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

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 1997

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER: 0-23490

VIVUS, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	94-3136179
STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

545 MIDDLEFIELD ROAD, SUITE 200, MENLO PARK, CA 94025
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES INCLUDING ZIP CODE)

(650) 325-5511
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

N/A
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

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

At September 30, 1997, 33,149,729 shares of common stock were outstanding.

Exhibit index on page 22.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

VIVUS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	1997	1996	1997	1996
Net product sales	$39,118	$ --	$100,367	$ --
Milestone revenue	--	10,000	5,000	20,000
Net revenues	39,118	10,000	105,367	20,000
Cost of goods sold	11,270	--	28,920	--
Gross margin	27,848	10,000	76,447	20,000
Operating expenses:				
Research and development	3,947	5,462	7,914	23,007
Selling, general and administrative	11,507	3,118	34,574	6,501
Total operating expenses	15,454	8,580	42,488	29,508
Income (loss) from operations	12,394	1,420	33,959	(9,508)
Interest and other income	1,106	1,242	3,491	2,191
Income (loss) before taxes	13,500	2,662	37,450	(7,317)
Income taxes	2,241	--	6,679	--
Net income (loss)	$11,259	$ 2,662	$ 30,771	$(7,317)
Net income (loss) per common and equivalent share	$ 0.31	$ 0.07(1)	$ 0.86	$ (0.25)(1)
Shares used in the computation of net income (loss) per share	35,772	35,636(1)	35,602	29,802(1)

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(1) Prior period figures have been adjusted to reflect the 2 for 1 stock split which occurred in the second quarter of 1997.

VIVUS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE DATA)

ASSETS

	SEPTEMBER 30, 1997 (UNAUDITED)	DECEMBER 31, 1996
Current assets:		
Cash	$ 3,362	$ 555
Available-for-sale securities	69,430	60,710
Trade and other receivables	18,105	748
Inventories	6,212	4,540
Prepaid expenses and other	652	587
Total current assets	97,761	67,140
Property & equipment	26,347	6,332
Available-for-sale securities, non-current	24,086	23,060
Total	$ 148,194	$ 96,532

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Accounts payable	$ 6,346	$ 3,324
Accrued and other liabilities	22,036	3,428
Total current liabilities	28,382	6,752
Stockholders' equity:		
Common stock; $.001 par value; shares authorized 200,000,000; shares outstanding -- September 30, 1997, 33,149,729; December 31, 1996, 32,454,340(1);	33	32
Paid in capital	159,347	156,173
Less treasury stock,at cost; 185,000 shares at September 30, 1997; none at December 31, 1996	(4,184)	--
Unrealized gain on securities	64	77
Deferred compensation	(65)	(348)
Accumulated deficit	(35,383)	(66,154)
Total stockholders' equity	119,812	89,780
Total	$ 148,194	$ 96,532

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(1) Prior period shares have been adjusted to reflect the 2 for 1 stock split which occurred in the second quarter of 1997.

VIVUS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED, IN THOUSANDS)

	NINE MONTHS ENDED SEPTEMBER 30,	
	1997	1996
Cash flows from operating activities:		
Net income (loss)	$ 30,771	$ (7,317)
Adjustments to reconcile net income (loss) to net cash provided by (used for) operating activities:		
Depreciation and amortization	1,448	719
Stock compensation costs	367	332
Issuance of common stock for patent rights	--	5,821
Changes in assets and liabilities:		
Receivables	(17,357)	(773)
Inventories	(1,672)	--
Prepaid expenses and other	(65)	(122)
Accounts payable	3,022	(109)
Accrued and other liabilities	18,608	1,099
Net cash provided by (used for) operating activities	35,122	(350)
Cash flows from investing activities:		
Property purchases	(21,463)	(2,101)
Securities purchases	(210,858)	(99,350)
Proceeds from sale/maturity of securities	201,099	52,716
Net cash used for investing activities	(31,222)	(48,735)
Cash flows from financing activities:		
Sale of common stock	--	57,428
Exercise of common stock options	2,918	864
Purchase of common stock through employees stock purchase plan	173	104
Repurchase of common stock through buybacks	(4,184)	--
Net cash provided by (used for) financing activities	(1,093)	58,396
Net increase in cash	2,807	9,311
Cash:		
Beginning of period	555	973
End of period	$ 3,362	$ 10,284
Non-cash investing and financing activities:		
Unrealized loss on securities	($13)	($127)

See accompanying notes to financial statements

VIVUS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 1997

1. BASIS OF PRESENTATION

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulations S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the three month and nine month periods ended September 30, 1997 are not necessarily indicative of the results that may be expected for the year ending December 31, 1997. For further information, refer to the financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 1996.

2. PROVISION FOR INCOME TAXES

The Company's effective tax rate was 17.8 percent of income before taxes for the nine months ended September 30, 1997. This tax rate includes the effect of net operating losses (NOLs) carried forward from prior periods. The tax rate would have been substantially higher if the NOLs were not available to offset current income. The Company expects to fully utilize all NOLs during 1997, and accordingly, the Company's effective tax rate is expected to increase in the future.

3. NET INCOME (LOSS) PER SHARE

For the three months and nine months ended September 30, 1997, net income per common and equivalent share is based on the weighted average number of common and equivalent shares outstanding during the period, including outstanding options and warrants. Such options and warrants are excluded from the net loss per common and equivalent shares for the nine months ended September 30, 1996 because they are antidilutive. Share and per share amounts have been calculated based on post-split shares resulting from the two-for-one stock split effective June 23, 1997.

4. IMPACT OF NEW ACCOUNTING PRONOUNCEMENT

The Company will adopt SFAS No. 128, "Earnings per Share," effective December 15, 1997 for the year ending December 31, 1997. This Statement cannot be applied before December 15, 1997. It requires that all earnings-per-share data for prior periods presented be restated to conform with the new statement. Had the new pronouncement been in effect for the periods presented, earnings-per-share would have been as follows:

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	1997	1996	1997	1996
Basic earnings-per-share.....	$0.34	$0.08	$0.93	$(0.25)
Diluted earnings-per-share.....	0.31	0.07	0.86	(0.25)

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

DESCRIPTION OF BUSINESS

VIVUS, Inc. ("VIVUS" or the "Company") is a leading developer of advanced therapeutic systems for the treatment of erectile dysfunction. Erectile dysfunction, commonly referred to as impotence, is the inability to achieve and maintain an erection of sufficient rigidity for sexual intercourse. The Company's transurethral system for erection is a non-invasive, easy to use system that delivers pharmacologic agents topically to the urethral lining. In November 1996, the Company obtained regulatory marketing clearance from the U.S. Food and Drug Administration (the "FDA") to manufacture and market its first product, MUSE(R) (alprostadil). The Company commenced product shipments to wholesalers in December 1996 and commercially introduced MUSE (alprostadil) in the United States through its direct sales force beginning in January 1997. In addition, the Company submitted applications for regulatory approval to market MUSE (alprostadil) in the United Kingdom in September 1996; Sweden in October 1996; Norway in January 1997; China, Australia and New Zealand in April 1997; Canada and Switzerland in May 1997; and Korea, South Africa, Brazil and Argentina in August 1997. These applications will be subject to rigorous approval processes, and there can be no assurance such approval will be granted in a timely manner, if at all. Furthermore, the Company received FDA clearance in December 1996 for ACTIS(R), an adjustable elastomeric venous flow control device designed for those patients who suffer from veno-occlusive dysfunction (commonly referred to as venous leak syndrome). The Company commenced commercial sales of ACTIS in July 1997. ACTIS is currently being studied for adjunctive use with MUSE (alprostadil), however, there can be no assurance that such studies will demonstrate that adjunctive use of ACTIS with MUSE (alprostadil) is an effective treatment for erectile dysfunction.

The Company has limited experience in manufacturing and selling MUSE (alprostadil) in commercial quantities. Since the commercial launch of MUSE (alprostadil) in January 1997, the Company has experienced product shortages due to higher than expected demand and difficulties encountered in scaling up production of MUSE (alprostadil). The Company has initiated the build out of 90,000 square feet of additional manufacturing space, and it is currently seeking a location for construction of a European manufacturing operation. If the Company encounters further difficulties with its current manufacturing facility or delays in completion or regulatory approval of its new manufacturing facility, capacity constraints could continue for an extended period of time, which would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company's New Jersey manufacturing facility at Paco Pharmaceutical Services, Inc. ("Paco") was inspected by the FDA for the first time after the pre-approval inspection during twelve days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive FDA Form 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of the current Good Manufacturing Practices ("cGMP") regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the FDA Form 483 and requested a meeting with the FDA District Office officials to address the matter. Approximately 30 days after submitting the initial written response, the Company provided the FDA with a written update of the progress made against the corrective action plan. The Company provided an additional written response to comments and questions from the FDA in April and May 1997. Following a meeting with FDA officials on May 23, 1997, the FDA issued a Warning Letter to the Company on May 29, 1997 reiterating the deficiencies noted in the earlier FDA Form 483. The Company's manufacturing facility was reinspected by the FDA during seven days in August and September 1997. That reinspection resulted in the issuance of an FDA Form 483, which mentioned specific areas cited in the earlier Form 483, where the FDA inspector continued to observe that the Company's operations were still not in full compliance with some areas of the cGMP regulations. On September 18, 1997, the Company provided a written response and requested that the FDA affirm that the Company's New Jersey manufacturing facility is in substantial compliance with cGMPs.

Continued failure to adequately address cGMP deficiencies within a reasonable time frame or to comply with cGMP regulations would have an adverse effect on the Company's ability to supply its product in the US

and internationally, which would have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that the FDA will deem the Company's corrective action or written response to the Form 483 observations to be adequate or that additional corrective action will not be required. Failure to achieve and maintain satisfactory cGMP compliance could have a material adverse effect on the Company's ability to continue to market and distribute its products and, in the most serious cases, could result in the issuance of additional Warning Letters, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

In May 1996, the Company entered into an international marketing agreement with Astra AB ("Astra"). Astra will purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. As consideration for execution of the international marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra as a result of filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved.

In January 1997, the Company entered into an international marketing agreement with Janssen Pharmaceutica International ("Janssen"), a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. As consideration for execution of the international marketing agreement, Janssen paid the Company $5 million in January 1997. The Company will receive additional payments in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved.

The Company has sought and will continue to seek additional pharmacologic agents for the treatment of erectile dysfunction that are suitable for transurethral delivery for which significant safety data already exists. The Company believes that such agents may progress rapidly through clinical development and the regulatory process due to the preexisting safety data. The Company expects to begin a Phase III multi-center trial in the first half of 1998 for its second product candidate, a combination of alprostadil and prazosin delivered via the Company's transurethral system for erection. The Company has several other product candidates in preclinical development.

Based on a published study of more than 1,200 men in Massachusetts, the Company estimates that more than 30% of males in the United States between the ages of 40 and 70 suffer from moderate to complete erectile dysfunction. The Company believes that similar rates of erectile dysfunction prevail outside the United States. An estimate from the National Institute of Health ("NIH") Consensus Statement on Impotence (1992) suggests that the number of men in the United States with erectile dysfunction may be 10 to 20 million. The rate of erectile dysfunction increases significantly with age. In addition to the Company's transurethral system for erection, the primary medical therapies currently used to treat erectile dysfunction are needle injection of pharmacologic agents into the penis, vacuum constriction devices, penile implants and oral medications. Despite the detrimental effect erectile dysfunction may have on a couple's quality of life, the Company believes that, due in part to the limitations of other therapies, less than 10% of men suffering from erectile dysfunction received medical treatment prior to the introduction of MUSE (alprostadil). The Company believes that MUSE (alprostadil) could become a first line therapy for erectile dysfunction.

RESULTS OF OPERATIONS

Three and Nine months Ended September 30, 1997 and 1996

Product revenue of $39,118,000 and $100,367,000 was recorded for the three months and nine months ended September 30, 1997 respectively, compared to zero for each of the same periods in 1996. All product revenue was the result of the commercial launch of MUSE (alprostadil) and ACTIS in 1997. Due to higher than expected demand following the launch of MUSE (alprostadil) and difficulties in scaling up production, demand has exceeded the available supply of product. The Company has achieved increasing revenues over the three quarters since its launch of MUSE (alprostadil) by increasing production from its current facility. There can be no assurance that the Company will be able to obtain significant additional increases in production from its current facility. No substantial increases in production capacity are expected prior to

approval by either the FDA or the Medicines Control Agency of the Company's 90,000 square feet of additional manufacturing space, which is currently under construction. See Risk Factors -- Limited Manufacturing Experience; Capacity Constraints.

As consideration for execution of the Janssen marketing agreement, Janssen paid the Company $5 million in January 1997. The Company recorded this receipt as milestone revenue in the condensed consolidated statement of operations. In 1996, the Company received milestone payments from Astra under the terms of an international marketing agreement. The Company recorded these Astra milestone revenues of $10 million and $20 million, respectively, in the three and nine month periods ended September 30, 1996.

Cost of goods sold was $11,270,000 and $28,920,000 in the three and nine months ended September 30, 1997. Cost of goods sold was zero for the same periods in 1996 as there were no product sales.

The resulting product gross margin for the three and nine months ended September 30, 1997 was 71%.

For the three months ended September 30, 1997, research and development expenses were $3,947,000 compared with $5,462,000 for the three months ended September 30, 1996, a decrease of 28%. For the nine months ended September 30, 1997, research and development expenses were $7,914,000, compared with $23,007,000 for the nine months ended September 30, 1996, a decrease of 66%. Research and development expenses for the three and nine month periods ended September 30, 1997 were less than the same periods in 1996 due primarily to higher pre-launch manufacturing expenses associated with commercial plant scale up, and clinical and regulatory costs associated with the preparation and filing of the Company's New Drug Application for MUSE (alprostadil) in 1996. In addition, the Company recorded a $5.9 million charge as the result of issuing 200,000 pre-split shares of Common Stock in May 1996 to ALZA Corporation to maintain exclusive rights to certain patents and patent applications beyond 1998.

Selling, general and administrative expenses for the three months ended September 30, 1997 were $11,507,000 compared with $3,118,000 for the three months ended September 30, 1996, an increase of 269%. For the nine months ended September 30, 1997, selling, general and administrative expenses were $34,574,000 compared with $6,501,000 for the nine months ended September 30, 1996, an increase of 432%. The increases compared with the same periods in 1996 resulted primarily from the addition of a fifty person field sales force, higher marketing expenses and the costs associated with adding personnel to support the growth of the Company's operations and the commercial launch of MUSE (alprostadil).

Spending levels are likely to continue to increase during 1997 as the Company further develops its commercial manufacturing, research and development, marketing and sales capabilities.

Interest and other income for the three months ended September 30, 1997 was $1,106,000 compared with $1,242,000 for the three months ended September 30, 1996, a decrease of 11%. The decrease related to a charge taken for the write off of certain fixed assets. For the nine months ended September 30, 1997, interest and other income was $3,491,000 compared with $2,191,000 for the nine months ended September 30, 1996, an increase of 59%. The increase was primarily the result of higher average invested balances.

Income taxes for the three months ended September 30, 1997 were $2,241,000, approximately 17% of income before taxes, compared with zero for the three months ended September 30, 1996. For the nine months ended September 30, 1997, income taxes were $6,679,000, approximately 18% of income before taxes, compared with zero for the nine months ended September 30, 1996. The increase is due to the increase in taxable income as a result of increased revenue from product sales. The 1997 tax rate includes the effect of net operating losses (NOLs) carried forward from prior periods. The tax rate would have been substantially higher if the NOLs were not available to offset current income. The Company expects to fully utilize all NOLs during 1997, and accordingly, the Company's effective tax rate is expected to increase in the future.

LIQUIDITY AND CAPITAL RESOURCES

Since inception, the Company has financed operations primarily from the sale of preferred and common stock. Through September 30, 1997, VIVUS has raised $150,685,000 from financing activities. Cash, cash equivalents and securities available-for-sale totaled $96,878,000 at September 30, 1997 compared with $84,325,000 at December 31, 1996. The increase in cash, cash equivalents and securities available-for-sale is

primarily a result of cash provided by operations, partially offset by capital disbursements. The Company maintains its current excess cash balances in a variety of interest bearing investment-grade financial investments such as United States treasury, federal agency and state government securities, repurchase agreements, corporate debt and bank certificates of deposit. Principal preservation, liquidity and safety are the primary investment objectives.

Cash flow from operations in the nine months ended September 30, 1997 was $35,122,000 compared with cash used of $350,000 in the nine months ended September 30, 1996. The increased cash provided by operations was primarily due to net income of $30,771,000.

Trade and other receivables at September 30, 1997 were $18,105,000 compared with $748,000 at December 31, 1996, an increase of $17,357,000. The increase primarily resulted from the increase in trade receivables resulting from sales of MUSE (alprostadil).

Current liabilities were $28,382,000 at September 30, 1997 compared with $6,752,000 at December 31, 1996, an increase of $21,630,000. The increase was related primarily to an increase in manufacturing and facilities expenditures, as well as accrued income taxes, incentive compensation, and accrued royalties.

Capital expenditures in the nine months ended September 30, 1997 were $21,463,000 compared with $2,101,000 for the same period ended September 30, 1996. Capital expenditures were higher in 1997 due to the construction of the new manufacturing facility, in Lakewood, New Jersey and the purchase of additional manufacturing equipment for use at the Company's dedicated manufacturing operation within the Paco Pharmaceutical Services, Inc. ("Paco") facility, also in Lakewood. Capital expenditures over the next two years are likely to increase as they are expected to include additional improvements in the current manufacturing facilities, completion of the new manufacturing facility in New Jersey, a new manufacturing facility in Europe, and a new corporate headquarters and a research and development laboratory facility in the United States.

The Company expects to incur substantial additional costs, including expenses related to its second manufacturing facility in the United States and one in Europe, new product preclinical and clinical costs, ongoing research and development activities, and general corporate purposes. The Company anticipates that its existing capital resources will be sufficient to support the Company's operations through the international commercial introduction of MUSE (alprostadil), but may not be sufficient for the introduction of any additional future products. The Company anticipates that it may be required to issue additional equity or debt securities and may use other financing sources including, but not limited to, corporate alliances and lease financings to fund the future development and possible commercial launch of its products. The sale of additional equity securities would result in additional dilution to the Company's stockholders. There can be no assurance that such funds will be available on terms satisfactory to the Company, or at all. Failure to obtain adequate funding could cause a delay or cessation of the Company's product development and marketing efforts and would have a material adverse effect upon the Company's business, financial condition and results of operations. The Company's working capital and additional funding requirements will depend upon numerous factors, including: (i) the level of resources that the Company devotes to sales and marketing capabilities; (ii) the level of resources that the Company devotes to expanding manufacturing capacity; (iii) the activities of competitors; (iv) the progress of the Company's research and development programs; (v) the timing and results of preclinical testing and clinical trials; (vi) technological advances; and (vii) continued profitability.

The Results of Operations and Liquidity and Capital Resources sections contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended. Actual results could differ materially from those projected in the forward-looking statements as a result of the factors set forth in this Liquidity and Capital Resources section, the Risk Factors section, the Results of Operations section and the Description of Business section. The discussion of those factors is incorporated herein by this reference as if said discussion was fully set forth at this point.

This Quarterly Report on Form 10-Q contains forward-looking statements that involve risks and uncertainties. The Company's actual results could differ from those set forth in such forward-looking statements as a result of certain factors, including those set forth in this Risk Factors section.

RISK FACTORS

LIMITED MANUFACTURING EXPERIENCE; CAPACITY CONSTRAINTS

The Company has only limited experience in manufacturing MUSE (alprostadil) in commercial quantities. Since the commercial launch of MUSE (alprostadil) in January 1997, the Company has experienced product shortages due to higher than expected demand and difficulties encountered in scaling up production of MUSE (alprostadil). The Company has initiated the build out of 90,000 square feet of additional manufacturing space in New Jersey, and it is currently seeking a location for construction of a European manufacturing operation. The Company anticipates it will complete construction of the new New Jersey facility by the end of 1997. However, construction of a cGMP compliant manufacturing site of this scale is a very complicated task, and the Company may not be able to meet this schedule. In addition, before the new facility can produce commercial product, the Company must validate the plant and obtain FDA approval. There is no assurance validation and FDA approval will be completed and obtained in a timely manner. If the Company encounters further difficulties with its current manufacturing facility or delays in completion or approval of its new manufacturing facility, capacity constraints could continue for an extended period. Such extended capacity constraints could create the need for product allocations between domestic and international markets following the launch of MUSE (alprostadil) outside of the United States, strain relationships with distribution partners, and possibly cause patients to seek alternative therapies. Such events could have a material adverse effect upon the business, financial condition and operating results of the Company.

The formulation, filling, packaging and testing of MUSE (alprostadil) is performed at Paco, a wholly-owned subsidiary of The West Company, at its facility in Lakewood, New Jersey. In June 1995, the Company completed construction of its approximately 6,000 square feet manufacturing and testing space within Paco's facility. Due to higher than expected demand, the Company has leased two adjacent buildings in New Jersey, totaling 90,000 square feet, that are being built out to support expansion of the Company's manufacturing capabilities. Until the Company develops an in-house manufacturing capability, it will be entirely dependent upon Paco for the manufacture of its products. There can be no assurance that the Company's reliance on Paco for the manufacture of its products will not result in problems with product supply, and there can be no assurance that the Company will be able to establish a second manufacturing facility. Interruptions in the availability of products could limit further development and commercial marketing of MUSE (alprostadil) and other potential products and would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company and certain of its suppliers and service providers are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMP and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. Certain of the Company's suppliers were inspected for compliance with cGMP regulations as part of the approval process. However, upon routine re-inspection of its contract manufacturers, there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMP and other regulations. Failure to achieve satisfactory compliance with cGMP regulations as confirmed by routine regulatory inspections could have a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious cases, result in the issuance of a regulatory warning letter or seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco was inspected by the FDA for the first time after the pre-approval inspection during twelve days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive FDA Form 483, which detailed areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of cGMP regulations. A

corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the FDA Form 483 and requested a meeting with the FDA District Office officials to address the matter. Approximately 30 days after submitting the initial written response, the Company provided the FDA with a written update of the progress made against the corrective action plan. The Company provided an additional written response to comments and questions from the FDA in April and May 1997. Following a meeting with FDA officials on May 23, 1997, the FDA issued a Warning Letter to the Company on May 29, 1997 reiterating the deficiencies noted in the earlier FDA Form 483. The Company's manufacturing facility was reinspected by the FDA during seven days in August and September 1997. That reinspection resulted in the issuance of an FDA Form 483, which mentioned specific areas cited in the earlier Form 483, where the FDA inspector continued to observe that the Company's operations were still not in full compliance with some areas of cGMP regulations. On September 19, 1997, the Company provided a written response and requested that the FDA affirm that the Company's New Jersey manufacturing facility is in substantial compliance with cGMP.

Continued failure to adequately address cGMP deficiencies within a reasonable time frame or to comply with cGMP regulations would have an adverse effect on the Company's ability to supply its product in the US and internationally, which would have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that the FDA will deem the Company's corrective action or written response to the Form 483 observations to be adequate or that additional corrective action will not be required. Failure to achieve and maintain satisfactory cGMP compliance could have a material adverse effect on the Company's ability to continue to market and distribute its products and, in the most serious cases, could result in the issuance of additional Warning Letters, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

PROPRIETARY RIGHTS AND RISK OF LITIGATION

The Company's success will depend, in large part, on the strength of its current and future patent position relating to the transurethral delivery of pharmacologic agents for the treatment of erectile dysfunction. The Company's patent position, like that of other pharmaceutical companies, is highly uncertain and involves complex legal and factual questions. Claims made under patent applications may be denied or significantly narrowed and issued patents may not provide significant commercial protection to the Company. The Company could incur substantial costs in proceedings before the United States Patent Office, including interference proceedings. These proceedings could also result in adverse decisions as to the priority of the Company's licensed or assigned inventions. There is no assurance that the Company's patents will not be successfully challenged or designed around by others.

The Company is presently involved in an opposition proceeding that was instigated by the Pharmedic Company against a European patent that is exclusively licensed to VIVUS. As a result of the opposition proceedings, certain claims in the European patent were held to be unpatentable by the Opposition Division of the European Patent Office (EPO). These claims related to all pharmaceutical compositions that included prostaglandin E(1). The patentability of other claims in the patent was confirmed. These claims included the use of active agents in the treatment of erectile dysfunction by administration via the urethra to the corpora cavernosa, and a pharmaceutical composition claim for prazosin. The Company appealed the EPO's decision with respect to the pharmaceutical composition claims that were held unpatentable. The Pharmedic Company appealed the EPO's decision with respect to the claims that were held patentable, but has since withdrawn. Despite the withdrawal of the Pharmedic Company from the appeals process, the Company has continued with its own appeal in an attempt to reinstate the composition claims. The EPO Appeals Board must make its own finding whether the claims that were deemed unpatentable by the Opposition Division are indeed patentable before it can reverse the Opposition Division's decision. There can be no assurance that the appeal will be successful or that further challenges to the Company's European patent will not occur should the Company try to enforce the patent in the various European courts.

There can be no assurance that the Company's products do not or will not infringe on the patent or proprietary rights of others. The Company may be required to obtain additional licenses to the patents, patent applications or other proprietary rights of others. There can be no assurance that any such licenses would be

made available on terms acceptable to the Company, if at all. If the Company does not obtain such licenses, it could encounter delays in product introductions while attempts to design around such patents, or, the development, manufacture or sale of products requiring such licenses could be precluded. The Company believes there will continue to be significant litigation in the pharmaceutical industry regarding patent or other intellectual property rights.

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company and certain of its officers and directors defrauded him by allegedly failing to inform him that they intended to use and patent this technology and by failing to compensate him in the manner allegedly promised. On May 28, 1996, the Company filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology. On July 17, 1996, the former consultant filed a lawsuit that sought to have two of the Company's patents corrected to name him as an inventor, or in the alternative, declared invalid on the grounds that they fail to list him as an inventor. The former consultant also sought damages for alleged fraud. On September 16, 1996, the Court dismissed the consultant's lawsuit, and ordered him to refile his claims as counterclaims in the action initiated by the Company on May 28, 1996. The consultant filed his counterclaim on September 26, 1996. On July 25, 1997, the Company filed motions for summary judgment, which request that the Court enter judgment against the former consultant on all of his claims. The Company's motions were heard by the Court on September 8, 1997. By orders dated September 9, 1997, the Court denied one of the Company's motions which related to the inventorship issues and granted in part and denied in part the Company's other motion, which was related to the fraud issues. This case is set for trial on December 9, 1997. The Company has conducted a review of the circumstances surrounding this matter and believes that the allegations are without merit. Although the Company believes that it should prevail in the litigation, the uncertainties inherent in litigation, and in particular, jury trials, prevent the Company from giving any assurances about the outcome of such litigation. A judgment in favor of the consultant on some or all of his claims would have a material adverse effect on the Company.

DEPENDENCE ON THE COMPANY'S TRANSURETHRAL SYSTEM FOR ERECTION

The Company currently relies upon a single therapeutic approach to treat erectile dysfunction, its transurethral system for erection. Certain side effects have been found to occur with the use of MUSE (alprostadil). Occasional mild to moderate transient penile/perineal pain was suffered by 21% to 42% of patients, depending on dosage, treated with MUSE (alprostadil) in the Company's Phase II/III Dose Ranging study. Moderate to severe (i.e., syncope) decreases in blood pressure were experienced by 1% to 4% of patients, depending on dosage treated with MUSE (alprostadil) in such study. The existence of side effects or dissatisfaction with product results may impact a patient's decision to use or continue to use, or a physician's decision to recommend, MUSE (alprostadil) as a therapy for the treatment of erectile dysfunction thereby affecting the commercial viability of MUSE (alprostadil). In addition, technological changes or medical advancements could diminish or eliminate the commercial viability of the Company's products. As a result of the Company's single therapeutic approach and its current focus on MUSE (alprostadil), the failure to successfully commercialize such product would have an adverse effect on the Company and could threaten the Company's ability to continue as a viable entity.

GOVERNMENT REGULATION AND UNCERTAINTY OF PRODUCT APPROVALS

The Company's research, preclinical development, clinical trials, manufacturing and marketing of its products are subject to extensive regulation by numerous governmental authorities in the United States and other countries. Clinical trials, manufacturing and marketing of the Company's products will be subject to the rigorous testing and approval processes of the FDA and equivalent foreign regulatory agencies. The process of obtaining FDA and other required regulatory approvals is lengthy and expensive. The Company completed pivotal clinical trials in 1995 and submitted an NDA for its first product, MUSE (alprostadil), to the FDA in March 1996. In November 1996, the Company received final marketing clearance from the FDA for MUSE (alprostadil). After regulatory approval is obtained, the Company's products are subject to continual review.

Manufacturing, labeling and promotional activities are continually regulated by the FDA, and the Company must also report certain adverse events involving its drugs to the Agency under regulations issued by the FDA. Additionally, previously unidentified adverse events or an increased frequency of adverse events that occur post approval could result in labeling modifications of approved products, which could adversely effect future marketing of a drug.

In addition, the Company submitted applications for regulatory approval to market MUSE (alprostadil) in the United Kingdom in September 1996; Sweden in October 1996; Norway in January 1997; China, Australia and New Zealand in April 1997; Canada and Switzerland in May 1997; and Korea, South Africa, Brazil and Argentina in August 1997. These applications will be subject to rigorous approval processes. There can be no assurance that approval in these or other countries will be granted on a timely basis, if at all, or if granted, that such approval will not contain significant limitations in the form of warnings, precautions or contraindications with respect to conditions of use. Any delay in obtaining, or failure to obtain, such approval would adversely effect the Company's ability to generate product revenue.

The Company's clinical trials for future products will seek safety data as well as efficacy data and will require substantial time and significant funding. There is no assurance that clinical trials will be completed successfully within any specified time period, if at all. Furthermore, the FDA may suspend clinical trials at any time if it is believed that the subjects participating in such trials are being exposed to unacceptable health risks. There can be no assurance that FDA or other regulatory approvals for any products developed by the Company will be granted on a timely basis, if at all, or if granted, that such approval will not contain significant limitations in the form of warnings, precautions or contraindications with respect to conditions of use. Any delay in obtaining, or failure to obtain, such approvals would adversely effect the Company's ability to generate product revenue. Failure to comply with the applicable regulatory requirements can, among other things, result in fines, suspensions of regulatory approvals, product recalls, operating restrictions and criminal prosecution. In addition, the marketing and manufacturing of pharmaceutical products are subject to continuing FDA review, and later discovery of previously unknown problems with a product, manufacturer or facility may result in the FDA requiring further clinical research or restrictions on the product or the manufacturer, including withdrawal of the product from the market. The restriction, suspension or revocation of regulatory approvals or any other failure to comply with regulatory requirements would have a material adverse effect on the Company's business, financial condition and results of operations.

The Company obtains the necessary raw materials and components for the manufacture of MUSE (alprostadil) from third parties. The Company currently contracts with foreign manufacturers that are required to comply with strict standards established by the Company. Certain suppliers are required by the Federal Food, Drug, and Cosmetic Act, as amended, and by FDA regulations to follow cGMP regulations and are subject to routine periodic inspections by the FDA and certain state and foreign regulatory agencies for compliance with cGMP and other applicable regulations. The FDA stringently applies regulatory standards for manufacturing. Certain of the Company's suppliers were inspected for compliance with cGMP regulations as part of the approval process. However, upon routine re-inspection of the manufacturing facilities, there can be no assurance that the FDA will find the manufacturing process or facilities to be in compliance with cGMP and other regulations. Failure to achieve satisfactory compliance with cGMP regulations as confirmed by routine inspections could have a significant adverse effect on the Company's ability to continue to manufacture and distribute its products and, in the most serious case, result in the issuance of a regulatory warning letter or seizure or recall of products, injunction and/or civil fines.

The Company's New Jersey manufacturing facility at Paco was inspected by the FDA for the first time after the pre-approval inspection during twelve days in February and March 1997. That inspection resulted in the issuance by the FDA of an extensive FDA Form 483, which detailed specific areas where the FDA inspector observed that the Company's operations were not in full compliance with some areas of cGMP regulations. A corrective action plan addressing all identified cGMP deficiencies was initiated immediately, and the Company submitted a written response to the FDA Form 483 and requested a meeting with the FDA District Office officials to address the matter. Approximately 30 days after submitting the initial written response, the Company provided the FDA with a written update of the progress made against the corrective action plan. The Company provided an additional written response to comments and questions from the FDA

in April and May 1997. Following a meeting with FDA officials on May 23, 1997, the FDA issued a Warning Letter to the Company on May 29, 1997 reiterating the deficiencies noted in the earlier FDA Form 483. The Company's manufacturing facility was reinspected by the FDA during seven days in August and September 1997. That reinspection resulted in the issuance of an FDA Form 483, which mentioned specific areas cited in the earlier Form 483, where the FDA inspector continued to observe that the Company's operations were still not in full compliance with some areas of cGMP regulations. On September 19, 1997, the Company provided a written response and requested that the FDA affirm that the Company's New Jersey manufacturing facility is in substantial compliance with cGMPs.

Continued failure to adequately address cGMP deficiencies within a reasonable time frame or to comply with cGMP regulations would have an adverse effect on the Company's ability to supply its product in the US and internationally, which would have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that the FDA will deem the Company's corrective action or written response to the Form 483 observations to be adequate or that additional corrective action will not be required. Failure to achieve and maintain satisfactory cGMP compliance could have a material adverse effect on the Company's ability to continue to market and distribute its products and, in the most serious cases, could result in the issuance of additional Warning Letters, seizure or recall of products, civil fines or closure of the Company's New Jersey manufacturing facility until cGMP compliance is achieved.

INTENSE COMPETITION

Competition in the pharmaceutical and medical products industries is intense and is characterized by extensive research efforts and rapid technological progress. Certain treatments for erectile dysfunction exist, such as needle injection therapy, vacuum constriction devices, penile implants and oral medications, and the manufacturers of these products will continue to improve these therapies. In July 1995, the FDA approved the use of alprostadil in The Upjohn Company's needle injection therapy product for erectile dysfunction. Previously, Upjohn had obtained approval in a number of European countries. In June 1997, Schwartz Pharma announced the FDA approval of their needle injection treatment for erectile dysfunction. Additional competitive therapies under development include an oral medication by Pfizer, Inc., for which they have filed for regulatory approval in the United States and Europe. Other large pharmaceutical companies are also actively engaged in the development of therapies for the treatment of erectile dysfunction. These companies have substantially greater research and development capabilities as well as substantially greater marketing, financial and human resources than the Company. In addition, these companies have significantly greater experience than the Company in undertaking preclinical testing, human clinical trials and other regulatory approval procedures. There are also small companies, academic institutions, governmental agencies and other research organizations that are conducting research in the area of erectile dysfunction. For instance, Zonagen, Inc. and Pentech Pharmaceutical, Inc. have oral medications in Phase III clinical trials. These entities may also market commercial products either on their own or through collaborative efforts. The Company's competitors may develop technologies and products that are more effective than those being developed by the Company. Such developments would render the Company's products less competitive or even obsolete. The Company is also competing with respect to marketing capabilities and manufacturing efficiencies, areas in which it has limited experience.

LIMITED SALES AND MARKETING EXPERIENCE; DEPENDENCE ON THIRD PARTIES

Before commercially launching its first product, MUSE (alprostadil), in January 1997, the Company had no experience in the sale, marketing and distribution of pharmaceutical products. The Company is marketing and selling its products initially through a direct sales force in the United States. There can be no assurance that the Company's domestic sales and marketing efforts will be successful.

In February 1996, the Company entered into a distribution agreement with CORD Logistics, Inc. ("CORD"), a wholly owned subsidiary of Cardinal Health, Inc. Under this agreement, CORD warehouses the Company's finished goods, takes customer orders, picks, packs and ships its product, invoices customers and collects related receivables. As a result of this distribution agreement with CORD, the Company is

heavily dependent on CORD's efforts to fulfill orders and warehouse its products effectively. There can be no assurance such efforts will be successful.

In May 1996, the Company entered into an international marketing agreement with Astra to purchase the Company's products for resale in Europe, South America, Central America, Australia and New Zealand. As consideration for execution of the international marketing agreement, Astra paid the Company $10 million in June 1996. In September 1996, the Company received a $10 million milestone payment from Astra as a result of filing an application for marketing authorization for MUSE (alprostadil) in the United Kingdom. The Company will be paid up to an additional $10 million in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. The marketing agreement does not have minimum purchase commitments, and Astra may take up to twelve months to introduce a product in a given country following regulatory approval in such country. As a result of this marketing agreement with Astra, the Company is dependent on Astra's efforts to market, distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

In July 1996, the Company entered into a distribution agreement with ASD, a subsidiary of Bergen Brunswig Corporation. ASD provides "direct-to-physician" distribution, telemarketing and customer service capabilities in support of the U.S. marketing and sales efforts. As a result of this distribution agreement with ASD, the Company is dependent on ASD's efforts to distribute, telemarket, and provide customer service effectively. There can be no assurance that such efforts will be successful.

In January 1997, the Company signed an international marketing agreement with Janssen, a subsidiary of Johnson & Johnson. Janssen will purchase the Company's products for resale in China, multiple Pacific Rim countries (excluding Japan), Canada, Mexico and South Africa. As consideration for execution of the international marketing agreement, Janssen paid the Company $5 million in January 1997. The Company will receive additional payments in the event certain other milestones are achieved. However, there can be no assurance that such milestones will be achieved. As a result of this distribution agreement with Janssen, the Company is dependent on Janssen's efforts to distribute and sell the Company's products effectively in the above mentioned markets. There can be no assurance that such efforts will be successful.

The Company intends to market and sell its products in other foreign markets through distribution, co-promotion or license agreements with corporate partners. To date, the Company has entered into international marketing agreements with Astra and Janssen. There can be no assurance that the Company will be able to successfully enter into additional agreements with corporate partners upon reasonable terms, if at all. To the extent that the Company enters into distribution, co-promotion or license agreements for the sale of its products, the Company will be dependent upon the efforts of third parties. These third parties may have other commitments, and there can be no assurance that they will commit the necessary resources to effectively market, distribute and sell the Company's product.

DEPENDENCE ON DUAL SOURCE OF SUPPLY

To date, the Company has obtained its supply of alprostadil from two sources. The first is Spolana Chemical Works a.s. ("Spolana") pursuant to a long-term supply agreement that was executed in May 1997. In January 1996, the Company entered into a long-term alprostadil supply agreement with Chinoin Pharmaceutical and Chemical Works Co. ("Chinoin"). Chinoin is the Hungarian subsidiary of the French pharmaceutical company Sanofi Winthrop. Alprostadil, a generic drug, is extremely difficult to manufacture and is only available to the Company from a limited number of other suppliers. While the Company is seeking additional sources, there can be no assurance that it will be able to identify and qualify such sources. The Company is required to identify its suppliers to the FDA. The FDA may require additional clinical trials or other studies prior to accepting a new supplier. Unless the Company secures and qualifies additional sources of alprostadil, it will be entirely dependent upon Spolana and Chinoin for the delivery of alprostadil. If interruptions in the supply of alprostadil were to occur for any reason, including a decision by Spolana and/or Chinoin to discontinue manufacturing, political unrest, labor disputes or a failure of Spolana and/or Chinoin to follow regulatory guidelines, the development and commercial marketing of MUSE (alprostadil) and other

potential products could be delayed or prevented. An interruption in the Company's supply of alprostadil would have a material adverse effect on the Company's business, financial condition and results of operations.

HISTORY OF LOSSES AND LIMITED OPERATING HISTORY

The Company has generated a cumulative net loss of $35.4 million for the period from its inception through September 30, 1997. To sustain profitability, the Company must successfully manufacture and market MUSE (alprostadil). The Company is subject to a number of risks including its ability to scale-up manufacturing capabilities and secure adequate supplies of raw materials, its ability to successfully market, distribute and sell its product, its reliance on a single therapeutic approach to erectile dysfunction and intense competition. There can be no assurance that the Company will be able to achieve profitability on a sustained basis. Accordingly, there can be no assurance of the Company's future success.

The Company began generating revenues from product sales in January 1997. The Company has limited experience in manufacturing and selling MUSE (alprostadil) in commercial quantities. Whether the Company can successfully manage the transition to a large scale commercial enterprise will depend upon successful further development of its manufacturing capability and its distribution network and attainment of foreign regulatory approvals for MUSE (alprostadil). Failure to make such a transition successfully would have a material adverse effect on the Company's business, financial condition and results of operations.

FUTURE CAPITAL NEEDS AND UNCERTAINTY OF ADDITIONAL FINANCING

The Company expects to incur substantial additional costs, including expenses related to building its marketing and sales organization, a second manufacturing plant in the United States, a manufacturing plant in Europe, new product preclinical and clinical costs, ongoing research and development activities, and general corporate purposes. The Company anticipates that its existing capital resources will be sufficient to support the Company's operations through world-wide commercial introduction of MUSE (alprostadil) but may not be sufficient for the introduction of any additional future products. Accordingly, the Company anticipates that it may be required to issue additional equity or debt securities and may use other financing sources including, but not limited to, corporate alliances and lease financings to fund the future development and possible commercial launch of its products. The sale of additional equity securities would result in additional dilution to the Company's stockholders. There can be no assurance that additional funds will be available on terms satisfactory to the Company, or at all. Failure to obtain adequate funding could cause a delay or cessation of the Company's product development and marketing efforts and would have a material adverse effect upon the Company's business, financial condition and results of operations. The Company's working capital and additional funding requirements will depend upon numerous factors, including: (i) the level of resources that the Company devotes to sales and marketing capabilities; (ii) the level of resources that the Company devotes to expanding manufacturing capacity; (iii) the activities of competitors; (iv) the progress of the Company's research and development programs; (v) the timing and results of preclinical testing and clinical trials; (vi) technological advances; and (vii) continued profitability.

DEPENDENCE ON KEY PERSONNEL

The Company's progress to date has been highly dependent upon the skills of a limited number of key management personnel. To reach its future business objectives, the Company will need to hire numerous other qualified personnel in the areas of sales, marketing, research and development, regulatory affairs, operations, clinical trial management and preclinical testing. There can be no assurance that the Company will be able to hire such personnel, as the Company must compete with other companies, academic institutions, government entities and other agencies. The loss of any of the Company's key personnel or the failure to attract or retain necessary new employees could have an adverse effect on the Company's research, product development and business operations.

RISKS RELATING TO INTERNATIONAL OPERATIONS

In the event the Company receives necessary foreign regulatory approvals, the Company plans to market its products internationally. Changes in overseas economic and political conditions, currency exchange rates, foreign tax laws or tariffs or other trade regulations could have a material adverse effect on the Company's business, financial condition and results of operations. The anticipated international nature of the Company's business is also expected to subject it and its representatives, agents and distributors to laws and regulations of the foreign jurisdictions in which they operate or the Company's products are sold. The regulation of drug therapies in a number of such jurisdictions, particularly in the European Union, continues to develop, and there can be no assurance that new laws or regulations will not have a material adverse effect on the Company's business, financial condition and results of operations. In addition, the laws of certain foreign countries do not protect the Company's intellectual property rights to the same extent as do the laws of the United States.

PRODUCT LIABILITY AND AVAILABILITY OF INSURANCE

The commercial launch of MUSE (alprostadil) exposes the Company to a significant risk of product liability claims due to its availability to a large population of patients. In addition, pharmaceutical products are subject to heightened risk for product liability claims due to inherent side effects. The Company details potential side effects in the patient package insert and the physician package insert, both of which are included with MUSE (alprostadil), and the Company maintains product liability insurance coverage. However, the Company's product liability coverage is limited and may not be adequate to cover potential product liability exposure. Product liability insurance is expensive, difficult to maintain and current or increased coverage may not be available on acceptable terms , if at all. Product liability claims brought against the Company in excess of its insurance coverage, if any, could have a material adverse effect upon the Company's business, financial condition and results of operations.

UNCERTAINTY OF PHARMACEUTICAL PRICING AND REIMBURSEMENT

In the United States and elsewhere, sales of pharmaceutical products currently are dependent, in part, on the availability of reimbursement to the consumer from third party payors, such as government and private insurance plans. Third party payors are increasingly challenging the prices charged for medical products and services. There can be no assurance that the Company's products will be considered cost effective and that reimbursement to the consumer will be available or sufficient to allow the Company to sell its products on a competitive basis.

In addition, certain health care providers are moving towards a managed care system in which such providers contract to provide comprehensive health care services, including prescription drugs, for a fixed cost per person. The Company hopes to further qualify its transurethral system for erection for reimbursement in the managed care environment. However, the Company is unable to predict the reimbursement policies employed by third-party health care payors. Furthermore, attempts at qualifying its transurethral system for erection for reimbursement could be adversely effected by changes in reimbursement policies of governmental or private health care payors.

UNCERTAINTY AND POSSIBLE NEGATIVE EFFECTS OF HEALTHCARE REFORM

The healthcare industry is undergoing fundamental changes that are the result of political, economic and regulatory influences. The levels of revenue and profitability of pharmaceutical companies may be affected by the continuing efforts of governmental and third party payors to contain or reduce healthcare costs through various means. Reforms that have been and may be considered include mandated basic healthcare benefits, controls on healthcare spending through limitations on the increase in private health insurance premiums and Medicare and Medicaid spending, the creation of large insurance purchasing groups and fundamental changes to the healthcare delivery system. Due to uncertainties regarding the outcome of healthcare reform initiatives and their enactment and implementation, the Company cannot predict which, if any, of the reform proposals will be adopted or the effect such adoption may have on the Company. There can be no assurance that future

healthcare legislation or other changes in the administration or interpretation of government healthcare or third-party reimbursement programs will not have a material adverse effect on the Company. Healthcare reform is also under consideration in some other countries.

POTENTIAL VOLATILITY OF STOCK PRICE

The stock market has recently experienced significant price and volume fluctuations unrelated to the operating performance of particular companies. In addition, the market price of the Company's Common Stock has been highly volatile and is likely to continue to be so. Factors such as variations in the Company's financial results, comments by security analysts, the Company's ability to scale up its manufacturing capability to commercial levels, the Company's ability to successfully sell its product in the United States and internationally, any loss of key management, the results of the Company's clinical trials or those of its competition, adverse regulatory actions or decisions, announcements of technological innovations or new products by the Company or its competition, changing governmental regulations, patents or other proprietary rights or product or patent litigation, may have a significant effect on the market price of the Company's Common Stock.

ANTI-TAKEOVER EFFECT OF SHAREHOLDER RIGHTS PLAN AND CERTAIN CHARTER AND BYLAW PROVISIONS

In February 1996, the Company's Board of Directors authorized the Company's reincorporation in the State of Delaware and adopted a Shareholder Rights Plan. The Company's reincorporation into the State of Delaware was approved by its stockholders and effective in May 1996. The Shareholder Rights Plan provides for a dividend distribution of one Preferred Shares Purchase Right (a "Right") on each outstanding share of the Company's Common Stock. The Rights will become exercisable following the tenth day after a person or group announces acquisition of 20% or more of the Company's Common Stock, or announces commencement of a tender offer, the consummation of which would result in ownership by the person or group of 20% or more of the Company's Common Stock. The Company will be entitled to redeem the Rights at $0.01 per Right at any time on or before the tenth day following acquisition by a person or group of 20% of more of the Company's Common Stock.

The Shareholder Rights Plan and certain provisions of the Company's Certificate of Incorporation and Bylaws may have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, control of the Company. The Company's Certificate of Incorporation allows the Company to issue Preferred Stock without any vote or further action by the stockholders, and certain provisions of the Company's Certificate of Incorporation and Bylaws eliminate the right of stockholders to act by written consent without a meeting, specify procedures for director nominations by stockholders and submission of other proposals for consideration at stockholder meetings, and eliminate cumulative voting in the election of directors. Certain provisions of Delaware law could also delay or make more difficult a merger, tender offer or proxy contest involving the Company, including Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years unless certain conditions are met. The Shareholder Rights Plan, the possible issuance of Preferred Stock, the procedures required for director nominations and stockholder proposals and Delaware law could have the effect of delaying, deferring or preventing a change in control of the Company, including without limitation, discouraging a proxy contest or making more difficult the acquisition of a substantial block of the Company's Common Stock. These provisions could also limit the price that investors might be willing to pay in the future for shares of the Company's Common Stock.

PART II: OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

A former consultant to the Company has claimed that he is the inventor of certain technology disclosed in two of the Company's patents. The former consultant further claims that the Company and certain of its officers and directors defrauded him by allegedly failing to inform him that they intended to use and patent this technology and by failing to compensate him in the manner allegedly promised. On May 28, 1996, the Company filed a complaint for declaratory judgment against the former consultant in the United States District Court for the Northern District of California, which seeks a declaration from the court that the former consultant is not an inventor of any of the technology. On July 17, 1996, the former consultant filed a lawsuit that sought to have two of the Company's patents corrected to name him as an inventor, or in the alternative, declared invalid on the grounds that they fail to list him as an inventor. The former consultant also sought damages for alleged fraud. On September 16, 1996, the Court dismissed the consultant's lawsuit, and ordered him to refile his claims as counterclaims in the action initiated by the Company on May 28, 1996. The consultant filed his counterclaim on September 26, 1996. On July 25, 1997, the Company filed motions for summary judgment, which request that the Court enter judgment against the former consultant on all of his claims. The Company's motions were heard by the Court on September 8, 1997. By orders dated September 9, 1997, the Court denied one of the Company's motions which related to the inventorship issues and granted in part and denied in part the Company's other motion which was related to the fraud issues. This case is set for trial on December 9, 1997. The Company has conducted a review of the circumstances surrounding this matter and believes that the allegations are without merit. Although the Company believes that it should prevail in the litigation, the uncertainties inherent in litigation, and in particular, jury trials prevent the Company from giving any assurances about the outcome of such litigation. A judgment in favor of the consultant on some or all of his claims would have a material adverse effect on the Company.

ITEM 2. CHANGES IN SECURITIES

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

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

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits (in accordance with Item 601 of Regulation S-K)

###3.2	Form of Amended and Restated Certificate of Incorporation of the Company, as currently in effect
****3.3	Bylaws of the Registrant, as amended
#3.4	Certificate of Designations of Rights, Preferences and Privileges of Series A Participating Preferred Stock
###4.1	Specimen Common Stock Certificate of the Registrant
*4.2	Registration Rights as amended
*4.4	Form of Preferred Stock Purchase Warrant issued by the Registrant to Invemed Associates, Inc., Frazier Investment Securities, L.P., and Cristina H. Kepner

#4.5	Second amended and Restated Preferred Shares Rights Agreement, dated as of April 15, 1997 by and between VIVUS, Inc. and Harris Trust Company of California, including the Certificate of Determination, the form of Rights Certificate and the Summary of Rights attached thereto as Exhibits A, B, and C, respectively.
*+10.1	Assignment Agreement by and between Alza Corporation and the Registrant dated December 31, 1993
*+10.2	Memorandum of Understanding by and between Ortho Pharmaceutical Corporation and the Registrant dated February 25, 1992
*10.3	Assignment Agreement by and between Ortho Pharmaceutical Corporation and the Registrant dated June 9, 1992
*+10.4	License Agreement by and between Gene A. Voss M.D., Allen C. Eichler, M.D., and the Registrant dated December 28, 1992
*+10.5A	License Agreement by and between Ortho Pharmaceutical Corporation and Kjell Holmquist AB dated June 23, 1989
*+10.5B	Amendment by and between Kjell Holmquist AB and the Registrant dated July 3, 1992
*10.5C	Amendment by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
*+10.5D	Stock Purchase Agreement by and between Kjell Holmquist AB and the Registrant dated April 22, 1992
*+10.6A	License Agreement by and between Amsu, Ltd., and Ortho Pharmaceutical Corporation dated June 23, 1989
*+10.6B	Amendment by and between Amsu, Ltd., and the Registrant dated July 3, 1992
*10.6C	Amendment by and between Amsu, Ltd., and the Registrant dated April 22, 1992
*+10.6D	Stock Purchase Agreement by and between Amsu, Ltd., and the Registrant dated July 10, 1992
*10.7	Supply Agreement by and between Paco Pharmaceutical Services, Inc., and the Registrant dated November 10, 1993
*10.10	Lease by and between McCandless-Triad and the Registrant dated November 23, 1992, as amended
***10.11	Form of Indemnification Agreements by and among the Registrant and the Directors and Officers of the Registrant
+++10.12	1991 Incentive Stock Plan and Form of Agreement, as amended
+++10.13	1994 Director Option Plan and Form of Agreement
*10.14	Form of 1994 Employee Stock Purchase Plan and Form of Subscription Agreement
*10.17	Letter Agreement between the Registrant and Leland F. Wilson dated June 14, 1991 concerning severance pay
####+10.21	Distribution Services Agreement between the Registrant and Synergy Logistics, Inc. (a wholly-owned subsidiary of Cardinal Health, Inc.) dated February 9, 1996
####+10.22	Manufacturing Agreement between the Registrant and CHINOIN Pharmaceutical and Chemical Works Co., Ltd. dated December 20, 1995
##+10.23	Distribution and Services Agreement between the Registrant and Alternate Site Distributors, Inc. dated July 17, 1996
*****+10.24	Distribution Agreement made as of May 29, 1996 between the Registrant and Astra AB
##10.25	Menlo McCandless Office Lease made as of August 30, 1996 by and between Registrant and McCandless-Triad

##10.26	Sublease Agreement made as of August 22, 1996 by and between Registrant and Plant Research Technologies
###++10.27	Distribution Agreement made as of January 22, 1997 between the Registrant and Janssen Pharmaceutical International, a division of Cilag AG International
###10.28	Lease Agreement made as of January 1, 1997 between the Registrant and Airport Associates
###10.29	Lease Amendment No. 1 as of February 15, 1997 between Registrant and Airport Associates
10.29A	Lease Amendment No. 2 dated July 24, 1997 by and between the Registrant and Airport Associates
10.29B	Lease Amendment No. 3 dated July 24, 1997 by and between the Registrant and Airport Associates
###10.30	Lease agreement by and between 605 East Fairchild Associates, L.P. and Registrant dated as of March 5, 1997
#####++10.31	Manufacture and supply agreement between Registrant and Spolana Chemical Works, a.s. dated May 30, 1997
27.1	Financial Data Schedule

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* Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-75698.

** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-1 No. 33-90390, as amended.

*** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Form 8-B filed with the Commission on June 24, 1996.

**** Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1996, as amended.

***** Incorporated by reference to the same numbered exhibit filed with the Registrant's Current Report on Form 8-K/A filed with the Commission on June 21, 1996.

Incorporated by reference to exhibit 99.1 filed with Registrant's Amendment Number 2 to the Registration Statement of Form 8-A (File No. 0-23490) filed with the Commission on April 23, 1997.

Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 1996

Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1996, as amended

Incorporated by reference to the same-numbered exhibit filed with the Registrant's Annual Report on Form 10-K for the year ended December 31, 1995, as amended

Incorporated by reference to the same-numbered exhibit filed with the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997

\+ Confidential treatment granted.

++ Confidential treatment requested.

+++ Incorporated by reference to the same-numbered exhibit filed with the Registrant's Registration Statement on Form S-8 No. 333-29939.

(b) Reports on Form 8-K
None.

SIGNATURES

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

VIVUS, Inc.

Date: October 8, 1997

/s/ DAVID C. YNTEMA

David C. Yntema
Chief Financial Officer

/s/ LELAND F. WILSON

Leland F. Wilson
President and Chief Executive Officer

VIVUS, INC.

INDEX TO EXHIBITS

EXHIBIT	DESCRIPTION
10.29A	Lease Amendment No. 2 dated July 24, 1997 by and between the Registrant and Airport Associates
10.29B	Lease Amendment No. 3 dated July 24, 1997 by and between the Registrant and Airport Associates
27.1	Financial Data Schedule

EXHIBIT 10.29A

LEASE AMENDMENT NO. 2

THIS LEASE AMENDMENT NO. 2 (this "Amendment") is made as of the 24th day of July, 1997, by and between AIRPORT ASSOCIATES, a New Jersey general partnership ("Landlord"), and VIVUS, INC., a Delaware corporation ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant are parties to a certain Lease dated as of January 1, 1997 (the "Original Lease"), as amended by Lease Amendment No. 1 dated as of February 15, 1997 (the "First Amendment") (the Original Lease, as amended by the First Amendment, is hereinafter referred to as the "Lease"), pursuant to which Landlord demised and leased to Tenant, and Tenant hired and took from Landlord, certain premises located at 735 Airport Road and 745 Airport Road, Lakewood, New Jersey, as further described in the Lease; and

WHEREAS, the initially capitalized terms used, but not defined, in this Amendment shall have the same meaning as the terms defined in the Lease, directly or by cross-reference, unless the context requires otherwise; and

WHEREAS, Tenant desires to lease from Landlord certain premises known as Unit 5-B located at 725 Airport Road, Lakewood, New Jersey comprised of 6,000 square feet of space (the "725 Premises") for a period commencing as of the date hereof and terminating at 11:59 p.m. on January 31, 1998 (the "725 Term"), upon the terms and conditions set forth in this Amendment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, Landlord and Tenant agree as follows:

1. Landlord demises and leases unto Tenant, and Tenant hires and takes from Landlord, the 725 Premises for the 725 Term. This demise by Landlord to Tenant of the 725 Premises shall be upon all the terms, covenants and conditions set forth in the Lease applicable to the 735 Premises and the 745 Premises, except as amended by this Amendment. Tenant covenants and agrees that it will accept the 725 Premises in their existing "as is" state or condition as of the commencement date of the 725 Term and without any representation or warranty, expressed or implied, in fact or by law, by Landlord or its agents and without recourse to Landlord or its agents as to the nature, condition and usability thereof, the title thereto, or the use or occupancy which may be made thereof, except as specifically provided in the Lease, as amended by this Amendment; provided, however, that Landlord shall be required to deliver possession of the 725 Premises to Tenant in a neat and sanitary condition, free of debris.

2. Notwithstanding anything to the contrary contained in the Lease, Tenant shall have no right or option to renew or extend the 725 Term beyond January 31, 1998, on which date Tenant shall vacate the 725 Premises and surrender same to Landlord in the manner set forth in

the Lease as if such date were the date set forth in the Lease for the expiration of the term of the Lease; provided, however, that (i) notwithstanding anything to the contrary set forth in Section 18 of the Lease in no event will Tenant be obligated to repair any defects in the 725 Premises existing on the date of delivery of the 725 Premises to Tenant or to surrender possession of the 725 Premises to Landlord in a better condition than that in which the 725 Premises was received by Tenant on the date of such delivery, and (ii) the provisions of Sections 30.3, 30.4 and 30.6 shall be inapplicable to Tenant's use and occupancy of the 725 Premises. The provisions of Section 32 of the Lease shall be inapplicable to Tenant's use and occupancy of the 725 Premises.

3. Tenant shall pay to Landlord, in the manner provided in the Lease, basic annual rental with respect to the 725 Premises at the rate of $4,000.00 per month, on the first (1st) day of each month during the 725 Term (which amount shall be prorated to reflect any partial month at the commencement or termination of the 725 Term).

4. For purposes of this Amendment, "Tenant's Proportionate Share" is the ratio, expressed as a percentage, of the number of square feet comprising of the 725 Premises (6,000) to the total number of square feet in the building (the "725 Building") located at 725 Airport Road, Lakewood, New Jersey (51,000), that is to say twelve (12%) percent. Tenant shall pay to Landlord not more frequently than monthly, and within fifteen (15) days after Tenant's receipt of a written invoice from Landlord, which invoice shall include backup documentation reasonably supporting the payment request, Tenant's Proportionate Share of the following expenses attributable to the 725 Premises for the 725 Term: those costs and expenses set forth in Sections 2.4, 2.6 and 5.1 of the Lease. The provisions of Section 2.8 shall be inapplicable to Tenant's use and occupancy of the 725 Premises.

5. Subject to Section 3.2 of the Lease, the 725 Premises may be used only for warehouse, quality assurance functions and administrative office purposes. Notwithstanding anything to the contrary contained in Section 3.3 of the Lease, Tenant shall not be required to comply with or cause the 725 Premises or 725 Building to comply with any laws, rules or regulations, except to the extent that compliance with any of the foregoing is necessitated due to Tenant's unique and particular use of the Premises

6. Notwithstanding anything to the contrary set forth in Section 8.1 of the Lease, Tenant's right of occupancy to the 725 Premises shall be subject to all mortgages now or hereafter affecting the 725 Premises, to each and every advance made or hereafter to be made under such mortgages, and to all renewals, modifications, consolidations, replacements and extensions of such mortgages irrespective of the dates of recording thereof, and Landlord shall not be required to obtain an additional Non-Disturbance Agreement in connection with Tenant's occupancy of the 725 Premises.

7. Notwithstanding anything to the contrary contained in Section 9.1 of the Lease, (i) Landlord shall be responsible for repairs to the roof, exterior walls, steel structures and

sprinkler system of the 725 Building, and the common areas within the 725 Building and areas outside of the 725 Building, and (ii) Tenant shall not be responsible for repairing, replacing or maintaining the heating, ventilating, air conditioning, electrical, water, sewer, plumbing and any other building system serving the Premises unless any repair described in clauses (i) or (ii) above is occasioned by the act or omission of Tenant, its agents, employees, guests, licensees, invitees, subtenants, assignees, successors or independent contractors, in which event Tenant shall be responsible for such repair, subject, however, to the waiver of subrogation provisions as set forth in Section 5.6 of the Lease.

8. Notwithstanding anything to the contrary contained in the Lease, Tenant shall not be permitted to make any Alterations in or to the 725 Premises.

9. Notwithstanding anything to the contrary contained in Section 11 of the Lease, Tenant shall not be permitted to assign, mortgage, pledge or encumber the Lease, as amended by this Amendment, in whole or in part, to the extent applicable to the 725 Premises, or sublet the 725 Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others, or enter into any management contract or other arrangement whereby the 725 Premises shall be managed or operated by anyone other than the then owner of Tenant's leasehold estate, nor shall the Lease, as amended by this Amendment, to the extent applicable to the 725 Premises, be assigned or transferred by operation of law.

10. Landlord and Tenant warrant and represent to each other that they have no dealings with any real estate broker or like agent in connection with the negotiation and execution of this Amendment, and that each knows of no other real estate broker or like agent who is or might be entitled to a commission in connection with this Amendment. Each party shall indemnify, defend and hold the other party harmless from any breach of the foregoing representation and warranty and/or a claim for a brokerage commission or similar fee by any party claiming to have represented or dealt with the indemnifying party in connection with the negotiation and execution of this Amendment.

11. In the event of any inconsistency between this Amendment and the Lease, the terms of this Amendment shall prevail. Except as otherwise provided herein, the Lease is hereby ratified and shall remain in full force and effect. Landlord and Tenant each represent to the other that, to the best of its knowledge, neither party is in default of its obligations under the Lease as of the effective date of this Amendment. This Amendment shall become effective and binding upon the parties as of the date both Landlord and Tenant have executed this Amendment.

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

	LANDLORD
WITNESS:	AIRPORT ASSOCIATES
/s/ June Langbein - ---------- Name: June Langbein	By: /s/ Edmond Bennett, Jr. ---------- Edmond Bennett, Jr., Partner
	TENANT
ATTEST:	VIVUS, INC.
/s/ Marnia Brownell - ---------- Name: Marnia Brownell Title: Corporate Counsel	By: /s/ David C. Yntema ---------- Name: David C. Yntema Title: CFO

EXHIBIT 10.29B

LEASE AMENDMENT NO. 3

THIS LEASE AMENDMENT NO. 3 (this "Amendment") is dated July 24, 1997, for reference purposes only, and is made by and between AIRPORT ASSOCIATES, a New Jersey general partnership ("Landlord"), and VIVUS, INC., a Delaware corporation ("Tenant"). Terms which are capitalized in this Amendment and not defined herein shall have the meanings ascribed to them in the Lease (as defined below).

WITNESSETH

WHEREAS, Landlord and Tenant are parties to a certain Lease dated as of January 1, 1997 (the "Original Lease"), as amended by Lease Amendment No. 1 dated as of February 15, 1997 (the "First Amendment") and Lease Amendment No. 2 of even date herewith (the "Second Amendment) (the Original Lease, as amended by the First Amendment and Second Amendment, is hereinafter referred to as the "Lease"), pursuant to which Landlord demised and leased to Tenant, and Tenant hired and took from Landlord, certain premises located in Lakewood, New Jersey, at 725 Airport Road (the "725 Premises"), 735 Airport Road (the "735 Premises"), and 745 Airport Road (the "745 Premises") (the 735 Premises and 745 Premises are sometimes herein referred to collectively as the "Premises"), as further described in the Lease;

WHEREAS, on or about February 10, 1997, Tenant's contractor, Marshall Contractors, Inc. (the "Contractor"), commenced construction of certain interior improvements to the Premises (the "Tenant Improvements"); and

WHEREAS, Landlord and Tenant desire to enter into this amendment to ratify and confirm that the construction of the Tenant Improvements does not require Landlord's consent, to amend various provisions of the Lease with respect to the construction and removal of the Tenant Improvements and other Alterations made to the Premises by Tenant, and to make certain other amendments to the Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, Landlord and Tenant agree as follows:

1. Tenant Improvements. Landlord hereby ratifies and confirms that the construction of the Tenant Improvements does not require Landlord's consent and that, notwithstanding anything to the contrary set forth in the Lease, Tenant shall not be required to furnish a performance and completion bond in connection with such construction. The foregoing shall not constitute a waiver by Landlord of Landlord's rights or Tenant's obligations in connection with (i) the other provisions of the Lease governing the construction of the Tenant Improvements, (ii) Landlord's approval of any future exterior Alterations to the Premises by Tenant, or (iii) the furnishing of a performance and completion bond by Tenant in connection with any future Alterations made to the Premises by Tenant.

2. Amendment of the Lease. Notwithstanding anything to the contrary contained in the Lease, the Lease is modified as follows:

A. Section 9.3 is replaced with the following:

"9.3 Tenant shall have the right to make, at its sole cost and expense, additions, alterations and changes (collectively, "Alterations") in or to the buildings located on the 735 Premises and 745 Premises (Tenant shall have no right to make Alterations to the 725 Premises), provided that Tenant shall not then be in default in the performance of any of the covenants in this Lease beyond any applicable notice or grace period, subject, however, in all cases to the following:"

B. Section 9.3.1 is replaced with the following:

"9.3.1 No exterior Alterations (including, without limitation, any passageway connecting the buildings located on the 735 Premises and 745 Premises) shall be commenced except after thirty (30) days' prior written notice to Landlord, which notice shall include reasonably detailed final plans and working drawings of the proposed Alterations and the name of the contractor."

C. Section 9.3.2 is replaced with the following:

"9.3.2 No exterior Alterations (including, without limitation, any passageway connecting the buildings located on the 735 Premises and 745 Premises) shall be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed."

D. The following provisions are added to Section 9.3 of the Lease:

"9.3.7 As soon as reasonably practicable after the completion of any Alterations (interior or exterior), but not later than sixty (60) days after the final completion of any such Alterations, Tenant shall deliver to Landlord copies of detailed "as built" plans and specifications covering such Alterations, and all applicable permits and governmental authorizations (including, without limitation, certificates of occupancy), if any, issued in connection with such Alterations.

9.3.8 In connection with the construction of the Tenant Improvements and any other future Alterations (interior or exterior) made by Tenant to either of the buildings located on the Premises, Landlord may, at its option, require Tenant to provide additional security in connection with the removal of such Alterations and restoration of such buildings (the "Removal Security"). Landlord must give Tenant written notice of Landlord's exercise (the "Removal Notice") within thirty (30) days after Landlord's receipt of "as built" plans for the Alterations in question. Landlord's failure to give Tenant a Removal Notice prior to the expiration of the foregoing time period shall constitute Landlord's election not to require such Removal Security from Tenant in connection with the Alterations in question. The amount of the Removal Security shall be the sum of the amount reasonably expected to be the cost of the following (collectively, the "Restoration

Cost"): (i) removing the Alterations in question, (ii) repairing any damage caused by such removal, and (iii) restoring the portion of the Premises in question to substantially its condition immediately preceding the construction of such Alterations. As more fully described in Section 9.3.8.1 below, Tenant shall have the option of depositing either cash or a letter of credit, or a combination of both, as its Removal Security. Each Removal Notice shall include Landlord's estimate of the applicable Restoration Cost. For a period of thirty (30) days following Landlord's delivery of a Removal Notice to Tenant, Landlord and Tenant shall use reasonable good faith efforts to reach agreement on the amount of the Removal Cost. If Landlord and Tenant have not mutually agreed upon the Removal Cost in writing within thirty (30) days after Landlord's delivery of the Removal Notice to Tenant, then each party shall place in a separate sealed envelope their final proposal as to the Removal Cost. Landlord and Tenant shall meet with each other within five (5) business days after the expiration of such 30-day period and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Removal Cost in writing within five (5) business days after the exchange and opening of envelopes, then the determination of the Removal Cost shall be submitted to arbitration in accordance with Section 9.3.8.2 below.

9.3.8.1 Tenant shall have the option of submitting as its Removal Security either cash or a letter of credit, or a combination of both, provided that the total amount of the Removal Security submitted to Landlord equals the applicable Removal Cost. Any cash Removal Security submitted by Tenant shall be placed in an interest-bearing account with a bank or other financial institution approved in writing by Tenant, which approval Tenant shall not unreasonably withhold or delay, and all interest earned thereon shall accrue for the benefit of Tenant and shall be due and payable by Landlord to Tenant within thirty (30) days after each annual anniversary of the Commencement Date of the Lease. Notwithstanding the foregoing, Landlord shall have no obligation to pay any such accrued interest to Tenant during the pendency of any default by Tenant under the Lease, provided that written notice of such default has been given by Landlord to Tenant. Any Removal Security submitted by Tenant if the form of a letter of credit shall (i) be a stand-by, irrevocable letter of credit issued by a bank or other financial institution reasonably acceptable to Landlord (the "Issuer"), (ii) be payable to Landlord; (iii) require that any draw on the letter of credit shall be made only upon receipt by the Issuer of a written certification from Landlord certifying tha t Tenant has failed to perform its removal and restoration obligations under the Lease with respect to Alterations to the Premises made by Tenant and the cash security held by Landlord is not sufficient to cover the damages likely to be incurred by Landlord as a result of such failure, and further certifying that the amount drawn on the letter of credit is the net amount due Landlord on account of Tenant's failure to perform its removal and restoration obligations after application by Landlord of any cash security deposit or cash Removal Security held by Landlord; (v) not expire prior to one year or longer after the date of its issuance; and (vi) provide that it is governed by the Uniform Customs and Practice for Documentary Credits (1993 revisions), International Chamber of Commerce Publication No. 500. On or before the fourteenth (14th) day prior to the expiration of the Removal Security letter of credit, Tenant shall either deliver to Landlord cash Removal Security in the amount of such letter of credit, which amount shall be held by Landlord in accordance with the provisions of this Section 9.3.8.1, or shall cause the Issuer to issue and deliver to Landlord a letter of credit to replace the expiring letter to credit ("Replacement Letter of Credit"); provided, however, that if Tenant does not

provide either cash Removal Security or a Replacement Letter of Credit in substitution for the full amount of such Removal Security letter of credit on or before the fourteenth (14th) day prior to the expiration of the Removal Security letter of credit, then Landlord may draw down the full amount of the expiring letter of credit and hold such funds as cash Removal Security until such time as Tenant provides Landlord with a Replacement Letter of Credit. The Replacement Letter of Credit shall be in the same amount as the expiring letter of credit less any cash Removal Security submitted by Tenant in substitution thereof, and shall be on the terms and conditions set forth in clauses (i) through (vi) above of this Section 9.3.8.1. In the event Landlord transfers its interest in this Lease, at Landlord's request and at Landlord's cost (not to exceed Five Hundred Dollars ($500) in any one instance) a new Restoration Security letter of credit shall be issued to the transferee of the Landlord (the "Transferee") on the same terms and conditions as any existing letter of credit, except that the new letter of credit shall be payable to the Transferee. Landlord shall surrender the existing letter of credit to Tenant simultaneously with Tenant's delivery of the new letter of credit to the Transferee. Additionally, Landlord shall transfer any cash Restoration Security held by Landlord to the Transferee. Upon the expiration or earlier termination of this Lease, Landlord shall promptly return the full amount of the Removal Security, including all accrued interest on any Removal Security submitted in cash by Tenant, less any amount applied by Landlord to cure any default by Tenant of Tenant's obligations hereunder regarding the removal and restoration of Alterations made by Tenant. In connection with any such default by Tenant, Landlord shall first apply any cash security deposit (provided such cash security deposit is not required to cure any other default by Tenant) or cash Removal Security (including accrued interest) held by Landlord before drawing on any letter of credit submitted as Removal Security.

9.3.8.2 The procedures for arbitrating the determination of Removal Cost shall be as follows: (i) within ten (10) business days after the exchange and opening of envelopes containing each parties' final proposal as to the Removal Cost, Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall have at least twenty (20) years experience in the construction of commercial warehouse, assembly and manufacturing buildings in the Ocean County, New Jersey area. If Landlord and Tenant fail to agree upon and appoint an arbitrator within such 10 business day period, then the appointment of the arbitrator shall be made by the presiding judge of the Superior Court of the State of New Jersey, Ocean County (the "Court"), and neither Landlord nor Tenant shall raise any objection as to the Court's full power and jurisdiction to entertain the application and make the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Removal Cost is the closest to the actual Removal Cost of the Alterations as determined by the arbitrator. Such arbitrator may hold a hearing and require submission of such further information as the arbitrator, in his or her sole discretion, determines to be necessary. The arbitrator shall, within thirty (30) days after his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Removal Cost, and shall notify Landlord and Tenant of such determination in writing. Within fifteen (15) days after the arbitrator's determination of Removal Cost is received by Tenant, Tenant shall submit to Landlord Removal Security in the amount of such Removal Cost. The determination by the arbitrator shall be binding upon Landlord and Tenant. The cost of arbitration shall be paid by Landlord and Tenant equally.

9.3.8.3 Notwithstanding anything to the contrary contained herein, (i) Tenant shall not be allowed to draw against the Removal Security to pay for Tenant's Removal Costs, and (ii) the Removal Security shall not be deemed to limit Tenant's liability in connection with any default by Tenant of Tenant's obligations under Section 18 to remove Alterations upon the expiration or earlier termination of this Lease, repair any damage caused by such removal, and restore the Premises to substantially its condition immediately prior to the construction of such Alterations, reasonable use, wear and tear, casualty and condemnation damage, and hazardous substances (as defined herein) for which Tenant is not responsible excepted."

E. Section 9.4 of the Lease is hereby amended to delete the second (2nd) sentence thereof in its entirety.

F. Exhibits B and C of the Lease are hereby deleted in their entirety.

G. Section 12.1.1 of the Lease is hereby amended to insert after the word "thereof" in line 2, the following: "...(including, without limitation, any Alteration made by Tenant)..."

3. Effect of Amendment: In the event of any inconsistency between this Third Amendment and the Lease, the terms of this Third Amendment shall prevail. Except as otherwise provided herein, the Lease is hereby ratified and shall remain in full force and effect. Landlord and Tenant each represent to the other that to the best of its knowledge that neither party is in default of its obligations under the Lease as of the effective date of this Third Amendment. This Third Amendment shall become effective and binding upon the parties as of the date both Landlord and Tenant have executed this Third Amendment.

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

LANDLORD

AIRPORT ASSOCIATES
a New Jersey general partnership

/s/ June Langbein
- ---------------------------------
Witness

By: /s/ Edmund Bennett, Jr.

Edmund Bennett, Jr., Partner

/s/ June Langbein
- ---------------------------------
Witness

By: /s/ Ronald Bennett, Jr.

Ronald Bennett, Jr., Partner

TENANT

ATTEST:

VIVUS, INC.,
a Delaware corporation

/s/ Marnia Brownell
- ----------
Print Name: Marnia Brownell
Title: Corporate Counsel

By: /s/ David C. Yntema

Print Name: David C. Yntema
Title: CFO

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