that any financing will be available when needed. If we fail to raise additional financing as we need it, we may have to delay or terminate our own product development programs or pass on opportunities to in-license or otherwise acquire new products that we believe may be beneficial to our business.

Our cash on hand as of June 30, 2003 was $2,334,937 and on August 4, 2003, we closed a private placement financing raising approximately $9.7 million in net proceeds. We believe our cash on hand will be sufficient to fund our operations through December 2004. We have based this estimate, however, on assumptions that may prove to be wrong. As a result, we may need to obtain additional financing prior to that time. In addition, we may need to raise additional capital at an earlier time to fund our ongoing research and development activities, acquire new products or take advantage of other unanticipated opportunities. We currently do not have sufficient resources to complete the commercialization of any of our proposed products. We cannot be certain that any financing will be available when needed or will be on terms acceptable to us. Insufficient funds may require us to delay, scale back or eliminate some or all of our programs designed to facilitate the commercial introduction of our proposed products, prevent commercial introduction of our products altogether or restrict us from acquiring new products that we believe may be beneficial to our business. We are also in the process of exploring strategic alternatives, which could include selling some or all of our assets or entering into a business combination, but we have not entered into any definitive agreements for such a strategic alternative.

*We are a development stage company with a short operating history, making it difficult for you to evaluate our business and your investment.*

We are in the development stage and our operations and the development of our proposed products are subject to all of the risks inherent in the establishment of a new business enterprise, including:

- the absence of an operating history;
- the lack of commercialized products;

- insufficient capital;
- expected substantial and continual losses for the foreseeable future;
- limited experience in dealing with regulatory issues;
- the lack of manufacturing experience and limited marketing experience;
- an expected reliance on third parties for the development and commercialization of some of our proposed products;
- a competitive environment characterized by numerous, well-established and well-capitalized competitors; and
- reliance on key personnel.

Because we are subject to these risks, you may have a difficult time evaluating our business and your investment in our company.

*Our proposed products are in the product development stages and will likely not be commercially introduced for several years, if at all.*

Our proposed products are in the product development stages and will require further development, pre-clinical and clinical testing and investment prior to commercialization in the United States and abroad. We cannot assure you that any of our proposed products will:

- be successfully developed;
- prove to be safe and efficacious in clinical trials;
- meet applicable regulatory standards;
- demonstrate substantial protective or therapeutic benefits in the prevention or treatment of any disease;
- be capable of being produced in commercial quantities at reasonable costs; or
- be successfully marketed.

*If we fail to obtain regulatory approval to commercially manufacture or sell any of our future products, or if approval is delayed, we will be unable to generate revenue from the sale of our products.*

We must obtain regulatory approval to sell any of our products in the United States and abroad. In the United States, we must obtain the approval of the FDA for each vaccine or drug that we intend to commercialize. The FDA approval process is typically lengthy and expensive, and approval is never certain. Products distributed abroad are subject to similar foreign government regulation.

Generally, only a very small percentage of newly discovered pharmaceutical products that enter pre-clinical development are approved for sale. Because of the risks and uncertainties in biopharmaceutical development, our proposed products could take a significantly longer time to gain regulatory approval than we expect or may never gain approval. If regulatory approval is delayed or never obtained, our management's credibility, the value of our company and our operating results could be adversely affected.

*To obtain regulatory approval to market our products, costly and lengthy pre-clinical studies and human clinical trials are required, and the results of the studies and trials are highly uncertain.*

As part of the FDA approval process, we must conduct, at our own expense, pre-clinical studies on animals and clinical trials on humans on each of our proposed products. We expect the number of pre-clinical studies and human clinical trials that the FDA will require will vary depending on the product, the disease or condition the product is being developed to address and regulations applicable to the particular product. We may need to perform multiple pre-clinical studies using various doses and formulations



before we can begin human clinical trials, which could result in delays in our ability to market any of our products. Furthermore, even if we obtain favorable results in pre-clinical studies on animals, the results in humans may be different.

After we have conducted pre-clinical studies in animals, we must demonstrate that our products are safe and effective for use on the target human patients in order to receive regulatory approval for commercial sale. The data obtained from pre-clinical and human clinical testing are subject to varying interpretations that could delay, limit or prevent regulatory approval. Adverse or inconclusive human clinical results would prevent us from filing for regulatory approval of our products. Additional factors that can cause delay or termination of our human clinical trials include:

- slow patient enrollment;
- longer treatment time required to demonstrate efficacy or safety;
- adverse medical events or side effects in treated patients; and
- lack of effectiveness of the product being tested.

*Uncertainties associated with the impact of published studies regarding the adverse health effects of certain forms of hormone therapy could adversely affect the trading price of our shares.*

In July 2002, the National Institutes of Health released data from its Women's Health Initiative study on the risks and benefits associated with long-term use of oral hormone therapy by healthy women. The National Institutes of Health announced that it was discontinuing the arm of the study investigating the use of oral estrogen/progestin combination hormone therapy products after an average follow-up period of 5.2 years because the product used in the study was shown to cause an increase in the risk of invasive breast cancer. The study also found an increased risk of stroke, heart attacks and blood clots and concluded that overall health risks exceeded benefits from use of combined estrogen plus progestin for an average of 5.2 year follow-up among healthy postmenopausal women. Also in July 2002, results of an observational study sponsored by the National Cancer Institute on the effects of estrogen therapy were announced. The main finding of the study was that postmenopausal women who used estrogen therapy for 10 or more years had a higher risk of developing ovarian cancer than women who never used hormone therapy. In October 2002, a significant hormone therapy study being conducted in the United Kingdom was also halted. Our proposed hormone therapy products differ from the products used in the Women's Health Initiative study and the primary products observed in the National Cancer Institute and United Kingdom studies. There are, however, no studies comparing the safety of our proposed hormone therapy products against other hormone therapies.

*Because our industry is very competitive and our competitors have substantially greater capital resources and more experience in research and development, manufacturing and marketing than us, we may not succeed in developing our proposed products and bringing them to market.*

Competition in the pharmaceutical industry is intense. Potential competitors in the United States and abroad are numerous and include pharmaceutical, chemical and biotechnology companies, most of which have substantially greater capital resources and more experience in research and development, manufacturing and marketing than us. Academic institutions, hospitals, governmental agencies and other public and private research organizations are also conducting research and seeking patent protection and may develop and commercially introduce competing products or technologies on their own or through joint ventures. We cannot assure you that our competitors will not succeed in developing similar technologies and products more rapidly than we do or that these competing technologies and products will not be more effective than any of those that we are currently developing or will develop.



*We license most of the technology underlying our proposed hormone therapy products and most of our CAP technology from third parties and may lose the rights to license them.*

We license most of the technology underlying our proposed hormone therapy products from Antares Pharma, Inc. and most of our CAP technology from the University of California. We may lose our right to license these technologies if we breach our obligations under the license agreements. Although we intend to use our reasonable best efforts to meet these obligations, if we violate or fail to perform any term or covenant of the license agreements or with respect to the University of California's license agreement within 60 days after written notice from the University of California, the other party to these agreements may terminate these agreements or certain projects contained in these agreements. The termination of these agreements, however, will not relieve us of our obligation to pay any royalty or license fees owing at the time of termination. Our failure to retain the right to license the technology underlying our proposed hormone therapy products or CAP technology could harm our business and future operating results. For example, if we were to enter into an outlicense agreement with a third party under which we agree to outlicense our hormone therapy products or CAP technology for a license fee, the termination of the main license agreement with Antares Pharma, Inc. or the University of California could either, depending upon the terms of the outlicense agreement, cause us to breach our obligations under the outlicense agreement or give the other party a right to terminate that agreement, thereby causing us to lose future revenue generated by the outlicense fees.

*We do not have any facilities appropriate for clinical testing, we lack significant manufacturing experience and we have very limited sales and marketing personnel. We may, therefore, be dependent upon others for our clinical testing, manufacturing, sales and marketing.*

Our current facilities do not include accommodation for the testing of our proposed products in animals or in humans for the clinical testing required by the FDA. We do not have a manufacturing facility that can be used for full-scale production of our products. In addition, at this time, we have very limited sales and marketing personnel. In the course of our development program, we will therefore be required to enter into arrangements with other companies or universities for our animal testing, human clinical testing, manufacturing, and sales and marketing activities. If we are unable to retain third parties for these purposes on acceptable terms, we may be unable to successfully develop, manufacture and market our proposed products. In addition, any failures by third parties to adequately perform their responsibilities may delay the submission of our proposed products for regulatory approval, impair our ability to deliver our products on a timely basis or otherwise impair our competitive position. Our dependence on third parties for the development, manufacture, sale and marketing of our products also may adversely affect our profit margins.

*If we are unable to protect our proprietary technology, we may not be able to compete as effectively.*

The pharmaceutical industry places considerable importance on obtaining patent and trade secret protection for new technologies, products and processes. Our success will depend, in part, upon our ability to obtain, enjoy and enforce protection for any products we develop or acquire under United States and foreign patent laws and other intellectual property laws, preserve the confidentiality of our trade secrets and operate without infringing the proprietary rights of third parties.

Where appropriate, we seek patent protection for certain aspects of our technology. In February 2000, we filed a patent application relating to our CAP technology. However, our owned and licensed patents and patent applications will not ensure the protection of our intellectual property for a number of other reasons:



- We do not know whether our patent applications will result in actual patents. For example, we may not have developed a method for treating a disease before others develop similar methods.

- Competitors may interfere with our patent process in a variety of ways. Competitors may claim that they invented the claimed invention before us or may claim that we are infringing on their patents and therefore cannot use our technology as claimed under our patent. Competitors may also contest our patents by showing the patent examiner that the invention was not original or novel or was obvious.

- We are in the research and development stage and are in the process of developing proposed products. Even if we receive a patent, it may not provide much practical protection. If we receive a patent with a narrow scope, then it will be easier for competitors to design products that do not infringe on our patent. Even if the development of our proposed products is successful and approval for sale is obtained, there can be no assurance that applicable patent coverage, if any, will not have expired or will not expire shortly after this approval. Any expiration of the applicable patent could have a material adverse effect on the sales and profitability of our proposed product.

- Enforcing patents is expensive and may require significant time by our management. In litigation, a competitor could claim that our issued patents are not valid for a number of reasons. If the court agrees, we would lose that patent.

- We may also support and collaborate in research conducted by government organizations or universities. We cannot guarantee that we will be able to acquire any exclusive rights to technology or products derived from these collaborations. If we do not obtain required licenses or rights, we could encounter delays in product development while we attempt to design around other patents or we may be prohibited from developing, manufacturing

or selling products requiring these licenses. There is also a risk that disputes may arise as to the rights to technology or products developed in collaboration with other parties.

It is also unclear whether our trade secrets will provide useful protection. While we use reasonable efforts to protect our trade secrets, our employees or consultants may unintentionally or willfully disclose our proprietary information to competitors. Enforcing a claim that someone else illegally obtained and is using our trade secrets, like patent litigation, is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Finally, our competitors may independently develop equivalent knowledge, methods and know-how.

*Claims by others that our products infringe their patents or other intellectual property rights could adversely affect our financial condition.*

The pharmaceutical industry has been characterized by frequent litigation regarding patent and other intellectual property rights. Patent applications are maintained in secrecy in the United States until the patents are issued and are also maintained in secrecy for a period of time outside the United States. Accordingly, we can conduct only limited searches to determine whether our technology infringes any patents or patent applications of others. Any claims of patent infringement would be time-consuming and could likely:

- result in costly litigation;
- divert the time and attention of our technical personnel and management;
- cause product development delays;



- require us to develop non-infringing technology; or
- require us to enter into royalty or licensing agreements.

Although patent and intellectual property disputes in the pharmaceutical industry have often been settled through licensing or similar arrangements, costs associated with these arrangements may be substantial and often require the payment of ongoing royalties, which could hurt our gross margins. In addition, we cannot be sure that the necessary licenses would be available to us on satisfactory terms, or that we could redesign our products 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, manufacturing and selling some of our products, which could harm our business, financial condition and operating results.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

We are exposed to interest rate risk on the investments of our excess cash. The primary objective of our investment activities is to preserve principal while at the same time maximize yields without significantly increasing risk. To achieve this objective, we invest in highly liquid and high quality debt securities. To minimize the exposure due to adverse shifts in interest rates, we invest in short-term securities with maturities of less than one year. Due to the nature of our short-term investments, we have concluded that we do not have a material market risk of exposure.

**ITEM 4. CONTROLS AND PROCEDURES**

As of June 30, 2003, the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rules 13a-14 and 13a-15 under the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our President and Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures are effective.

There were no significant changes identified by our President and Chief Executive Officer or our Chief Financial Officer in our internal controls over financial reporting or in other factors that could significantly affect these controls subsequent to the date of our evaluation.



## PART II - OTHER INFORMATION

**ITEM 4 – SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

On May 30, 2003, at the Annual Meeting of Stockholders, our stockholders re-elected eight directors, approved our Amended and Restated 1998 Stock Plan and ratified the appointment of Deloitte & Touche L.L.P., our independent auditors, for the fiscal year ending December 31, 2003. The votes on each of these matters were as follows:

| | For | Against | Withheld | Broker Non-Votes |
|---|---|---|---|---|
| **1. Election of Directors** | | | | |
| Louis W. Sullivan | 5,510,343 | — | 75 | — |
| Stephen M. Simes | 5,510,336 | — | 82 | — |
| Victor Morgenstern | 5,510,344 | — | 74 | — |
| Fred Holubow | 5,510,344 | — | 74 | — |
| Ross Mangano | 5,510,344 | — | 74 | — |
| Edward C. Rosenow | 5,510,336 | — | 82 | — |
| Angela Ho | 5,510,344 | — | 74 | — |
| Peter Kjaer | 5,510,335 | — | 83 | — |
| **2. Approve Amended and Restated 1998 Stock Plan** | 5,082,045 | 338,260 | 90,113 | — |

| | | | | |
|---|---|---|---|---|
| **3. Appointment of Auditors** | 5,510,230 | 35 | 154 | — |

**ITEM 6 - EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits

10.1 Amended and Restated 1998 Stock Plan.

10.2 Deferred Compensation Plan.

31.1 Certification of CEO Pursuant to SEC Rule 13a-14.

31.2 Certification of CFO Pursuant to SEC Rule 13a-14.

32.1 Certification of CEO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

32.2 Certification of CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(b) Reports on Form 8-K: No reports on Form 8-K were filed during the quarter ended June 30, 2003.



**SIGNATURES**

Pursuant to the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

August 13, 2003

**BIOSANTE PHARMACEUTICALS, INC.**

By: /s/ Stephen M. Simes
Stephen M. Simes
President and Chief Executive Officer
(principal executive officer)

By: /s/ Phillip B. Donenberg
Phillip B. Donenberg
Chief Financial Officer, Secretary and Treasurer
(principal financial and accounting officer)

BIOSANTE PHARMACEUTICALS, INC.
AMENDED AND RESTATED 1998 STOCK PLAN
(As amended through May 30, 2003)

1. Purpose of Plan.

The purpose of the BioSante Pharmaceuticals, Inc. 1998 Stock Plan (the "Plan") is to advance the interests of BioSante Pharmaceuticals, Inc. (the "Company") and its stockholders by enabling the Company and its Subsidiaries to attract and retain persons of ability to perform services for the Company and its Subsidiaries by providing an incentive to such individuals through equity participation in the Company and by rewarding such individuals who contribute to the achievement by the Company of its economic objectives.

2. Definitions.

The following terms will have the meanings set forth below, unless the context clearly otherwise requires:

2.1 "Board" means the Board of Directors of the Company.

2.2 "Broker Exercise Notice" means a written notice pursuant to which a Participant, upon exercise of an Option, irrevocably instructs a broker or dealer to sell a sufficient number of shares or loan a sufficient amount of money to pay all or a portion of the exercise price of the Option and/or any related withholding tax obligations and remit such sums to the Company and directs the Company to deliver stock certificates to be issued upon such exercise directly to such broker or dealer.

2.3 "Change in Control" means an event described in Section 10.1 of the Plan.

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

2.5 "Committee" means the group of individuals administering the Plan, as provided in Section 3 of the Plan.

2.6 "Common Stock" means the common stock of the Company, par value $0.0001 per share, or the number and kind of shares of stock or other securities into which such common stock may be changed in accordance with Section 4.3 of the Plan.

2.7 "Disability" means the disability of the Participant such as would entitle the Participant to receive disability income benefits pursuant to the long-term disability plan of the Company or Subsidiary then covering the Participant or, if no such plan exists or is applicable to the Participant, the permanent and total disability of the Participant within the meaning of Section 22(e)(3) of the Code.

2.8 "Eligible Recipients" means all employees (including officers and directors who are also employees) of the Company or any Subsidiary and any non-employee directors and officers and individual consultants and independent contractors of the Company or any Subsidiary, other than consultants or independent contractors providing services in connection with the offer or sale of securities in a capital raising transaction or who directly or indirectly promote or maintain a market for the Company's securities.

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

2.10 "Fair Market Value" means, with respect to the Common Stock, as of any date (or, if no shares were traded or quoted on such date, as of the next preceding date on which there was such a trade or quote) (a) the mean between the reported high and low sale prices of the Common Stock if the Common

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Stock is listed, admitted to unlisted trading privileges or reported on any foreign or national securities exchange or on the Nasdaq National Market or SmallCap Market or an equivalent foreign market on which sale prices are reported; (b) if the Common Stock is not so listed, admitted to unlisted trading privileges or reported, the closing bid price as reported by the OTC Bulletin Board or the National Quotation Bureau, Inc. or other comparable service; or (c) if the Common Stock is not so listed or reported, such price as the Committee determines in good faith in the exercise of its reasonable discretion.

2.11 "Incentive Award" means an Option or Stock Award granted to an Eligible Recipient pursuant to the Plan.

2.12 "Incentive Stock Option" means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that qualifies as an "incentive stock option" within the meaning of Section 422 of the Code.

2.13 "Non-Statutory Stock Option" means a right to purchase Common Stock granted to an Eligible Recipient pursuant to Section 6 of the Plan that does not qualify as an Incentive Stock Option.

2.14 "Option" means an Incentive Stock Option or a Non-Statutory Stock Option.

2.15 "Participant" means an Eligible Recipient who receives one or more Incentive Awards under the Plan.

2.16 "Previously Acquired Shares" means shares of Common Stock or any other shares of capital stock of the Company that are already owned by the Participant or, with respect to any Option, that are to be issued upon the exercise of such Option.

2.17 "Retirement" means termination of employment or service pursuant to and in accordance with the regular (or, if approved by the Board for purposes of the Plan, early) retirement/pension plan or practice of the Company or Subsidiary then covering the Participant, provided that if the Participant is not covered by any such plan or practice, the Participant will be deemed to be covered by the Company's plan or practice for purposes of this determination.

2.18 "Securities Act" means the Securities Act of 1933, as amended.

2.19 "Stock Award" means an award of Common Stock granted to an Eligible Recipient pursuant to Section 7 of the Plan.

2.20 "Stock Unit" means a bookkeeping entry representing the equivalent of one share of Common Stock that is payable in the form of Common Stock, cash or any combination of the foregoing.

2.21 "Subsidiary" means any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Committee.

2.22 "Tax Date" means the date any withholding tax obligation arises under the Code or other applicable tax statute for a Participant with respect to an Incentive Award.

3. Plan Administration.

3.1 The Committee. The Plan will be administered by the Board or by a committee of the Board. So long as the Company has a class of its equity securities registered under Section 12 of the Exchange Act, any committee administering the Plan will consist solely of two or more members of the Board who are "non-employee directors" within the meaning of Rule 16b-3 under the Exchange Act and, if the Board so determines in its sole discretion, who are "outside directors" within the meaning of Section 162(m)



of the Code. Such a committee, if established, will act by majority approval of the members (but may also take action with the written consent of all of the members of such committee), and a majority of the members of such a committee will constitute a quorum. As used in the Plan, "Committee" will refer to the Board or to such a committee, if established; provided, however, that with respect to the grant of any Incentive Award to a Participant who is then a Committee Member, and to any action that may be taken hereunder by the Committee regarding any such Incentive Award for so long as such Participant is a Committee Member, such action may be taken only by the Board. To the extent consistent with applicable corporate law, the Committee may delegate to any officers of the Company the duties, power and authority of the Committee under the Plan pursuant to such conditions or limitations as the Committee may establish; provided, however, that only the Committee may exercise such duties, power and authority with respect to Eligible Recipients who are subject to Section 16 of the Exchange Act and Section 162(m) of the Code. The Committee may exercise its duties, power and authority under the Plan in its sole and absolute discretion without the consent of any Participant or other party, unless the Plan specifically provides otherwise. Each determination, interpretation or other action made or taken by the Committee pursuant to the provisions of the Plan will be final, conclusive and binding for all purposes and on all persons, including, without limitation, the Company, the stockholders of the Company, the participants and their respective successors-in-interest. No member of the Committee will be liable for any action or determination made in good faith with respect to the Plan or any Incentive Award granted under the Plan.

3.2 Authority of the Committee.

(a) In accordance with and subject to the provisions of the Plan, the Committee will have the authority to determine all provisions of Incentive Awards as the Committee may deem necessary or desirable and as consistent with the terms of the Plan, including, without limitation, the following: (i) the Eligible Recipients to be selected as Participants; (ii) the nature and extent of the Incentive Awards to be made to each Participant (including the number of shares of Common Stock to be subject to each Incentive Award, any exercise price, the manner in which Incentive Awards will vest or become exercisable and whether Incentive Awards will be granted in tandem with other Incentive Awards) and the form of written agreement, if any, evidencing such Incentive Award; (iii) the time or times when Incentive Awards will be granted; (iv) the duration of each Incentive Award; and (v) the restrictions and other conditions to which the payment or vesting of Incentive Awards may be subject. In addition, the Committee will have the authority under the Plan in its sole discretion to pay the economic value of any Incentive Award in the form of cash, shares of Common Stock, shares of any capital stock of the Company, Stock Units or any combination of the foregoing.

(b) The Committee will have the authority under the Plan to amend or modify the terms of any outstanding Incentive Award in any manner, including, without limitation, the authority to modify the number of shares or other terms and conditions of an Incentive Award, extend the term of an Incentive Award, accelerate the exercisability or vesting or otherwise terminate any restrictions relating to an Incentive Award, accept the surrender of any outstanding Incentive Award or, to the extent not previously exercised or vested, authorize the grant of new Incentive Awards in substitution for surrendered Incentive Awards; provided, however that the amended or modified terms are permitted by the Plan as then in effect and that any Participant adversely affected by such amended or modified terms has consented to such amendment or modification. No amendment or modification to an Incentive Award, however, whether pursuant to this Section 3.2 or any other provisions of the Plan, will be deemed to be a re-grant of such Incentive Award for purposes of this Plan.

(c) In the event of (i) any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, extraordinary dividend or divestiture (including a spin-off) or any other similar change in corporate structure or shares, (ii) any purchase, acquisition, sale or disposition of a significant amount of assets



or a significant business, (iii) any change in accounting principles or practices, or (iv) any other similar change, in each case with respect to the Company or any other entity whose performance is relevant to the grant or vesting of an Incentive Award, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) may, without the consent of any affected Participant, amend or modify the vesting criteria of any outstanding Incentive Award that is based in whole or in part on the financial performance of the Company (or any Subsidiary or division thereof) or such other entity so as equitably to reflect such event, with the desired result that the criteria for evaluating such financial performance of the Company or such other entity will be substantially the same (in the sole discretion of the Committee or the board of directors of the surviving corporation) following such event as prior to such event; provided, however, that the amended or modified terms are permitted by the Plan as then in effect.

(d) The Committee may permit or require the deferral of any payment, issuance or other settlement of an Incentive Award subject to such rules and procedures as the Committee may establish, including the conversion of such payment, issuance or other settlement into Stock Units

and the payment or crediting of interest, dividends or dividend equivalents.

4. Shares Available for Issuance.

4.1 Maximum Number of Shares Available. Subject to adjustment as provided in Section 4.3 of the Plan, the maximum number of shares of Common Stock that will be available for issuance under the Plan will be 2,000,000 shares of Common Stock, plus any shares of Common Stock which, as of the date the Plan is approved by the stockholders of the Company, are reserved for issuance under the Company's existing Stock Option Plan and which are not thereafter issued or which have been issued but are subsequently forfeited and which would otherwise have been available for further issuance under such plan. The Committee may use shares available for issuance under the Plan as the form of payment for compensation, awards or rights earned or due under deferred or any other compensation plans or arrangements of the Company or any Subsidiary. The shares available for issuance under the Plan may, at the election of the Committee, be either treasury shares or shares authorized but unissued, and, if treasury shares are used, all references in the Plan to the issuance of shares will, for corporate law purposes, be deemed to mean the transfer of shares from treasury.

4.2 Calculation of Shares Available. Shares of Common Stock (a) that are issued under the Plan or under any deferred or other compensation plan or arrangement of the Company or any Subsidiary or (b) that are subject to outstanding Incentive Awards, Stock Units or other awards or rights earned or due under the Plan or under any deferred or other compensation plan or arrangement of the Company or any Subsidiary, will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan. To the extent that any shares of Common Stock that are subject to an Incentive Award, Stock Unit or other award or right earned or due under the Plan or under any deferred or other compensation plan or arrangement of the Company or any Subsidiary (a) are not issued to a Participant under the Plan or a participant under any deferred or other compensation plan or arrangement of the Company or any Subsidiary due to the fact that such Incentive Award, Stock Unit or other award or right earned or due under the Plan or under any deferred or other compensation plan or arrangement of the Company or any Subsidiary lapses, expires, is forfeited or for any reason is terminated unexercised or unvested, or is settled or paid in cash or (b) are used to satisfy any exercise price or withholding obligations, such shares will automatically again become available for issuance under the Plan. In addition, to the extent that a Participant tenders (either by actual delivery or by attestation) shares of Common Stock already owned by the Participant to the Company in satisfaction of any exercise price or withholding tax obligations, such shares will automatically again become available for issuance under the Plan.

4.3 Adjustments to Shares and Incentive Awards. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of



shares, rights offering, divestiture or extraordinary dividend (including a spin-off) or any other similar change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) available for issuance or payment under the Plan and, in order to prevent dilution or enlargement of the rights of Participants, (a) the number and kind of securities or other property (including cash) subject to outstanding Options, and (b) the exercise price of outstanding Options.

5. Participation.

Participants in the Plan will be those Eligible Recipients who, in the judgment of the Committee, have contributed, are contributing or are expected to contribute to the achievement of economic objectives of the Company or its Subsidiaries. Eligible Recipients may be granted from time to time one or more Incentive Awards, singly or in combination or in tandem with other Incentive Awards, as may be determined by the Committee in its sole discretion. Incentive Awards will be deemed to be granted as of the date specified in the grant resolution of the Committee, which date will be the date of any related agreement with the Participant.

6. Options.

6.1 Grant. An Eligible Recipient may be granted one or more Options under the Plan, and such Options will be subject to such terms and conditions, consistent with the other provisions of the Plan, as may be determined by the Committee in its sole discretion. The Committee may designate whether an Option is to be considered an Incentive Stock Option or a Non-Statutory Stock Option. To the extent that any Incentive Stock Option granted under the Plan ceases for any reason to qualify as an "incentive stock option" for purposes of Section 422 of the Code, such Incentive Stock Option will continue to be outstanding for purposes of the Plan but will thereafter be deemed to be a Non-Statutory Stock Option.

6.2 Exercise Price. The per share price to be paid by a Participant upon exercise of an Option will be determined by the Committee in its discretion at the time of the Option grant; provided, however, that such price will not be less than 100% of the Fair Market Value of one share of Common Stock on the date of grant with respect to an Incentive Stock Option (110% of the Fair Market Value if, at the time the Incentive Stock Option is granted, the Participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company).

6.3 Exercisability and Duration. An Option will become exercisable at such times and in such installments as may be determined by the Committee in its sole discretion at the time of grant; provided, however, that no Incentive Stock Option may be exercisable after 10 years from its date of grant (five years from its date of grant if at the time the Incentive Stock Option is granted, the Participant owns, directly or indirectly, more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company).

6.4 Payment of Exercise Price. The total purchase price of the shares to be purchased upon exercise of an Option must be paid entirely in cash (including check, bank draft or money order); provided, however, that the Committee, in its sole discretion and upon terms and conditions established by the Committee, may allow such payments to be made, in whole or in part, by tender of a Broker Exercise Notice, Previously Acquired Shares (including through delivery of a written attestation of ownership of such Previously Acquired Shares if permitted, and on terms acceptable, to the Committee in its sole discretion), a promissory note (on terms acceptable to the Committee in its sole discretion) or by a combination of such methods.

6.5 Manner of Exercise. An Option may be exercised by a Participant in whole or in part from time to time, subject to the conditions contained in the Plan and in the agreement evidencing such Option, by delivery in person, by facsimile or electronic transmission or through the mail of written notice of exercise to the Company (Attention: Chief Financial Officer) at its principal executive office in Lincolnshire, Illinois and by paying in full the total exercise price for the shares of Common Stock to be purchased in accordance with Section 6.4 of the Plan.

6.6 Aggregate Limitation of Stock Subject to Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined as of the date an Incentive Stock Option is granted) of the shares of Common Stock with respect to which incentive stock options (within the meaning of Section 422 of the Code) are exercisable for the first time by a Participant during any calendar year (under the Plan and any other incentive stock option plans of the Company or any subsidiary or parent corporation of the Company (within the meaning of the Code)) exceeds $100,000 (or such other amount as may be prescribed by the Code from time to time), such excess Options will be treated as Non-Statutory Stock Options. The determination will be made by taking incentive stock options into account in the order in which they were granted. If such excess only applies to a portion of an Incentive Stock Option, the Committee, in its discretion, will designate which shares will be treated as shares to be acquired upon exercise of an Incentive Stock Option.

7. Stock Awards.

An Eligible Recipient may be granted one or more Stock Awards under the Plan, and such Stock Awards will be subject to such terms and conditions, consistent with the other provisions of the Plan, as may be determined by the Committee. The Participant will have all voting, dividend, liquidation and other rights with respect to the shares of Common Stock issued to a Participant as a Stock Award under this Section 7 upon the Participant becoming the holder of record of such shares; provided, however, that the Committee may impose such restrictions on the assignment or transfer of a Stock Award as it deems appropriate; and provided, further, that if the Participant defers the receipt of the Stock Award under any deferred compensation plan or arrangement of the Company or any Subsidiary and in lieu thereof receives a Stock Unit, such Participant will not have all voting, dividend, liquidation and other rights with respect to the shares of Common Stock issued to the Participant as a Stock Award under this Section 7.

8. Effect of Termination of Employment or Other Service.

8.1 Termination Due to Death, Disability or Retirement. Unless otherwise provided by the Committee in its sole discretion in the agreement evidencing an Incentive Award:

(a) In the event a Participant's employment or other service with the Company and all Subsidiaries is terminated by reason of death or Disability, all outstanding Options then held by the Participant will remain exercisable, to the extent exercisable as of the date of such termination, for a period of six months after such termination (but in no event after the expiration date of any such Option) and all Stock Awards then held by a Participant will, to the extent applicable, vest and/or continue to vest in the manner determined by the Committee and set forth in any agreement evidencing such Stock Award.

(b) In the event a Participant's employment or other service with the Company and all Subsidiaries is terminated by reason of Retirement, all outstanding Options then held by the Participant will remain exercisable, to the extent exercisable as of the date of such termination, for a period of three months after such termination (but in no event after the expiration date of any such Option) and all Stock Awards then held by a Participant will, to the extent applicable, vest and/or continue to vest in the manner determined by the Committee and set forth in any agreement evidencing such Stock Award.



8.2 Termination for Reasons Other than Death, Disability or Retirement.

(a) Unless otherwise provided by the Committee in its sole discretion in the agreement evidencing an Incentive Award, in the event a Participant's employment or other service is terminated with the Company and all Subsidiaries for any reason other than death, Disability or Retirement, or a Participant is in the employ or service of a Subsidiary and the Subsidiary ceases to be a Subsidiary of the Company (unless the Participant continues in the employ or service of the Company or another Subsidiary), all rights of the Participant under the Plan and any agreements evidencing an Option will immediately terminate without notice of any kind, and no Options then held by the Participant will thereafter be exercisable and all Stock Awards then held by a Participant will, to the extent applicable, vest and/or continue to vest in the manner determined by the Committee and set forth in any agreement evidencing such Stock Award; provided, however, that if such termination is due to any reason other than termination by the Company or any Subsidiary for "cause," all outstanding Options then held by such Participant will remain exercisable, to the extent exercisable as of such termination, for a period of three months after such termination (but in no event after the expiration date of any such Option).

(b) For purposes of this Section 8.2, "cause" (as determined by the Committee) will be as defined in any employment or other agreement or policy applicable to the Participant or, if no such agreement or policy exists, will mean (i) dishonesty, fraud, misrepresentation, embezzlement or deliberate injury or attempted injury, in each case related to the Company or any Subsidiary, (ii) any unlawful or criminal activity of a serious nature, (iii) any intentional and deliberate breach of a duty or duties that, individually or in the aggregate, are material in relation to the Participant's overall duties, or (iv) any material breach of any employment, service, confidentiality or non-compete agreement entered into with the Company or any Subsidiary.

8.3 Modification of Rights Upon Termination. Notwithstanding the other provisions of this Section 8, upon a Participant's termination of employment or other service with the Company and all Subsidiaries, the Committee may, in its sole discretion (which may be exercised at any time on or after the date of grant, including following such termination), cause Options (or any part thereof) then held by such Participant to become or continue to become exercisable and/or remain exercisable following such termination of employment or service and all Stock Awards then held by a Participant will, to the extent applicable, vest and/or continue to vest in the manner determined by the Committee and set forth in any agreement evidencing such Stock Award; provided, however, that no Option may remain exercisable beyond its expiration date.

8.4 Exercise of Incentive Stock Options Following Termination. Any Incentive Stock Option that remains unexercised more than one year following termination of employment by reason of Disability or more than three months following termination for any reason other than death or Disability will thereafter be deemed to be a Non-Statutory Stock Option.

8.5 Date of Termination of Employment or Other Service. Unless the Committee otherwise determines in its sole discretion, a Participant's employment or other service will, for purposes of the Plan, be deemed to have terminated on the date recorded on the personnel or other records of the Company or the Subsidiary for which the Participant provides employment or other service, as determined by the Committee in its sole discretion based upon such records.

9. Payment of Withholding Taxes.

9.1 General Rules. The Company is entitled to (a) withhold and deduct from future wages of the Participant (or from other amounts that may be due and owing to the Participant from the Company or a Subsidiary), or make other arrangements for the collection of, all legally required amounts necessary to



satisfy any and all foreign, federal, state and local withholding and employment-related tax requirements attributable to an Incentive Award, including, without limitation, the grant, exercise or vesting of, or payment of dividends with respect to, an Incentive Award or a disqualifying disposition of stock received upon exercise of an Incentive Stock Option, or (b) require the Participant promptly to remit the amount of such withholding to the Company before taking any action, including issuing any shares of Common Stock, with respect to an Incentive Award.

9.2 Special Rules. The Committee may, in its sole discretion and upon terms and conditions established by the Committee, permit or require a Participant to satisfy, in whole or in part, any withholding or employment-related tax obligation described in Section 9.1 of the Plan by electing to tender Previously Acquired Shares, a Broker Exercise Notice or a promissory note (on terms acceptable to the Committee in its sole discretion), or by a combination of such methods.

10. Change in Control.

10.1 Change in Control. For purposes of this Section 10, a "Change in Control" of the Company will mean the following:

(a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to a person or entity that is not controlled by the Company;

(b) the approval by the stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;

(c) any person becomes after the effective date of the Plan the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 20% or more, but not 50% or more, of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuity Directors (as defined in Section 10.2 below), or (ii) 50% or more of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

(d) a merger or consolidation to which the Company is a party if the stockholders of the Company immediately prior to effective date of such merger or consolidation have "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), immediately following the effective date of such merger or consolidation, of securities of the surviving corporation representing (i) more than 50%, but less than 80%, of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, unless such merger or consolidation has been approved in advance by the Continuity Directors, or (ii) 50% or less of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

(e) the Continuity Directors cease for any reason to constitute at least a majority of the Board; or

(f) any other change in control of the Company of a nature that would be required to be reported pursuant to Section 13 or 15(d) of the Exchange Act, whether or not the Company is then subject to such reporting requirement.



10.2 Continuity Directors. For purposes of this Section 10, "Continuity Directors" of the Company will mean any individuals who are members of the Board on the effective date of the Plan and any individual who subsequently becomes a member of the Board whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the Continuity Directors (either by specific vote or by approval of the Company's proxy statement in which such individual is named as a nominee for director without objection to such nomination).

10.3 Acceleration of Vesting. Without limiting the authority of the Committee under Sections 3.2 and 4.3 of the Plan, if a Change in Control of the Company occurs, then, unless otherwise provided by the Committee in its sole discretion either in the agreement evidencing an Incentive Award at the time of grant or at any time after the grant of an Incentive Award, all outstanding Options will become immediately exercisable in full and will remain exercisable for the remainder of their terms, regardless of whether the Participant to whom such Options have been granted remains in the employ or service of the Company or any Subsidiary and all outstanding Stock Awards then held by a Participant will, to the extent applicable, vest and/or continue to vest in the manner determined by the Committee and set forth in any agreement evidencing such Stock Award.

11. Rights of Eligible Recipients and Participants; Transferability.

11.1 Employment or Service. Nothing in the Plan will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of any Eligible Recipient or Participant at any time, nor confer upon any Eligible Recipient or Participant any right to continue in the employ or service of the Company or any Subsidiary.

11.2 Rights as a Stockholder. As a holder of Options, a Participant will have no rights as a stockholder unless and until such Options are exercised for, or paid in the form of, shares of Common Stock and the Participant becomes the holder of record of such shares. Except as otherwise provided in the Plan, no adjustment will be made for dividends or distributions with respect to such Options as to which there is a record date preceding the date the Participant becomes the holder of record of such shares, except as the Committee may determine in its discretion.

11.3 Restrictions on Transfer.

(a) Except pursuant to testamentary will or the laws of descent and distribution and except as expressly permitted by Section 11.3(b) of the Plan, no right or interest of any Participant in an Incentive Award prior to the exercise or vesting of such Incentive Award will be assignable or transferable, or subjected to any lien, during the lifetime of the Participant, either voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise. A Participant will, however, be entitled to designate a beneficiary to receive an Incentive Award upon such Participant's death. In the event of a Participant's death, payment of any amounts due under the Plan will be made to, and exercise of any Options (to the extent permitted pursuant to Section 8 of the Plan) will be made by, the Participant's designated beneficiary. For purposes of the Plan, a "designated beneficiary" will be the beneficiary or beneficiaries designated by the Participant in a writing filed with the Committee in such form and at such time as the Committee will require in its sole discretion. If a Participant fails to designate a beneficiary, or if the designated beneficiary does not survive the Participant or dies before the designated beneficiary's exercise of all rights under the Plan, payment of any amounts due under the Plan will be made to, and exercise of any Options (to the extent permitted pursuant to Section 8 of the Plan) may be made by, the Participant's personal representative.

(b) The Committee may, in its discretion, authorize all or a portion of the Options to be granted to a Participant to be on terms which permit transfer by such Participant to (i) the spouse, ex-spouse,



children, step-children or grandchildren of the Participant (the "Family Members"), (ii) a trust or trusts for the exclusive benefit of such Family Members, (iii) a partnership in which such Family Members are the only partners, or (iv) such other persons or entities as the Committee, in its discretion, may permit, provided that (1) there may be no consideration for such a transfer (other than the possible receipt of an ownership interest in an entity to which such a transfer is made), (2) the award agreement pursuant to which such Options are granted must be approved by the Committee and must expressly provide for transferability in a manner consistent with this Section 11.3(b), (3) timely written notice of the transfer must be provided to the Company by the Participant, and (4) subsequent transfers of the transferred Options shall be prohibited except for those in accordance with Section 11.3(a). Following transfer, any such Option and the rights of any transferee with respect thereto will continue to be subject to the same terms and conditions as were applicable immediately prior to the transfer, including that the events of termination of employment or other service as provided in the Plan and in any applicable award agreement will continue to be applied with respect to the original Participant, with the transferee bound by the consequences of any such termination of employment or service as specified in the Plan and the applicable award agreement. The Company will be under no obligation to provide notice of termination of a Participant's employment or other service to any transferee of such Participant's Options. Notwithstanding any Option transfer pursuant to this Section 11.3(b), the Participant will remain subject to and liable for any employment-related taxes in connection with the exercise of such Option.

11.4 Breach of Confidentiality or Non-Compete Agreements. Notwithstanding anything in the Plan to the contrary, in the event that a Participant materially breaches the terms of any confidentiality or non-compete agreement entered into with the Company or any Subsidiary, whether such breach occurs before or after termination of such Participant's employment or other service with the Company or any Subsidiary, the Committee in its sole discretion may immediately terminate all rights of the Participant under the Plan and any agreements evidencing an Incentive Award then held by the Participant without notice of any kind.

11.5 Non-Exclusivity of the Plan. Nothing contained in the Plan is intended to modify or rescind any previously approved compensation plans or programs of the Company or create any limitations on the power or authority of the Board to adopt such additional or other compensation arrangements as the Board may deem necessary or desirable.

12. Securities Law and Other Restrictions.

Notwithstanding any other provision of the Plan or any agreements entered into pursuant to the Plan, the Company will not be required to issue any shares of Common Stock under this Plan, and a Participant may not sell, assign, transfer or otherwise dispose of shares of Common Stock issued pursuant to Incentive Awards granted under the Plan, unless (a) there is in effect with respect to such shares a registration statement under the Securities Act and any applicable state or foreign securities laws or an exemption from such registration under the Securities Act and applicable state or foreign securities laws, and (b) there has been obtained any other consent, approval or permit from any other regulatory body which the Committee, in its sole discretion, deems necessary or advisable. The Company may condition such issuance, sale or transfer upon the receipt of any representations or agreements from the parties involved, and the placement of any legends on certificates representing shares of Common Stock, as may be deemed necessary or advisable by the Company in order to comply with such securities law or other restrictions.

13. Plan Amendment, Modification and Termination.

The Board may suspend or terminate the Plan or any portion thereof at any time, and may amend the Plan from time to time in such respects as the Board may deem advisable in order that Incentive Awards



under the Plan will conform to any change in applicable laws or regulations or in any other respect the Board may deem to be in the best interests of the Company; provided, however, that no amendments to the Plan will be effective without approval of the stockholders of the Company if stockholder approval of the amendment is then required pursuant to Section 422 of the Code or the rules of any stock exchange or Nasdaq or similar regulatory body. No termination, suspension or amendment of the Plan may adversely affect any outstanding Incentive Award without the consent of the affected Participant; provided, however, that this sentence will not impair the right of the Committee to take whatever action it deems appropriate under Sections 3.2, 4.3 and 10 of the Plan.

14. Effective Date and Duration of the Plan.

The Plan is effective as of December 8, 1998, the date it was adopted by the Board. The Plan will terminate at midnight on December 8, 2008 and may be terminated prior to such time to by Board action, and no Incentive Award will be granted after such termination. Incentive Awards outstanding upon termination of the Plan may continue to be exercised, or become free of restrictions, in accordance with their terms.

15. Miscellaneous.

14.1 Governing Law. The validity, construction, interpretation, administration and effect of the Plan and any rules, regulations and actions relating to the Plan will be governed by and construed exclusively in accordance with the laws of the State of Delaware, notwithstanding the conflicts of laws principles of any jurisdictions.

14.2 Successors and Assigns. The Plan will be binding upon and inure to the benefit of the successors and permitted assigns of the Company and the Participants.

**BIOSANTE PHARMACEUTICALS, INC.**
**DEFERRED COMPENSATION PLAN**

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# BIOSANTE PHARMACEUTICALS, INC.
# DEFERRED COMPENSATION PLAN

## ARTICLE 1.
## NAME, PURPOSES, BACKGROUND

**1.1.** **Plan Name.** The name of the Plan is the "BioSante Pharmaceuticals, Inc. Deferred Compensation Plan."

**1.2.** **Plan Purposes.** The purposes of the Plan are to:

(a) assist the Participating Employers in attracting and retaining key executives,

(b) provide an employer-sponsored tax-deferred capital accumulation vehicle for key executives and members of the Company's board of directors, and

(c) encourage additional retirement savings by eligible executives and directors.

**1.3.** **Plan Type.** The Plan is an unfunded plan maintained primarily for the purpose of providing deferred compensation for non-employee, independent directors and a select group of management or highly compensated employees of the Company. It is intended that, with respect to participation by Qualified Directors, ERISA will not apply to the Plan and that, with respect to participation by Qualified Employees, the Plan is exempt from the provisions of Parts 2, 3 and 4 of Subtitle B of Title I of ERISA by operation of sections 201(2), 301(a)(3) and 401(a)(4) thereof, respectively, and from the provisions of Title IV of ERISA, to the extent otherwise applicable, by operation of section 4021(b)(6) thereof. The Plan is also intended to be unfunded for tax purposes. The Plan will be construed and administered in a manner that is consistent with and gives effect to the foregoing.

**1.4.** **Plan Background**. The Company adopted the Plan effective as of June 1, 2003.

**1.5.** **Applicability.** The terms of the Plan apply only to a Participant who elects deferrals pursuant to Section 3.2 for a Plan Year beginning after June 1, 2003.

## ARTICLE 2.
## PARTICIPATION

**2.1.** **Eligibility for Participant Deferral Credits**.

(a) First Day of Plan Year.

(i) Qualified Employee. An individual who is a Qualified Employee on the first day of a Plan Year is eligible to defer his or her Annual Stock Bonus pursuant to Section 3.2(a) with respect to the Plan Year.



(ii) Qualified Director. An individual who is a Qualified Director on the first day of a Plan Year is eligible to defer his or her Annual Stock Retainer pursuant to Section 3.2(b) with respect to the Plan Year and/or his or her Board Meeting Stock Compensation pursuant to Section 3.2(c) with respect to the Plan Year.

(b) During Plan Year.

(i) Qualified Employee. An individual who becomes a Qualified Employee after the first day of a Plan Year is eligible to defer his or her Annual Stock Bonus pursuant to Section 3.2(a) with respect to the remainder of the Plan Year.

(ii) Qualified Director. An individual who becomes a Qualified Director after the first day of a Plan Year is eligible to defer his or her Annual Stock Retainer pursuant to Section 3.2(b) with respect to the remainder of the Plan Year and his or her Board Meeting Stock Compensation pursuant to Section 3.2(c) with respect to the remainder of the Plan Year.

**2.2.** **Loss of Eligibility For Participant Deferral Credits.**

(a) Reasons.

(i) Ceasing to be Qualified Employee. An Employee Participant will cease to be eligible to defer his or her Annual Stock Bonus as of the date on which he or she ceases to be a Qualified Employee.

(ii) Ceasing to be a Qualified Director. A Director Participant will cease to be eligible to defer his or her Annual Stock Retainer and his or her Board Meeting Stock Compensation as of the date on which he or she ceases to be a Qualified Director.

(iii) Unforeseeable Emergency. A Participant who, pursuant to Section 3.2(d), has revoked a deferral election in connection with an Unforeseeable Emergency, or pursuant to Section 4.1(b), has received a distribution due to an Unforeseeable Emergency, is not eligible to defer Annual Stock Bonus, Annual Stock Retainer or Board Meeting Stock Compensation with respect to the remainder

of the Plan Year during which the revocation occurs or the distribution is received, as the case may be, and the immediately following Plan Year.

(iv) Accelerated Distribution. A Participant who, pursuant to Section 4.1(c), has received an accelerated distribution, is not eligible to defer Annual Stock Bonus, Annual Stock Retainer or Board Meeting Stock Compensation with respect to the remainder of the Plan Year during which the distribution is received and the immediately following Plan Year.



(v) 401(k) Plan Hardship Withdrawal. A Qualified Employee who receives a hardship withdrawal from a 401(k) plan maintained by a Participating Employer, or by any other employer required to be aggregated with the Participating Employer under Code section 414(b), (c), (m) or (o), is not eligible to defer Annual Stock Bonus under the Plan to the extent required to comply with the terms of the 401(k) plan.

(b) Effect on Deferral Elections. An Active Participant who, pursuant to subsection (a) above, loses his or her eligibility to defer for a Plan Year is not eligible for further deferral credits in the form of Stock Units relating to deferral elections made pursuant to Section 3.2 for the Plan Year other than credits relating to Annual Stock Bonus, Annual Stock Retainer or Board Meeting Stock Compensation with respect to the period before the loss of eligibility, and any other Annual Stock Bonus, Annual Stock Retainer or Board Meeting Stock Compensation that would have otherwise been deferred in connection with a deferral election made pursuant to Section 3.2 for the Plan Year will be paid to the Participant as if he or she had not made the deferral election.

**2.3.** **Transfer Among Participating Employers**. An Employee Participant who transfers employment from one Participating Employer to another Participating Employer and who continues to be a Qualified Employee after the transfer will, for the duration of the Plan Year during which the transfer occurs, continue to receive credits in the form of Stock Units pursuant to Section 3.2(a) of the Plan, in accordance with the deferral election in effect for the portion of the Plan Year before the transfer, as a Qualified Employee of such other Participating Employer.

**2.4.** **Multiple Employment.** An Employee Participant who is simultaneously employed as a Qualified Employee with more than one Participating Employer will participate in the Plan as a Qualified Employee of all such Participating Employers on the basis of a single deferral election pursuant to Section 3.2(a) applied ratably to his or her Annual Stock Bonus from each Participating Employer.

**2.5.** **Conditions of Participation**. Each Qualified Employee and Qualified Director, as a condition of participation in the Plan, is bound by all the terms and conditions of the Plan and the Plan Rules, and must furnish to the Administrator such pertinent information and execute such election forms and other instruments as the Administrator or Plan Rules may require by such dates as the Administrator or Plan Rules may establish. All elections, directions, designations and similar actions required in connection with the Plan must be made in accordance with and are subject to the terms of the Plan and Plan Rules.

**2.6.** **Termination of Participation**. A Participant will cease to be a Participant as of the date on which he or she is not then eligible to make deferrals and his or her entire Stock Account balance has been distributed.



## ARTICLE 3.
## BENEFITS

**3.1.** **Participant Stock Accounts.**

(a) Stock Account. For each Participant who elects deferrals pursuant to Section 3.2, the Administrator will establish and maintain a Stock Account.

(b) Subaccounts. If an Employee Participant makes deferrals with respect to Annual Stock Bonus from more than one Participating Employer, amounts attributable to each Participating Employer will be credited to separate subaccounts within the appropriate Stock Account.

**3.2.** **Participant Deferral Credits**.

(a) Annual Stock Bonus. Annual Stock Bonus deferrals by an Employee Participant will be made in accordance with the following rules:

(i) An Employee Participant may elect to defer all or any portion of his or her Annual Stock Bonus for the Plan Year.

(ii) An election made by an Employee Participant pursuant to this subsection will be effective at the time and in the manner specified in Plan Rules after the Administrator receives a complete and accurate election provided receipt is prior to the last day of the Plan Year immediately preceding the Plan Year in which the Annual Stock Bonus is earned or, in the case of an individual who becomes a Qualified Employee after the first day of a Plan Year, within 30 days after he or she becomes a Qualified Employee. In connection with the adoption of this Plan, a Qualified Employee's election must be received by the Administrator within 30 days after the Effective Date.

(b) Annual Stock Retainer. Annual Stock Retainer deferrals by a Director Participant will be made in accordance with the following rules:

(i) A Director Participant may elect to defer all or any portion of his or her Annual Stock Retainer for the Plan Year.

(ii) An election made by a Director Participant pursuant to this subsection will be effective at the time and in the manner specified in Plan Rules after the Administrator receives a complete and accurate election provided receipt is prior to the last day of the Plan Year immediately preceding the Plan Year in which the Annual Stock Retainer is earned or, in the case of an individual who

becomes a Qualified Director after the first day of a Plan Year, within 30 days after he or she becomes a Qualified Director. In connection with the adoption of this Plan, a Qualified Director's election must be received by the Administrator within 30 days after the Effective Date.



(c) Board Meeting Stock Compensation. Board Meeting Stock Compensation deferrals by a Director Participant will be made in accordance with the following rules:

(i) A Director Participant may elect to defer all or any portion of his or her Board Meeting Stock Compensation for the Plan Year.

(ii) An election made by a Director Participant pursuant to this subsection will be effective at the time and in the manner specified in Plan Rules after the Administrator receives a complete and accurate election provided receipt is prior to the last day of the Plan Year immediately preceding the Plan Year in which the Board Meeting Stock Compensation is earned or, in the case of an individual who becomes a Qualified Director after the first day of a Plan Year, within 30 days after he or she becomes a Qualified Director. In connection with the adoption of this Plan, a Qualified Employee's election must be received by the Administrator within 30 days after the Effective Date.

(d) Revocation of Deferral Election. An Active Participant may revoke a deferral election made pursuant to Section 3.2(a), (b) or (c) after the election becomes effective if, and only if, the Participant submits a request to the Administrator at the time and in the manner specified in Plan Rules and the Administrator determines that the Participant has experienced an Unforeseeable Emergency. The revocation will be effective as soon as administratively practicable after the Administrator's determination that the Participant has experienced an Unforeseeable Emergency.

(e) Participants Who Become Participants After First Day of Plan Year. Any election pursuant to Section 3.2(a) for a Plan Year by an Employee Participant who becomes a Qualified Employee after the first day of the Plan Year applies only to the portion of the Annual Stock Bonus relating to services performed after the effective date of the election, as determined by the Administrator. Any election pursuant to Section 3.2(b) for a Plan Year by a Director Participant who becomes a Qualified Director after the first day of the Plan Year applies only to the portion of the Annual Stock Retainer relating to services performed after the effective date of the election, as determined by the Administrator. Any election pursuant to Section 3.2(c) for a Plan Year by a Director Participant who becomes a Qualified Director after the first day of the Plan Year applies only to the portion of the Board Meeting Stock Compensation relating to services performed after the effective date of the election, as determined by the Administrator.

(f) Amount and Timing of Credits. An Active Participant's Stock Account will be credited with the number of whole and fractional Stock Units equal to the number of Shares such Active Participant would have otherwise received in connection with his or her Annual Stock Bonus, Annual Stock Retainer and/or Board Meeting Stock Compensation but for his or her deferral election pursuant to this section on the date on which the Participant would have otherwise received the



Annual Stock Bonus, Annual Stock Retainer and/or Board Meeting Stock Compensation but for his or her deferral election pursuant to this section.

(g) Administrative Reduction. The Administrator may reduce the amount of any deferral that would otherwise be made pursuant to this section to the extent determined by the Administrator to be necessary to effect any required payroll withholding, contributions or deferrals pursuant to any other plan maintained by any Affiliate or any other deductions.

**3.3.** **Earnings Credits**. A Participant's Stock Account will be credited as of the date on which dividends are paid on the Shares with that number of whole and fractional Stock Units determined by dividing the dollar amount of the dividends that would have been payable to the Participant if the number of Stock Units credited to the Participant's Stock Account on the record date for such dividend payment had then been Shares registered in the name of such Participant by the Price per Stock on the date as of which the credit is made.

**3.4.** **Adjustments to Stock Units**. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, divestiture or extraordinary dividend (including a spin-off) or any other similar change in the Company's corporate structure or the Shares, the Administrator (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation) will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) available for issuance or distribution under the Plan and as to the number and kind of Stock Units credited to Stock Accounts.

## ARTICLE 4.
## DISTRIBUTION

**4.1.** **Distribution to Participant Before Severance or Disability**.

(a) In-Service Distributions.

(i) Each Participant will be provided with one opportunity to elect to receive a distribution of all or any portion of his or her Stock Account as of a specified date or dates prior to his or her Severance date or Disability. The election must be made in conjunction with the first deferral election that the Participant makes pursuant to Section 3.2. The Participant will not have any other opportunity to make an election pursuant to this subsection.

(ii) The first distribution date specified in an election made pursuant to clause (i) may not be before the first day of the second Plan Year after the Plan Year to which the deferral election relates. A Participant may not specify more than one distribution date per Plan Year.



(iii) A Participant will be provided with one opportunity to elect to either delay or cancel each date specified in an election made pursuant to clause (i). An election pursuant to this clause will not be valid and will not have any effect unless it is made on a properly completed form received by the Administrator before the first day of the Plan Year immediately preceding the Plan Year that includes the distribution date originally specified.

(iv) If the Participant experiences a Severance or Disability before a specified date, the Participant's election pursuant to this subsection will become ineffective on his or her Severance date or Disability and distribution of his or her remaining Stock Account balance will be made pursuant to Section 4.2 or 4.3, as the case may be.

(v) Any distribution pursuant to this subsection will be made in a lump sum payment of whole Shares on or as soon as administratively practicable after the date specified by the Participant. If the Participant elected a specific Stock amount, the amount of the distribution will be the specified amount or the balance of the Participant's Stock Account as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date), whichever is less. If the Participant elected a specific percentage of the Stock Account, the amount of the distribution will be the specified percentage of the Participant's Stock Account as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date). Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(b) Withdrawals Due to Unforeseeable Emergency. Prior to a Participant's Severance date or Disability, a distribution will be made to a Participant from his or her Stock Account if the Participant submits a written distribution request to the Administrator and the Administrator determines that the Participant has experienced an Unforeseeable Emergency. The amount of the distribution may not exceed the lesser of (a) the amount necessary to satisfy the emergency, as determined by the Administrator, and (b) the balance of the Stock Account as of the Valuation Date coinciding with or immediately preceding the date of the distribution (reduced by the amount of any other distribution from the Stock Account after that Valuation Date). The distribution will be made in the form of a lump sum payment of whole Shares as soon as administratively practicable after the Administrator's determination that the Participant has experienced an Unforeseeable Emergency. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(c) Accelerated Distribution. Prior to a Participant's Severance date or Disability, the



Participant may elect to receive a distribution in an amount equal to 90 percent of his or her Stock Account balance as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date), and the remaining 10 percent balance of the Stock Account will be permanently forfeited as of that Valuation Date. The distribution will be made in the form of a lump sum payment of whole Shares as soon as administratively practicable after the Participant's properly completed written election is filed with the Administrator. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(d) Reduction of Stock Account Balance. The balance of the Participant's Stock Account will be reduced (but not below zero) by the amount of the distribution as of the beginning of the next day after the Valuation Date coinciding with or last preceding the date of the distribution.

**4.2. Distribution to Participant After Severance or Disability**.

(a) Time. Distribution to a Participant will be made or commence on or as soon as administratively practicable after the date of the Participant's Disability, Retirement, or other Severance.

(b) Form.

(i) Severance Before Retirement or Disability. Upon a Participant's Severance before his or her Retirement or Disability, distribution to the Participant will be made in the form of a lump sum payment of whole Shares. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(ii) Retirement or Disability. Upon a Participant's Retirement or Disability, distribution to the Participant will be made in the form of a lump sum payment of whole Shares unless (1) the Participant made a written election, on a form provided by the Administrator, to receive his or her distribution in the form of up to 10 annual installment payments of whole Shares and (2) his or her properly completed election form is filed with the Administrator before the first day of the Plan Year immediately preceding the Plan Year that includes his or her Retirement or Disability. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash. Not more than once during any 12-month period, a Participant may change an election made pursuant to this subsection, but the change will not be valid and will not have any effect unless it is made on a properly completed form received by the Administrator before the first day of the Plan Year immediately preceding the Plan Year that

includes the Participant's Retirement or Disability. Until an election becomes effective, it will have no effect on any prior election whether or not such prior election became effective before or after the Administrator received the later election. When an election becomes effective, it will automatically supersede any prior election then in effect.

(c) Amount.

(i) Lump Sum. The amount of a lump sum payment in the form of whole Shares from a Participant's Stock Account will be equal to the number of Stock Units remaining in the Stock Account as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date). Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(ii) Installments. The amount of an installment payment in the form of Shares from a Participant's Stock Account will be determined by dividing the number of whole Stock Units remaining in the Stock Account as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date) by the total number of remaining payments (including the current payment). Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash. The undistributed portion of a Stock Account distributed in the form of installment payments will continue to be credited with earnings in accordance with Section 3.3.

(d) Special Rules. The provisions of this subsection apply notwithstanding subsection (a), (b) or (c) above or any election by a Participant to the contrary.

(i) Divestitures.

(1) If some or all of the assets of a Participating Employer are sold or otherwise disposed of to an unrelated third party, the Administrator may, but is not required to, cause to be distributed the Stock Account of any Employee Participant whose employment with all Affiliates is terminated in connection with the sale or disposition. Any such distribution will be made in the form of a lump sum payment of whole Shares as soon as administratively practicable after the date of the sale or disposition. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash. The amount of the payment will be determined in accordance with subsection (c).



(2) If a Participating Employer ceases to be an Affiliate, unless otherwise provided in an agreement between an Affiliate and the Participating Employer or an Affiliate and an unrelated third-party acquirer:

(A) An Employee Participant who is employed with the Participating Employer or

(B) a Participant who is not employed with the Participating Employer but has a Stock Account balance attributable to service with the Participating Employer as a Qualified Employee

will not become entitled to his or her Stock Account balance attributable to service with the Participating Employer as a Qualified Employee solely as a result of the cessation and the Participating Employer will, after the date on which it ceases to be an Affiliate, continue to be solely responsible to provide benefits to the Participant at least equal to the balance of the Stock Account as of the effective date of the cessation and as thereafter increased by deferral credits relating to the period before the effective date and earnings credits pursuant to Section 3.3.

(ii) Withdrawals Due to Unforeseeable Emergency. If a Participant is receiving installment payments, a distribution will be made to a Participant from his or her Stock Account if the Participant submits a written distribution request to the Administrator and the Administrator determines that the Participant has experienced an Unforeseeable Emergency. The amount of the distribution may not exceed the lesser of (a) the amount necessary to satisfy the emergency, as determined by the Administrator, and (b) the balance of the Stock Account as of the Valuation Date coinciding with or immediately preceding the date of the distribution (reduced by the amount of any other distribution from the Stock Account after that Valuation Date). The distribution will be made in the form of a lump sum payment of whole Shares as soon as administratively practicable after the Administrator's determination that the Participant has experienced an Unforeseeable Emergency. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(iii) Accelerated Distribution. If a Participant is receiving installment payments, the Participant may elect to receive a distribution in an amount equal to 90 percent of his or her Stock Account balance as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date), and the



remaining 10 percent balance of the Stock Account will be permanently forfeited as of that Valuation Date. The distribution will be made in the form of a lump sum payment of whole Shares as soon as administratively practicable after the Participant's properly completed written election is filed with the Administrator. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash.

(e) Reduction of Stock Account Balance. The balance of the Stock Account from which a distribution is made will be reduced (but not below zero) by the amount of the distribution as of the beginning of the next day after the Valuation Date coinciding with or last preceding the date of the distribution.

**4.3. Distribution to Beneficiary**.

(a) Time. Distribution to a Beneficiary will be made as soon as administratively practicable after the date on which the Administrator receives notice of the Participant's death and determines that the Beneficiary is entitled to receive the distribution.

(b) Form. Distribution to the Participant's Beneficiary will be made in the form of a lump sum payment whether or not payments had commenced to the Participant in the form of installments prior to his or her death. The distribution will be made in the form of whole Shares. Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Beneficiary in cash.

(c) Amount. The amount of a lump sum payment will be equal to the number of whole Stock Units remaining in the Participant's Stock Account as of the Valuation Date coinciding with or immediately preceding the date on which the payment is made (reduced by the amount of any other distribution from the Stock Account after that Valuation Date). Any fractional Share will be valued based on the Price per Share on the date of the distribution and the value of the fractional Share will be distributed to the Participant in cash. If there are multiple Beneficiaries, the total amount distributed will be divided among the Beneficiaries as directed by the Participant in the Beneficiary designation.

(d) Reduction of Stock Account Balance. The balance of the Stock Account from which a distribution is made will be reduced (but not below zero) by the amount of the distribution as of the beginning of the next day after the Valuation Date coinciding with or immediately preceding the date of the distribution.

(e) Beneficiary Designation.

(i) Each Participant may designate, on a form furnished by the Administrator, one or more primary Beneficiaries or alternative Beneficiaries to receive all or a specified part of his or her Stock Account after his or her death, and the Participant may change or revoke any such designation from time



to time. No such designation, change or revocation is effective unless executed by the Participant and received by the Administrator during the Participant's lifetime.

(ii) If a Participant:

(1) fails to designate a Beneficiary, or

(2) revokes a Beneficiary designation without naming another Beneficiary, or

(3) designates one or more Beneficiaries, none of whom survives the Participant or exists at the time in question,

for all or any portion of his or her Stock Account, such Stock Account or portion will be paid to the Participant's surviving spouse or, if the Participant is not survived by a spouse, to the representative of the Participant's estate.

(iii) The automatic Beneficiaries specified above and, unless the designation otherwise specifies, the Beneficiaries designated by the Participant, become fixed as of the Participant's death so that, if a Beneficiary survives the Participant but dies before the receipt of the payment due such Beneficiary, the payment will be made to the representative of such Beneficiary's estate. Any designation of a Beneficiary by name that is accompanied by a description of relationship or only by statement of relationship to the Participant is effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.

**4.4. Payment in Event of Incapacity**. If any individual entitled to receive any payment under the Plan is, in the judgment of the Administrator, physically, mentally or legally incapable of receiving or acknowledging receipt of the payment, and no legal representative has been appointed for the individual, the Administrator may (but is not required to) cause the payment to be made to any one or more of the following as may be chosen by the Administrator: the Beneficiary (in the case of the incapacity of a Participant); the institution maintaining the individual; a custodian for the individual under the Uniform Transfers to Minors Act of any state; or the individual's spouse, children, parents, or other relatives by blood or marriage. The Administrator is not required to see to the proper application of any such payment and the payment completely discharges all claims under the Plan against the Participating Employer, the Plan and Trust to the extent of the payment.

**4.5. Suspension**. If a Participant who is receiving installment payments again becomes a Qualified Employee or Qualified Director, the installment payments will stop. The remaining balance of the Participant's Stock Account will be distributed upon the Participant's subsequent Severance or Disability in accordance with Article 4 without regard to any election made pursuant to Section 4.2(b)(ii) prior to the Participant's last



preceding Retirement or Disability.

**4.6. Shares Available for Issuance**. Any Shares distributed under this Plan will be issued under the Company's Amended and Restated 1998 Stock Plan. Shares available for issuance pursuant to Stock Units credited to a Participant's Stock Account will be reserved for issuance under the

Company's Amended and Restated 1998 Stock Plan.

**4.7.** **Securities Laws and Other Restrictions**. Notwithstanding any other provision of the Plan or any agreements entered into pursuant to the Plan to the contrary, neither the Company nor the Trustee is required to issue or distribute any Shares under the Plan, and a Participant or distributee may not sell, assign, transfer or otherwise dispose of Shares issued or distributed pursuant to the Plan, unless (a) there is in effect with respect to such Shares a registration statement under the Securities Act and any applicable securities laws of a state or foreign jurisdiction or an exemption from such registration under the Securities Act and applicable state or foreign securities laws, and (b) there has been obtained any other consent, approval or permit from any other regulatory body which the Company, in its sole discretion, deems necessary or advisable. The Company or the Trustee may condition such issuance, distribution, sale or transfer upon the receipt of any representations or agreements from the parties involved, and the placement of any legends on certificates representing Shares, as may be deemed necessary or advisable by the Company in order to comply with such securities law or other restrictions.

## ARTICLE 5.
## SOURCE OF PAYMENTS; NATURE OF INTEREST

**5.1.** **Establishment of Trust**. A Participating Employer may establish a Trust, or may be covered by a Trust established by another Participating Employer, with an independent corporate trustee. The Trust must (a) be a grantor trust with respect to which the Participating Employer is treated as the grantor for purposes of Code section 677, (b) not cause the Plan to be funded for purposes of Title I of ERISA and (c) provide that the Trust assets will, upon the insolvency of a Participating Employer, be used to satisfy claims of the Participating Employer's general creditors. The Participating Employers may from time to time transfer to the Trust cash, shares of Company Stock or other marketable securities or other property acceptable to the Trustee in accordance with the terms of the Trust.

**5.2.** **Source of Payments**.

(a) Each Participating Employer will pay, from its general assets, the portion of any benefit pursuant to Article 4 or Section 6.3 or 6.4 attributable to a Participant's Stock Account with respect to that Participating Employer, and all costs, charges and expenses relating thereto.

(b) The Trustee will make distributions to Participants and Beneficiaries from the Trust in satisfaction of a Participating Employer's obligations under the Plan in accordance with the terms of the Trust. The Participating Employer is responsible for paying any benefits attributable to a Participant's Stock Account with respect



to that Participating Employer that are not paid by the Trust.

**5.3.** **Status of Plan**. Nothing contained in the Plan or Trust is to be construed as providing for assets to be held for the benefit of any Participant or any other person or persons to whom benefits are to be paid pursuant to the terms of the Plan, the Participant's or other person's only interest under the Plan being the right to receive benefits in accordance with the terms of the Plan. The Trust is established only for the convenience of the Participating Employers and the Participants, and no Participant has any interest in the assets of the Trust. To the extent the Participant or any other person acquires a right to receive benefits under the Plan or the Trust, such right is no greater than the right of any unsecured general creditor of the Participating Employer.

**5.4.** **Non-assignability of Benefits**. The benefits payable under the Plan and the right to receive future benefits under the Plan may not be anticipated, alienated, sold, transferred, assigned, pledged, encumbered or subjected to any charge or legal process.

## ARTICLE 6.
## ADOPTION, AMENDMENT, TERMINATION

**6.1.** **Adoption**. With the prior approval of the Administrator, an Affiliate may adopt the Plan and become a Participating Employer by furnishing to the Administrator a certified copy of a resolution of its Board adopting the Plan.

**6.2.** **Amendment**.

(a) Right. The Company reserves the right to amend the Plan at any time to any extent that it may deem advisable.

(b) Method. To be effective, an amendment must be stated in a written instrument approved in advance or ratified by the Company's Board and executed in the name of the Company by its President or a Vice President and attested by the Secretary, the Deputy Secretary or an Assistant Secretary.

(c) Binding Effect. An amendment adopted in accordance with subsection (b) above is binding on all interested parties as of the effective date stated in the amendment; provided, however, that no amendment may retroactively deprive any Participant, or the Beneficiary of a deceased Participant, of any benefit to which he or she is entitled under the terms of the Plan in effect immediately prior to the effective date of the amendment or the date on which the amendment is adopted, whichever is later.

(d) Applicability to Participants Who Have Experienced a Severance or Disability. The provisions of the Plan in effect on a Participant's Severance date or Disability will, except as otherwise expressly provided by a subsequent amendment, continue to apply to such Participant.

(e) Change of Control. Notwithstanding anything in the Plan to the contrary, from and after the occurrence of a Change of Control, no amendment may be made to

the Plan that would adversely affect the terms and conditions associated with the Stock Account balance of any Participant as of the date of the Change of Control.

**6.3.** **Termination of Participation**. Notwithstanding any other provision of the Plan to the contrary, if determined by the Administrator to be necessary to ensure that the Plan is exempt from ERISA to the extent contemplated by Section 1.3, or upon the Administrator's determination that a Participant's interest in the Plan has been or is likely to be includable in the Participant's gross income for federal income tax purposes prior to the actual payment of benefits pursuant to the Plan, the Administrator may take any or all of the following steps:

(a) terminate the Participant's future participation in the Plan;

(b) cause the Participant's entire interest in the Plan to be distributed to the Participant in the form of an immediate lump sum payment of whole Shares in an amount determined in accordance with Section 4.2(c); and/or

(c) transfer the benefits that would otherwise be payable pursuant to the Plan for all or any of the Participants to a new plan that is similar in all material respects (other than those which require the action in question to be taken.)

**6.4.** **Termination**. The Company reserves the right to terminate the Plan in its entirety at any time. Each Participating Employer reserves the right to cease its participation in the Plan at any time. The Plan will terminate in its entirety or with respect to a particular Participating Employer as of the date specified by the Company or such Participating Employer in a written instrument adopted in the same manner as an amendment. Upon the termination of the Plan in its entirety or with respect to any Participating Employer, the Company or Participating Employer, as the case may be, will either cause (a) any benefits to which Participants have become entitled prior to the effective date of the termination to continue to be paid in accordance with the provisions of Article 4 or (b) the entire interest in the Plan of any or all Participants, or the Beneficiaries of any or all deceased Participants, to be distributed in the form of an immediate lump sum payment of whole Shares in an amount determined in accordance with Section 4.2(c).

## ARTICLE 7.
## CONSTRUCTION, INTERPRETATION AND DEFINITIONS

**7.1.** **Cross Reference**. References within a section of the Plan to a particular subsection refer to that subsection within the same section and references within a section or subsection to a particular clause refer to that clause within the same section or subsection, as the case may be.

**7.2.** **Governing Law**. To the extent that state law is not preempted by the provisions of ERISA, or any other laws of the United States, all questions pertaining to the construction, validity, effect and enforcement of the Plan will be determined in accordance with the internal, substantive laws of the State of Illinois without regard to the conflict of law rules of the State of Illinois or any other jurisdiction.



**7.3.** **Headings**. The headings of articles and sections are included solely for convenience of reference; if there exists any conflict between such headings and the text of the Plan, the text will control.

**7.4.** **Number and Gender**. Wherever appropriate, the singular may be read as the plural, the plural may be read as the singular and one gender may be read as the other gender.

**7.5.** **Definitions**. The definitions set forth in this Section apply in constructing this instrument unless the context otherwise indicates.

*Active Participant*. "Active Participant" means a Director Participant or an Employee Participant.

*Administrator*. "Administrator" means the Company or the person to whom administrative duties are delegated pursuant to the provisions of Section 8.1, as the context requires.

*Affiliate*. "Affiliate" means the Company and any corporation at least a majority of whose outstanding securities ordinarily having the right to vote at elections of directors is owned, directly or indirectly, by the Company.

*Amended and Restated 1998 Stock Plan*. "Amended and Restated 1998 Stock Plan" means the BioSante Pharmaceuticals, Inc. Amended and Restated 1998 Stock Plan, as such plan is hereafter amended from time to time, and any successor plan thereto.

*Annual Stock Bonus*. "Annual Stock Bonus" for a Plan Year means that portion of an annual bonus earned by an Employee Participant during the Plan Year for his or her services during the Plan Year as a Qualified Employee that is intended to be paid in whole Shares to the Employee Participant by a Participating Employer during the succeeding Plan Year, net of any contributions and deductions specified in Plan Rules, under the Amended and Restated 1998 Stock Plan.

*Beneficiary*. "Beneficiary" with respect to a Participant is the person designated or otherwise determined under the provisions of Section 4.3(e) as the distributee of benefits payable after the Participant's death. A person designated or otherwise determined to be a Beneficiary under the terms of the Plan has no interest in or right under the Plan until the Participant in question has died. A Beneficiary will cease to be such on the day on which all benefits to which he, she or it is entitled under the Plan have been distributed.

*Board*. "Board" means the board of directors of the Affiliate in question. When the Plan provides for an action to be taken by the Board, the action may be taken by any committee or individual authorized to take such action pursuant to a proper delegation by the board of directors in question.

*Change of Control*. "Change of Control" shall mean the first of the following events to occur:

(a) the sale, lease, exchange or other transfer, directly or indirectly, of substantially all of the assets of the Company (in one transaction or in a series of related transactions) to a person or entity that is not controlled by the Company;

(b) the approval by the stockholders of the Company of any plan or proposal for the liquidation or dissolution of the Company;

(c) any person becomes after the effective date of the Plan the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of (i) 20% or more, but not 50% or more, of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors, unless the transaction resulting in such ownership has been approved in advance by the Continuity Directors (as defined in below), or (ii) 50% or more of the combined voting power of the Company's outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

(d) a merger or consolidation to which the Company is a party if the stockholders of the Company immediately prior to effective date of such merger or consolidation have "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), immediately following the effective date of such merger or consolidation, of securities of the surviving corporation representing (i) more than 50%, but less than 80%, of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors, unless such merger or consolidation has been approved in advance by the Continuity Directors, or (ii) 50% or less of the combined voting power of the surviving corporation's then outstanding securities ordinarily having the right to vote at elections of directors (regardless of any approval by the Continuity Directors);

(e) the Continuity Directors cease for any reason to constitute at least a majority of the Board; or

(f) any other change in control of the Company of a nature that would be required to be reported pursuant to Section 13 or 15(d) of the Exchange Act, whether or not the Company is then subject to such reporting requirement.

*Continuity Directors*. "Continuity Directors" of the Company shall mean any individuals who are members of the Board on the effective date of the Plan and any individual who subsequently becomes a member of the Board whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the Continuity Directors (either by specific vote or by approval of the Company's proxy statement in which such individual is named as a nominee for director without objection to such nomination).



*Code*. "Code" means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes a reference to that provision as it may be amended from time to time, to any successor provision, to any regulations promulgated thereunder and to any binding pronouncements relating thereto.

*Company*. "Company" means BioSante Pharmaceuticals, Inc., a Delaware corporation.

*Company Stock*. "Company Stock" means common stock, par value $0.0001 per share, of the Company or such other class or kind of shares or other securities as may be applicable pursuant to Section 3.4.

*Director Participant*. "Director Participant" means a Participant who is a Qualified Director.

*Disability*. "Disability" means a disability for which a Participant is receiving disability benefits pursuant to a long-term disability plan maintained by an Affiliate or as a result of which the Participant is certified as being disabled by the Social Security Administration and is receiving disability benefits under the disability provisions of the Social Security Act. The Participant must provide the Administrator with proof of his or her Disability that is satisfactory to the Administrator. For purposes of the Plan, a Disability occurs on the date following the Administrator's receipt of such proof on which the Administrator determines that the Participant has experienced a Disability.

*Effective Date*. "Effective Date" means June 1, 2003.

*Employee Participant*. "Employee Participant" means a Participant who is a Qualified Employee.

*ERISA*. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended. Any reference to a specific provision of ERISA includes a reference to that provision as it may be amended from time to time and to any successor provision.

*Exchange Act*. "Exchange Act" means the Securities Exchange Act of 1934, as amended. Any reference to a specific provision of the Exchange Act includes a reference to that provision as it may be amended from time to time and to any successor provision.

*Participant*. "Participant" means a current or former Active Participant to whose Stock Account amounts have been credited pursuant to Article 3 and who has not ceased to be a Participant pursuant to Section 2.6.

*Participating Employer*. "Participating Employer" means the Company and any other Affiliate that has adopted the Plan, or all of them collectively, as the context requires. An Affiliate will cease to be a Participating Employer upon a termination of the Plan as to its Qualified Employees (and, in the case of the Company, its Qualified Directors) and the satisfaction in full of all of its obligations under the Plan or upon its ceasing to be an Affiliate.



*Plan*. "Plan" means the BioSante Pharmaceuticals, Inc. Deferred Compensation Plan, as from time to time amended or restated.

*Plan Year*. "Plan Year" means with respect to a Qualified Employee, the calendar year (provided, that the first Plan Year is the period beginning on June 1, 2003 and ending on December 31, 2003), and with respect to a Qualified Director, the one-year period which begins on June 1 of each year and ends on May 31 of the next succeeding year (provided, that the first Plan Year is the period beginning on June 1, 2003 and ending on May 31, 2003).

*Plan Rules*. "Plan Rules" are rules, policies, practices or procedures adopted by the Administrator pursuant to Section 8.2.

*Price per Share*. The "Price per Share" on a given date (or, if no shares were traded or quoted on such date, as of the next preceding date on which there was such a trade or quote) is (a) the mean between the reported high and low sale prices of the Company Stock if the Company Stock is listed, admitted to unlisted trading privileges or reported on any foreign or national securities exchange or on the Nasdaq National Market or SmallCap Market or an equivalent foreign market on which sale prices are reported; (b) if the Company Stock is not so listed, admitted to unlisted trading privileges or reported, the closing bid price as reported by the OTC Bulletin Board or the National Quotation Bureau, Inc. or other comparable service; or (c) if the Company Stock is not so listed or reported, such price as the Board determines in good faith in the exercise of its reasonable discretion.

*Qualified Director*. "Qualified Director" means an individual who is a member of the Company's board of directors and is independent (i.e., is not an employee of the Company or any of its affiliates or subsidiaries).

*Qualified Employee*. "Qualified Employee" means an individual who performs services for a Participating Employer as an employee of the Participating Employer (as classified by the Participating Employer at the time the services are performed without regard to any subsequent reclassification), who is an officer of the Participating Employer elected by the Participating Employer's Board or a Vice President of the Participating Employer. The Company may, pursuant to Plan Rules, establish additional requirements or conditions an employee must satisfy in order to be treated as a Qualified Employee under the Plan.

*Retirement*. "Retirement" means:

(a) in the case of an Employee Participant, the Participant's Severance after his or her attainment of age 55; or

(b) in the case of a Director Participant, the Participant's Severance after his or her completion of at least three complete years of service as a Qualified Director.



*Securities Act*. "Securities Act" means the Securities Act of 1933, as amended. Any reference to a specific provision of the Securities Act includes a reference to that provision as it may be amended from time to time and to any successor provision.

*Severance*. "Severance" means:

(a) the date on which an Employee Participant has completely severed his or her employment relationship with all Affiliates; or

(b) the date on which a Director Participant ceases to be a member of the Company's Board.

*Shares*. "Shares" means shares of common stock of the Company, $0.0001 par value, or such other class or kind of shares or other securities as may be applicable pursuant to Section 3.4.

*Stock Account*. "Stock Account" means the bookkeeping account or accounts maintained with respect to a Participant pursuant to Section 3.1.

*Stock Units*. "Stock Units" means a unit credited to a Participant's Stock Account pursuant to Sections 3.2(a), (b) and (c), each of which represents the economic equivalent of one Share. A Participant will not have any rights as a stockholder with respect to Stock Units until the Participant is distributed Shares pursuant to Article 4 of the Plan.

*Trust*. "Trust" means any trust or trusts established by a Participating Employer pursuant to Section 5.1.

*Trustee*. "Trustee" means the independent corporate trustee or trustees that at the relevant time has or have been appointed to act as Trustee of the Trust.

*Unforeseeable Emergency*. "Unforeseeable Emergency" means an unanticipated emergency that is caused by an event beyond the Participant's or Beneficiary's control resulting in a severe financial hardship that cannot be satisfied through other means. The existence of an Unforeseeable Emergency will be determined by the Administrator in its sole discretion.

*Valuation Date*. "Valuation Date" means the last day of each calendar month on which the New York Stock Exchange is open for regular business and any interim dates selected by the Administrator.

## ARTICLE 8.
## ADMINISTRATION

**8.1.** **Administrator**. The general administration of the Plan and the duty to carry out its provisions is vested in the Company. The Company may delegate such duty or any portion thereof to a named person or persons and may from time to time revoke such authority and delegate it to another person or persons.

**8.2.** **Plan Rules**. The Administrator has the discretionary power and authority to make such Plan Rules as the Administrator determines to be consistent with the terms, and necessary or advisable in connection with the administration of the Plan and to modify or rescind any such Plan Rules.

**8.3.** **Administrator's Discretion**. The Administrator has the discretionary power and authority to make all determinations necessary for administration of the Plan, except those determinations that the Plan requires others to make, and to construe, interpret, apply and enforce the provisions of the Plan and Plan Rules whenever necessary to carry out its intent and purpose and to facilitate its administration, including, without limitation, the discretionary power and authority to remedy ambiguities, inconsistencies, omissions and erroneous benefit calculations. In the exercise of its discretionary power and authority, the Administrator will treat all similarly situated persons uniformly.

**8.4.** **Specialist's Assistance**. The Administrator may retain such actuarial, accounting, legal, clerical and other services as may reasonably be required in the administration of the Plan, and may pay reasonable compensation for such services. All costs of administering the Plan will be paid by the Participating Employers.

**8.5.** **Indemnification**. The Participating Employers jointly and severally agree to indemnify and hold harmless, to the extent permitted by law, each director, officer, and employee of any Affiliates against any and all liabilities, losses, costs and expenses (including legal fees) of every kind and nature that may be imposed on, incurred by, or asserted against such person at any time by reason of such person's services in connection with the Plan, but only if such person did not act dishonestly or in bad faith or in willful violation of the law or regulations under which such liability, loss, cost or expense arises. The Participating Employers have the right, but not the obligation, to select counsel and control the defense and settlement of any action for which a person may be entitled to indemnification under this provision.

**8.6.** **Benefit Claim Procedure**.

(a) The Administrator will notify a Participant in writing, within 90 days of the Participant's written application for benefits, of the Participant's eligibility or noneligibility for benefits under the Plan. If the Administrator determines that a Participant is not eligible for benefits or full benefits, the notice will:

(i) state the specific reasons for the denial of any benefits;

(ii) provide a specific reference to the provision of the Plan on which the denial is based;

(iii) provide a description of any additional information or material necessary for the claimant to perfect the claim, and a description of why it is needed;

(iv) state that the claimant will be provided, on request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;



(v) state the claimant's right to bring a civil action under ERISA Section 502(a) following a continued denial of a claim after appeal review; and

(vi) provide an explanation of the Plan's claims review procedure and other appropriate information as to the steps to be taken if the Participant wishes to have the claim reviewed. If the Administrator determines that there are special circumstances requiring additional time to make a decision, the Administrator will notify the Participant of the special circumstances and the date by which a decision is expected to be made, and may extend the time for up to an additional 90-day period.

(b) If a Participant is determined by the Administrator not to be eligible for benefits or if the Participant believes that he or she or she is entitled to greater or different benefits, the Participant will be provided the opportunity to have his or her claim reviewed by the Administrator by filing a petition for review with the Administrator within 60 days after the Participant receives the notice issued by the Administrator. The petition must state the specific reasons the Participant believes he or she or she is entitled to benefits or greater or different benefits. Within 60 days after the Administrator receives the petition, the Administrator will give the Participant (and his or her counsel, if any) an opportunity to present his or her position to the Administrator in writing, and the Participant (or his or her counsel) may review the pertinent documents, and the Administrator will notify the Participant of its decision in writing within such 60-day period, stating specifically the basis of the decision written in a manner calculated to be understood by the Participant and the specific provisions of the Plan on which the decision is based. If because of special circumstances requiring additional time to make a decision, the 60-day period is not sufficient, the decision may be deferred for up to another 60-day period at the election of the Administrator, but notice of this deferral must be given to the Participant.

(c) The same procedure applies to the Beneficiary of a deceased Participant.

(d) A claimant must exhaust the procedure described in this section before pursuing the claim in any other proceeding.

**8.7.** **Disputes**.

(a) In the case of a dispute between a Qualified Employee Participant or his or her Beneficiary and a Participating Employer, the Administrator or other person relating to or arising from the Plan, the United States District Court for the District of Illinois is a proper venue for any action initiated by or against the Participating Employer, Administrator or other person and such court will have personal jurisdiction over any Participant or Beneficiary named in the action.

(b) Regardless of where an action relating to or arising from the participation in the Plan by a Qualified Employee is pending, the law as stated and applied by the United States Court of Appeals for the Seventh Circuit or the United States

District Court for the District of Illinois will apply to and control all actions relating to the Plan brought against the Plan, a Participating Employer, the Administrator or any other person or against any such Participant or his or her Beneficiary.

(c) No civil action arising out of or relating to this Plan may be commenced by a Participant or Beneficiary more than two (2) years after the Participant or Beneficiary had knowledge (or should have had knowledge) of the facts or circumstances that give rise to, or form the basis for, such action.

## ARTICLE 9.
## MISCELLANEOUS

**9.1.** **Withholdings and Offsets**. The Participating Employers and the Trustee retain the right to withhold from any compensation, deferral and/or benefit payment pursuant to the Plan, any and all income, employment, excise and other tax as the Participating Employers or Trustee deems necessary and the Participating Employers may offset against amounts then payable to a Participant or Beneficiary under the Plan any amounts then owing to the Participating Employers by such Participant or Beneficiary.

**9.2.** **Other Benefits**. Neither amounts deferred nor amounts paid pursuant to the Plan constitute salary or compensation for the purpose of computing benefits under any other benefit plan, practice, policy or procedure of a Participating Employer unless otherwise expressly provided thereunder.

**9.3.** **No Warranties Regarding Tax Treatment**. The Participating Employers make no warranties regarding the tax treatment to any person of any deferrals or payments made pursuant to the Plan and each Participant will hold the Administrator and the Participating Employers and their officers, directors, employees, agents and advisors harmless from any liability resulting from any tax position taken in good faith in connection with the Plan.

**9.4.** **No Rights to Continued Service Created**. Neither the establishment of nor participation in the Plan gives any individual the right to continued employment with the Company or service on the Company's board of directors or limits the right of the Participating Employer to discharge, transfer, demote, modify terms and conditions of employment or service on the Company's board of directors or otherwise deal with any individual without regard to the effect which such action might have on him or her with respect to the Plan.

**9.5.** **Special Provisions**. Special provisions of the Plan applicable only to certain Participants may be set forth on an exhibit to the Plan adopted in the same manner as an amendment to the Plan. In the event of a conflict between the terms of the exhibit and the terms of the Plan, the exhibit controls. Except as otherwise expressly provided in the exhibit, the generally applicable terms of the Plan control all matters not covered by the exhibit.

**9.6.** **Successors**. Except as otherwise expressly provided in the Plan, all obligations of the Participating Employers under the Plan are binding on any successor to the Participating



Employer whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise of all or substantially all of the business and/or assets of the Participating Employer.

**Exhibit 31.1**

**Certification of CEO Pursuant to SEC Rule 13a-14**

I, Stephen M. Simes, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of BioSante Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: August 13, 2003



/s/ Stephen M. Simes
Stephen M. Simes
Vice Chairman, President and Chief
Executive Officer

**Exhibit 31.2**

**Certification of CFO Pursuant to SEC Rule 13a-14**

I, Phillip B. Donenberg, certify that:

1. I have reviewed this quarterly report on Form 10-QSB of BioSante Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.



/s/ Phillip B. Donenberg
Phillip B. Donenberg
Chief Financial Officer, Treasurer and
Secretary

**Exhibit 32.1**

**Certification of CEO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of BioSante Pharmaceuticals, Inc. (the "Company") on Form 10-QSB for the second quarter ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Stephen M. Simes, Vice Chairman, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Stephen M. Simes
Stephen M. Simes
Vice Chairman, President and Chief Executive Officer
August 13, 2003

**Exhibit 32.2**

**Certification of CFO Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of BioSante Pharmaceuticals, Inc. (the "Company") on Form 10-QSB for the second quarter ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Phillip B. Donenberg, Chief Financial Officer, Treasurer and Secretary of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Phillip B. Donenberg
Phillip B. Donenberg
Chief Financial Officer, Treasurer and Secretary
August 13, 2003