CYTRX CORP
Form S-4/A
August 07, 2008

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As filed with the Securities and Exchange Commission on August 7, 2008

Reg. No. 333-152309

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 1
to
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

CYTRX CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**58-1642750**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

CytRx Corporation
11726 San Vicente Boulevard, Suite 650
Los Angeles, California 90049
(Address, including zip code, and telephone number, including area code, of Registrant s principal executive offices)

Steven A. Kriegsman
President and Chief Executive Officer
CytRx Corporation
11726 San Vicente Boulevard., Suite 650
Los Angeles, California 90049
(310) 826-5648
(Name, address, including zip code, and telephone number, including area code, of agent for service)
With copies to:

Benjamin S. Levin, Esq.	**Dale E. Short, Esq.**	**Alexander M. Donaldson, Esq.**
CytRx Corporation	**TroyGould PC**	**Wyrick Robbins Yates & Ponton LLP**
11726 San Vicente Boulevard, Suite 650	**1801 Century Park East, Suite 1600**	**4101 Lake Boone Trail, Suite 300**
Los Angeles, California 90049	**Los Angeles, California 90067**	**Raleigh, North Carolina 27607**
Fax: (310) 826-6139	**Fax: (310) 201-4746**	**Fax: (919) 781-4865**

Approximate date of commencement of proposed sale to public: As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed proxy statement/prospectus.

If the securities being registered on this form are to be offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. o

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

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

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

Large accelerated filer o	Accelerated filer þ	Non-accelerated filer o	Smaller reporting company o
		(Do not check if a smaller reporting company)	

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Dear Stockholders:

We cordially invite you to attend a special meeting of stockholders of Innovive Pharmaceuticals, Inc., a Delaware corporation, at our offices located at 555 Madison Avenue, 25th Floor, New York, New York, on September 19, 2008, at 10:00 a.m., local time.

At the special meeting, we will ask you to consider and vote upon a proposal to approve an Agreement and Plan of Merger, dated as of June 6, 2008, pursuant to which CytRx Corporation, a Delaware corporation, has agreed to acquire Innovive as a wholly owned subsidiary. The acquisition will be effected by the merger of Innovive with CytRx Merger Subsidiary, Inc., with Innovive as the surviving corporation. CytRx Merger Subsidiary, Inc. was formed by CytRx solely for purposes of entering into the merger agreement and completing the transactions contemplated by the merger agreement.

A copy of the merger agreement is attached as Appendix A to the accompanying proxy statement/prospectus. Pursuant to the terms of the merger agreement, Merger Subsidiary will merge with and into Innovive with Innovive to be the surviving corporation in the merger. As a result of the merger, Innovive will become a wholly owned subsidiary of CytRx and will change its corporate name to CytRx Oncology Corporation. Shares of Innovive common stock will no longer be publicly traded after the merger.

In the merger, CytRx will pay initial merger consideration of $3,000,000 in the form of shares of CytRx common stock valued at $0.94 per share, which equals the average daily volume-weighted closing price of CytRx common stock as reported on The Nasdaq Capital Market over the 10 trading days prior to the signing of the merger agreement. CytRx also will pay future earnout merger consideration of up to $18,253,462, subject to the achievement of specified net sales under Innovive s existing license agreements. Subject to specified conditions, any earnout merger consideration will be payable in shares of CytRx common stock or, at CytRx s election, in cash, or by a combination of shares of CytRx common stock and cash. CytRx common stock will be valued for purposes of any earnout merger consideration based upon the average of the daily market price during the 10-trading day period ending on the second trading day prior to payment of the earnout merger consideration. If Innovive s stockholders approve the merger agreement and the merger is completed, all of the outstanding shares of Innovive common stock immediately prior to the effective time of the merger (other than shares held by Innovive, CytRx and Merger Subsidiary and by Innovive stockholders, if any, who properly exercise their rights as dissenting stockholders under Delaware law) will be converted into the right to receive an allocable portion of the merger consideration based upon the fully diluted shares of Innovive at the effective time of the merger.

After careful consideration, Innovive s board of directors, by a unanimous vote of the directors, has determined that the merger agreement is advisable, fair to, and in the best interests of the stockholders of Innovive, has approved and authorized in all respects the merger agreement, and recommends that you vote FOR the approval of the merger agreement.

The accompanying proxy statement/prospectus provides you with detailed information about the proposed merger and the special meeting. Please give this material your careful attention. You may also obtain more information about Innovive and CytRx from documents filed with the Securities and Exchange Commission. We encourage you to obtain current market quotations for CytRx common stock, which is traded on The Nasdaq Capital Market under the symbol CYTR.

We would like you to attend the special meeting. HOWEVER, WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, IT IS IMPORTANT THAT YOUR SHARES BE REPRESENTED. Accordingly, please sign, date, and return the enclosed proxy card in the postage-paid envelope or submit your proxy by the Internet prior to the special meeting. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. If your shares are held in street name, you must instruct your broker in order to vote. Remember, failing to vote has the same effect as a vote against the approval of the merger agreement.

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We look forward to seeing you on September 19, 2008.

Sincerely,

Steven Kelly
President and Chief Executive Officer

See Risk Factors on page 11 for a discussion of important factors that you should consider before you return your proxy or vote at the special meeting.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the merger or of the securities to be issued in connection with the merger or determined if this proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated August ___, 2008 and is first being mailed to Innovive stockholders on or about August ___, 2008.

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INNOVIVE PHARMACEUTICALS, INC.
555 Madison Avenue, 25th Floor
New York, New York 10022
NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
To Be Held on September 19, 2008

To our Stockholders:

Notice is hereby given that a special meeting of stockholders of Innovive Pharmaceuticals, Inc., a Delaware corporation, will be held on September 19, 2008, at 10:00 a.m., local time, at our offices located at 555 Madison Avenue, 25th Floor, New York, New York, in order to:

(1) Consider and vote upon a proposal to approve the Agreement and Plan of Merger, dated as of June 6, 2008, among Innovive, CytRx Corporation, a Delaware corporation, CytRx Merger Subsidiary, Inc., a Delaware corporation and a wholly owned subsidiary of CytRx, which we refer to as Merger Subsidiary, and Steven Kelly, as stockholder representative. A copy of the merger agreement is attached as Appendix A to the accompanying proxy statement/prospectus. Pursuant to the terms of the merger agreement, Merger Subsidiary will merge with and into Innovive, with Innovive to be the surviving corporation in the merger. As a result of the merger, Innovive will become a wholly owned subsidiary of CytRx and will change its corporate name to CytRx Oncology Corporation. Shares of Innovive common stock will no longer be publicly traded after the merger.

In the merger, CytRx will pay initial merger consideration of $3,000,000 in the form of shares of CytRx common stock valued at $0.94 per share, which equals the average daily volume-weighted closing price of CytRx common stock as reported on The Nasdaq Capital Market over the 10 trading days prior to the signing of the merger agreement. CytRx also will pay future earnout merger consideration of up to $18,253,462, subject to the achievement of specified net sales under Innovive s existing license agreements. Subject to specified conditions, any earnout merger consideration will be payable in shares of CytRx common stock or, at CytRx s election, in cash, or by a combination of shares of CytRx common stock and cash. CytRx common stock will be valued for purposes of any earnout merger consideration based upon the average of the daily market price during the 10-trading day period ending on the second trading day prior to payment of the earnout merger consideration. If Innovive s stockholders approve the merger agreement and the merger is completed, all of the outstanding shares of Innovive common stock immediately prior to the effective time of the merger (other than those shares held by Innovive, CytRx and Merger Subsidiary and by Innovive stockholders, if any, who properly exercise their rights as dissenting stockholders under Delaware law) will be converted into the right to receive an allocable portion of the merger consideration based upon the fully-diluted shares of Innovive at the effective time of the merger; and

(2) Approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the merger agreement; and

(3) Transact such other business that may properly come before the special meeting or any adjournment or postponement of the special meeting.

Only stockholders of record of our common stock at the close of business on July 31, 2008 are entitled to notice of and to vote at the special meeting and at any adjournment or postponement of the special meeting. All stockholders of record are cordially invited to attend the special meeting in person.

The approval of the merger agreement requires the approval of the holders of a majority of the outstanding shares of Innovive common stock entitled to vote, with each share having a single vote for this purpose. Directors and officers of Innovive and their affiliates who own beneficially an aggregate of approximately 22% of the shares of Innovive common stock entitled to vote at the special meeting have agreed to vote all shares that they control in favor of the merger agreement.

Whether or not you plan to attend the special meeting, we urge you to vote your shares by completing, signing, dating, and returning the proxy card as promptly as possible in the postage-paid envelope and thus ensure that your shares will be

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represented at the special meeting if you are unable to attend. If you sign, date, and mail your proxy card without indicating how you wish to vote, your proxy will be voted in favor of the approval of the merger agreement. If you fail to return your proxy card or fail to submit your proxy by the Internet and do not vote in person at the special meeting, it will have the same effect as a vote against the approval of the merger agreement. Any stockholder attending the special meeting may vote in person even if he or she has returned a proxy card; such vote by ballot will revoke any proxy previously submitted. If, however, you hold your shares through a bank or broker or other custodian, you must obtain a legal proxy issued from such custodian in order to vote your shares in person at the special meeting.

Each Innovive stockholder who does not vote in favor of the approval of the merger agreement will have the right to require Innovive to purchase his or her shares, in cash, for the fair value of the shares, but only if (i) the merger is completed and (ii) the stockholder complies with the requirements of Delaware law for the exercise of dissenters rights that are summarized in the accompanying proxy statement/prospectus. The completion of the merger is subject to the condition, among others, that the holders of not more than 5% of Innovive s common stock properly exercise their rights as dissenting stockholders.

By Order of the Board of Directors

Eric Poma, Ph.D.
Corporate Secretary

August ___, 2008

Please do not send your stock certificates at this time. If the merger is completed, the disbursing agent will provide you with instructions regarding the surrender of your stock certificates

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers address briefly some questions you may have regarding the special meeting and the proposed merger. These questions and answers may not address all questions that may be important to you. Please refer to the more detailed information contained elsewhere in this proxy statement/prospectus, the appendices to this proxy statement/prospectus, and the documents referred to in this proxy statement/prospectus. References in this proxy statement/prospectus to ***you*** *refer to Innovive stockholders and references to* ***we***, ***us***, *or* ***our*** *mean Innovive. References in this proxy statement/prospectus to* ***CytRx*** *mean CytRx before the merger, or CytRx and its subsidiaries, including Innovive, after the merger, as the context requires.*

Q: What is the proposed transaction?

A: We are proposing that Innovive be acquired by CytRx pursuant to the merger agreement. If the merger agreement is approved by Innovive s stockholders and the other closing conditions under the merger agreement have been satisfied or waived, Merger Subsidiary, a wholly owned subsidiary of CytRx, will merge with and into Innovive, with Innovive to be the surviving corporation in the merger. As a result of the merger, Innovive will become a wholly owned subsidiary of CytRx and will change its corporate name to CytRx Oncology Corporation. Shares of Innovive s common stock will no longer be publicly traded after the merger.

Q: What is the consideration payable in the merger?

A: In the merger, CytRx will pay initial merger consideration of $3,000,000 in the form of shares of CytRx common stock valued at $0.94 per share, which equals the average daily volume-weighted closing price of CytRx common stock as reported on The Nasdaq Capital Market over the 10 trading days prior to the signing of the merger agreement. CytRx also will pay future earnout merger consideration of up to $18,253,462, subject to the achievement of specified net sales under Innovive s existing license agreements, as follows:

Net Sales	Earnout Merger Consideration
$ 2,000,000	$2,000,000
$15,000,000	$5,000,000
$30,000,000	$5,000,000
$40,000,000	$6,253,462

Subject to specified conditions, any earnout merger consideration will be payable in shares of CytRx common stock or, at CytRx s election, in cash, or by a combination of shares of CytRx common stock and cash. CytRx common stock will be valued for purposes of any earnout merger consideration based upon the average of the daily market price during the 10-trading day period ending on the second trading day prior to payment of the earnout merger consideration.

Q: What is my share of the merger consideration?

A: In the merger, you will be entitled to receive for each share of Innovive common stock you hold immediately prior to the effective time of the merger an amount equal to the quotient determined by dividing the sum of the initial merger consideration and the earnout merger consideration (to the extent the earnout merger consideration becomes payable) by the fully diluted shares immediately prior to the effective time of the merger. For purposes of the merger agreement, **fully diluted shares** means the sum of all issued and outstanding shares (including any dissenting shares) of Innovive common stock and all shares of Innovive common stock issuable upon the exercise, in full,

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of all outstanding Innovive warrants that, by their terms, will remain outstanding following the merger. As of the date of this proxy statement/prospectus, there were 19,382,913 fully diluted shares. This does not include the option for 2,000,000 shares that we granted to CytRx pursuant to the loan and security agreement as described under Ancillary Agreements Loan and Security Agreement. The initial merger consideration and any earnout merger consideration paid or payable for each share of Innovive common stock are sometimes collectively referred to in this proxy statement/prospectus as the **merger consideration**. Your right to receive any earnout merger consideration will not be transferable, except by operation of law. No fractional shares of CytRx common stock will be issued in the merger. In lieu of any fractional share, you will receive cash equal to the value in the merger of such fractional share, less any applicable withholding.

Q: What is this document?

A. This document constitutes a proxy statement and a notice of meeting with respect to the special meeting of Innovive stockholders at which you will be asked to consider and vote on the proposal to approve the merger agreement. This document also constitutes a prospectus of CytRx with respect to the shares of CytRx common stock to be issued to you pursuant to the merger agreement.

Q: Where and when is the special meeting?

A: The special meeting will be held at 10:00 a.m., local time, on September 19, 2008, at our offices located at 555 Madison Avenue, 25th Floor, New York, New York.

Q: Are all Innovive stockholders as of the record date entitled to vote at the special meeting?

A: Yes. All stockholders who own Innovive common stock at the close of business on July 31, 2008, the record date for the special meeting, are entitled to receive notice of the special meeting and to vote the shares of Innovive common stock that they held on that date at the special meeting, or at any adjournments or postponements of the special meeting.

Q: Are all Innovive stockholders as of the record date entitled to attend the special meeting?

A: Yes. Innovive stockholders as of the record date, or their legally authorized proxies named in the proxy card, may attend the special meeting. Seating, however, is limited. Cameras, recording devices, and other electronic devices will not be permitted at the meeting. If your shares are held in the name of a broker, trust, bank, or other nominee, you should bring a proxy or letter from the broker, trustee, bank, or nominee confirming your beneficial ownership of the shares.

Q: What vote of Innovive s stockholders is required to approve the merger agreement?

A: For us to complete the merger, stockholders holding a majority of the outstanding shares of Innovive common stock at the close of business on the record date must vote **FOR** the approval of the merger agreement, with each share having a single vote for these purposes. Accordingly, failure to vote or abstaining from voting will have the same effect as a vote against the merger agreement.

Q. How do the Innovive insiders intend to vote their shares?

Steven Kelly, Neil Herskowitz, J. Jay Lobell and Eric Poma, M.D., each of whom is a director or officer of Innovive, and their affiliates, Lindsay A. Rosenwald, M.D., and Lester Lipshutz, as investment manager or trustee

of trusts established for the benefit of Dr. Rosenwald and his family, along with Angelo De Caro, who recently resigned as a director, have agreed pursuant to support agreements that they have entered into with CytRx and Merger Subsidiary to vote all Innovive shares that they control in favor of the merger agreement. These directors and officers and their affiliates own beneficially an aggregate of approximately 22% of the shares of common stock entitled to vote at

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the special meeting. To facilitate the support agreements, these beneficial owners also granted CytRx proxies to vote their shares with respect to the merger and the merger agreement.

Q: Does our board of directors recommend that our stockholders vote FOR the approval of the merger agreement?

A: Yes. After careful consideration, the board of directors, by a unanimous vote of the directors, recommends that you vote **FOR** the approval of the merger agreement. You should read The Merger Innovive s Reasons for the Merger beginning on page 43 of this proxy statement/prospectus for a discussion of the factors that our board of directors considered in deciding to recommend the approval of the merger agreement.

In considering the recommendation of the board of directors with respect to the merger agreement, you should be aware that some of Innovive s directors and executive officers who participated in meetings of the board of directors have interests in the merger that are different from, or in addition to, the interests of our stockholders generally. See The Merger Interests of Certain Persons in the Merger beginning on page 47.

Q: What do I need to do now?

A: We urge you to read this proxy statement/prospectus carefully, including its appendices, and to consider how the merger affects you. If you are a stockholder as of the record date, then you can ensure that your shares are voted at the special meeting by completing, signing, dating, and returning each proxy card in the postage-paid envelope provided or submitting your proxy by the Internet prior to the special meeting.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: Your broker will vote your shares on your behalf only if you provide instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without those instructions, your shares will not be voted, which will have the same effect as voting against the merger.

Q: How do I change or revoke my vote?

A: You can change your vote at any time before your proxy is voted at the special meeting. You may revoke your proxy prior to the special meeting by notifying us in writing or by submitting a later-dated new proxy by the Internet or by mail to Innovive Pharmaceuticals, Inc., 555 Madison Avenue, 25th Floor, New York, New York 10022, Attention: Corporate Secretary. You also may revoke your proxy by attending the special meeting and voting in person. Simply attending the special meeting, however, will not be sufficient to revoke your proxy. If you have instructed a broker to vote your shares, these options for changing your vote do not apply, and instead you must follow the instructions received from your broker to change your vote.

Q: What does it mean if I get more than one proxy card or vote instruction card?

A: If your shares are registered differently and are in more than one account, you will receive more than one proxy card. Please sign, date, and return all of the proxy cards you receive (or submit your proxy by the Internet) to ensure that all of your shares are voted.

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Q: When do you expect the merger to be completed?

A: We are working toward completing the merger as quickly as possible, and we anticipate that it will be completed in September 2008, assuming satisfaction or waiver of all of the conditions to the merger described under The Merger Agreement Conditions to the Merger beginning on page 70 of this proxy statement/prospectus. However, because the merger is subject to certain conditions, the exact timing of the completion of the merger and the likelihood of the consummation of the merger cannot be predicted with certainty. If any of the conditions in the merger agreement is not satisfied, the merger agreement may terminate as a result.

Q. Are there risks associated with the merger?

A. Yes. The merger involves risks, including the following:

the merger is subject to a number of conditions, and there is no assurance that the merger will be completed;

the expected benefits of the merger to the combined company are subject to post-merger challenges, including maintaining the listing of CytRx common stock on The Nasdaq Capital Market to promote liquidity for stockholders of the combined company and potentially greater access to capital and using the assets and resources of the combined company to successfully develop the existing product candidates of the combined company, and these and benefits may not be realized;

if the costs associated with the merger exceed the benefits, the combined company may experience adverse financial results, including increased losses;

CytRx expects to continue to incur operating losses, and the combined company will need to raise additional funds to cover the cost of operating or it may have to reduce or stop operations;

the merger agreement limits our ability to pursue alternatives to the merger, and CytRx will be entitled to exercise its option to purchase Innovive common stock if we do so, which would be materially dilutive to our stockholders;

the support agreements may deter competing bids;

because the market price of CytRx common stock may fluctuate, you cannot be sure of the market value of CytRx common stock that you will receive in the merger;

you cannot be sure when you will receive any earnout merger consideration, and you may never receive any earnout merger consideration;

the merger may be a taxable transaction for U.S. federal income tax purposes, in which case you will recognize taxable gain or loss to the extent that the value of the merger consideration you receive is greater or less than your tax basis in your Innovive shares, and even if the merger otherwise qualifies as a tax-free reorganization for U.S. federal income tax purposes, you will recognize taxable income or gain to the extent of any earnout merger consideration characterized as imputed interest and to the extent the balance of any earnout merger consideration received in the form of cash is greater than your tax basis in your Innovive shares allocable to that earnout merger consideration;

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if the merger is not completed, we will have incurred substantial expenses without realizing the expected benefits of the merger and will have to repay CytRx for advances under the loan and security agreement, which we may not to be able to do;

our officers and directors have financial interests in the merger that may be different from, or in addition to, the interests of our stockholders, generally;

if the merger is not consummated by September 30, 2008, either we or CytRx may choose not to proceed with the merger;

the fairness opinion obtained by us from our financial advisor will not reflect changes in circumstances subsequent to the date of the merger agreement; and

the shares of CytRx common stock to be received in the merger will have different rights from the shares of Innovive common stock that you now hold.

Q: Who will bear the cost of this solicitation?

A: The expenses of preparing, printing, and mailing this proxy statement/prospectus and the proxies solicited hereby will be borne by Innovive. Additional solicitation may be made by telephone, facsimile, or other contact by certain directors, officers, employees, or agents of Innovive, none of whom will receive additional compensation for those activities. Innovive will, upon request, reimburse brokerage houses and other custodians, nominees, and fiduciaries for their reasonable expenses for forwarding material to the beneficial owners of shares held of record by others.

Q: Will a proxy solicitor be used?

A: No. However, the directors, officers, employees, and other agents of Innovive may solicit proxies on our behalf from stockholders by telephone, by other electronic means, or in person.

Q: Should I send in my stock certificates now?

A: No. Shortly after the merger is completed, you will receive a letter of transmittal with instructions informing you how to surrender your stock certificates or book-entry shares to the disbursing agent in order to receive the merger consideration. **Please do not send in your stock certificates with your proxy card.**

Q: Who can help answer my other questions?

A: If you have more questions about the merger, need assistance in submitting your proxy or voting your shares, or need additional copies of the proxy statement/prospectus or the enclosed proxy card, you can call our Chief Financial Officer, J. Gregory Jester, at (212) 716-1814. If your broker holds your shares, you should also call your broker for additional information.

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SUMMARY OF THE PROXY STATEMENT/PROSPECTUS

This summary highlights selected information from the proxy statement/prospectus and may not contain all of the information that is important to you. You should carefully read the entire proxy statement/prospectus to fully understand the proposed transaction. We encourage you to read the merger agreement that is attached as Appendix A, because it is the legal document that governs the parties agreement pursuant to which CytRx will acquire Innovive in a merger if all of the conditions to the merger are satisfied or waived. Certain items in this summary include page references directing you to a more complete description of the items in this proxy statement/prospectus.

The Parties to the Merger (pages 40, 79 and 127)

CytRx Corporation

CytRx Corporation was organized in 1985 as a Delaware corporation. CytRx is a clinical-stage biopharmaceutical company engaged in developing human therapeutic products based primarily upon its small-molecule molecular chaperone amplification technology. Through February 2008, CytRx owned a majority of the outstanding shares of common stock of RXi Pharmaceuticals Corporation, which CytRx refers to as **RXi**. RXi was founded in April 2006 by CytRx and four researchers in the field of ribonucleic acid interference, or RNAi, including Dr. Craig Mello, recipient of the 2006 Nobel Prize for Medicine for his co-discovery of RNAi. In March 2008, CytRx distributed to its stockholders approximately 36% of RXi s outstanding shares, which reduced CytRx s ownership to less than 50% of RXi. RXi is focused solely on developing and commercializing therapeutic products based upon RNAi technologies for the treatment of human diseases.

CytRx s executive officers are located at 11726 San Vicente Boulevard, Suite 650, Los Angeles, California 90049, and its telephone number is (310) 826-5648. CytRx common stock is listed for trading on The Nasdaq Capital Market under the symbol CYTR. The common stock of RXi is listed on The Nasdaq Capital Market under the symbol RXII.

Innovive Pharmaceuticals, Inc.

Innovive Pharmaceuticals, Inc. was organized in 2004 as a Delaware corporation. Innovive is a development-stage biopharmaceutical company engaged in the development of compounds for the treatment of cancer. Innovive s executive offices are located at 555 Madison Avenue, 25th Floor, New York, New York 10022, and its telephone number is (212) 716-1810. Innovive common stock is quoted on the Over-the-Counter Bulletin Board, or OTCBB, under the symbol IVPH.

CytRx Merger Subsidiary, Inc.

CytRx Merger Subsidiary, Inc. was organized in 2008 as a Delaware corporation and wholly owned subsidiary of CytRx. Merger Subsidiary was formed by CytRx solely for purposes of entering into and completing the transactions contemplated by the merger agreement. It has not conducted any activities to date other than activities incidental to its organization and in connection with the transactions contemplated by the merger agreement. Merger Subsidiary s business address and telephone number are the same as those of CytRx.

The Merger (page 40)

You are being asked to vote your shares of Innovive to approve the merger agreement. The merger agreement provides that Merger Subsidiary will be merged with and into Innovive, and that the outstanding shares of Innovive common stock (other than shares that are owned by Innovive, CytRx and Merger

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Subsidiary and shares that are owned by stockholders, if any, who properly exercise dissenters rights under Delaware law) will be cancelled and converted into the right to receive the merger consideration.

After the completion of the merger, you will have no ownership interest in Innovive and shares of Innovive s common stock will no longer be publicly traded.

The Special Meeting of Stockholders (page 58)

Place, Date, and Time

The special meeting of stockholders will be held at 10:00 a.m., local time, on September 19, 2008, at our offices located at 555 Madison Avenue, 25th Floor, New York, New York.

Vote Required for Approval of the Merger Agreement (page 58)

Approval of the merger agreement requires stockholders holding a majority of the outstanding shares of Innovive common stock at the close of business on the record date to vote FOR the approval of the merger agreement, with each share having a single vote for this purpose. The failure to vote has the same effect as a vote against the approval of the merger agreement.

Who Can Vote at the Special Meeting (page 58)

You may vote at the special meeting all of the shares of Innovive common stock you own of record as of the close of business on July 31, 2008. If you own shares that are registered in someone else s name (for example, a broker), you need to direct that person to vote those shares on your behalf or obtain an authorization from them to vote the shares yourself at the special meeting. As of the close of business on July 31, 2008, there were 14,610,003 shares of Innovive common stock outstanding held by 171 holders of record. We believe that a number of our stockholders hold their shares in street name and, as a result, that the number of beneficial holders of Innovive common stock is greater than the number of record holders.

Procedure for Voting (page 59)

You may vote your shares by attending the special meeting and voting in person, or you may submit a proxy by the Internet or by mailing the enclosed proxy card. You can change your vote at any time before your proxy is voted at the special meeting. You may revoke your proxy prior to the special meeting by notifying us in writing or by submitting a later-dated proxy by the Internet or by mail to Innovive Pharmaceuticals, Inc., 555 Madison Avenue, 25th Floor, New York, New York 10022, Attention: Corporate Secretary. In addition, you may revoke your proxy by attending the special meeting and voting in person. However, simply attending the special meeting will not revoke your proxy. If you have instructed a broker to vote your shares, these options for changing your vote do not apply, and instead you must follow the instructions received from your broker to change your vote.

If your shares are held in street name by your broker, please follow the directions provided by your broker in order to instruct your broker as to how to vote your shares. If you do not instruct your broker to vote your shares, it will have the same effect as a vote against the approval of the merger agreement.

Board Recommendation (page 60)

After careful consideration, our board of directors, by unanimous vote:

- has determined that the merger agreement is advisable, fair to, and in the best interests of Innovive and its stockholders;

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has approved and authorized in all respects the merger agreement, the merger, and the other transactions contemplated by the merger agreement; and

recommends that Innovive s stockholders vote FOR the approval of the merger agreement.

Neither Innovive nor any of our officers or directors has an ownership interest in CytRx or is otherwise affiliated with CytRx, and we have had no dealings with CytRx or its officers or directors other than in connection with the merger agreement and related matters. However, in considering the recommendation of the board of directors with respect to the merger agreement, you should be aware that some of Innovive s directors and executive officers who participated in meetings of the board of directors have interests in the merger that are different from, or in addition to, the interests of our stockholders, generally. See The Merger Interests of Certain Persons in the Merger beginning on page 47.

Fairness Opinion (page 49 and Appendix C)

In connection with the merger, our board of directors received a written opinion, dated June 6, 2008, from Chartered Capital Advisers, Inc., Innovive s financial advisor, which we refer to as **Chartered**, as to the fairness, from a financial point of view and as of the date of the opinion, of the merger consideration to be received by holders of our common stock. The full text of Chartered s written opinion is attached to this proxy statement/prospectus as Appendix C. We encourage you to read the opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters considered, and limitations on the review undertaken.

Chartered s opinion was provided to our board of directors in connection with our board of directors evaluation of the merger consideration from a financial point of view and does not address any terms or other aspects or implications of the merger, other than the merger consideration to the extent expressly specified in the opinion, or any aspects or implications of any other agreement, arrangement or understanding entered into in connection with the merger or otherwise. Chartered s opinion is not intended to be, and does not constitute, a recommendation to any stockholder as to how such stockholder should vote or act on any matters relating to the proposed merger.

Shares Held by Directors and Officers; Support Agreements (pages 48 and 155 and Appendix B)

As of July 31, 2008, the directors and officers of Innovive beneficially owned approximately 3% of the shares of Innovive common stock entitled to vote at the special meeting. Steven Kelly, Neil Herskowitz, J. Jay Lobell and Eric Poma, M.D., each of whom is a director or officer of Innovive, and their affiliates, Lindsay A. Rosenwald, M.D., and Lester Lipshutz, as investment manager or trustee of trusts established for the benefit of Dr. Rosenwald and his family, along with Angelo De Caro, who recently resigned as a director, have agreed pursuant to support agreements that they have entered into with CytRx and Merger Subsidiary to vote all Innovive shares that they control in favor of the merger agreement. These directors and officers and their affiliates own beneficially an aggregate of approximately 22% of the shares of common stock entitled to vote at the special meeting. To facilitate the support agreements, these beneficial owners also granted CytRx proxies to vote their share with respect to the merger and the merger agreement. The full text of the form of the support agreements, including the form of proxy, is attached to this proxy statement/prospectus as Appendix B. We encourage you to read the form of the support agreements in its entirety.

Material United States Federal Income Tax Consequences (page 55)

The treatment of the merger for U.S. federal income tax may be uncertain. If the merger is a taxable exchange, each U.S. holder of Innovive common stock will recognize income, gain or loss for U.S. federal income tax purposes measured by the difference between the fair market value of the merger consideration received in the merger and the holder s tax basis in the Innovive common stock. If, on the other hand, the

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merger constitutes a tax-free reorganization, each U.S. holder of Innovive common stock will not recognize gain or loss on the receipt of CytRx common stock, but will recognize (i) taxable income on the portion of any earnout merger consideration characterized as imputed interest and (ii) taxable gain on the receipt of the balance of any earnout merger consideration received in the form of cash, to the extent it exceeds the U.S. holder s adjusted tax basis in the Innovive common stock allocable to such earnout merger consideration. You should consult your personal tax advisor, however, for a full understanding of the tax consequences related to the merger that are particular to you.

Stock Exchange Listing of CytRx Common Stock (page 49)

It is a condition to the completion of the merger that the shares of CytRx common stock issuable to Innovive stockholders in payment of the initial merger consideration be approved for listing on The Nasdaq Capital Market. It is also a condition to the payment of any earnout merger consideration that CytRx may elect to pay in shares of CytRx common stock that such shares be listed on The Nasdaq Capital Market or other trading market.

Comparative Market Prices of Common Stock (page 49)

CytRx common stock is listed on The Nasdaq Capital Market and our common stock is quoted on the OTCBB. On June 6, 2008, the last full trading day before the public announcement of the merger agreement, the closing price of CytRx common stock as reported on The Nasdaq Capital Market was $0.99. On June 6, 2008, the last full trading day before the public announcement of the merger agreement, the closing price of shares of our common stock as reported on the OTCBB was $0.15. If the merger is completed, there is no assurance as to what the market price of CytRx common stock will be at that or any other time.

Regulatory Requirements (page 49)

The merger is not subject to any federal or state regulatory requirements.

Dissenters or Appraisal Rights (page 157 and Appendix D)

If you do not vote your shares in favor of approval of the merger agreement, you will be entitled to receive in cash an amount equal to the fair value of your shares, provided that you comply with the procedures set forth in Section 262 of the Delaware General Corporation Law. The ultimate amount you receive as a dissenting stockholder may be more or less than, or the same as, the merger consideration you would have received in the merger. Your failure to follow exactly the procedures specified under Delaware law will result in the loss of your dissenters rights.

The completion of the merger is subject to the condition, among others, that the holders of not more than 5% of Innovive s common stock properly exercise their rights as dissenting stockholders.

Interests of Certain Persons in the Merger (page 47)

In considering the recommendation of our board of directors with respect to the merger agreement, you should be aware that some of our directors and executive officers have interests in the merger that may be different from, or in addition to, the interests of our stockholders, generally. These interests include indemnification and insurance arrangements with our officers and directors and severance benefits that may become payable to some of our officers. Our board of directors was aware of these interests and considered them, among other matters, in approving the merger agreement.

CytRx s officers and directors own CytRx common stock and have been granted stock options to purchase CytRx common stock, none of which will vest or be adjusted or otherwise changed as a result of the

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merger. Except for the interests inherent in their ownership of CytRx common stock and stock options, CytRx s officers and directors do not have any material interests in the merger.

Comparison of Rights of Innovive Stockholders and CytRx Stockholders (page 165)

Your rights as Innovive stockholders are currently governed by our certificate of incorporation, our bylaws and Delaware law. Upon completion of the merger, you will become stockholders of CytRx and your rights will be governed by CytRx s restated certificate of incorporation, CytRx s restated bylaws, the Shareholder Protection Rights Agreement, dated April 16, 1997, as amended, between CytRx and American Stock Transfer & Trust Co., as rights agent, which we refer to in this proxy statement/prospectus as the **CytRx rights agreement**, and Delaware law.

Procedure for Receiving the Merger Consideration (page 62)

CytRx will appoint a disbursing agent reasonably acceptable to us to coordinate the payment of the initial merger consideration following the merger. Promptly after the completion of the merger, the disbursing agent will mail a letter of transmittal with instructions to you and the other stockholders. The letter of transmittal and instructions will tell you how to surrender your stock certificates or book-entry shares in order to receive the merger consideration.

Please do not send in your share certificates now.

Stock Options (page 62)

At or prior to the completion of the merger, the administrator of our stock plans will resolve under the stock plans that each Innovive stock option outstanding immediately prior to the effective time of the merger, whether or not then vested or exercisable, will be cancelled immediately prior to the effective time, with any consideration due to the holders thereof being paid at such time. All of our stock options currently are underwater, so we expect that our option holders will receive no payments or other consideration in connection with the merger. After the merger, such stock options will no longer be outstanding and the holders of the options will no longer have any rights to purchase Innovive stock or other securities.

Warrants (page 62)

Each Innovive warrant outstanding immediately prior to the effective time of the merger that, by its terms, does not expire upon the effective time, will remain outstanding in accordance with its terms, and the holder thereof will thereafter have the right to purchase and receive (in lieu of the shares of Innovive common stock) the merger consideration payable with respect to the number of shares of Innovive common stock purchasable under the warrant immediately prior to the effective time of the merger. To the extent Innovive warrants outstanding at the effective time of the merger are subsequently cancelled, or terminate, without being exercised in full, the merger consideration otherwise payable with respect to such cancelled or terminated warrants will become the property of CytRx. If required by the terms of the warrants, CytRx will cause to be issued promptly after the completion of the merger replacement warrants for the Innovive warrants that, by their terms, will remain outstanding after the merger.

No Solicitation by Us of Alternative Acquisition Transactions (page 67)

The merger agreement contains restrictions on our ability to solicit or engage in discussions or negotiations with any third party relating to an acquisition transaction, which generally means (1) a license or sublicense of our intellectual property under our existing license agreements, (2) acquisition of 10% or more of our assets, (3) acquisition of at least 10% of our common stock, (4) a tender offer or exchange offer that would result in any person beneficially owning 10% or more of our common stock, or (5) merger, consolidation or similar transaction. We have agreed that, prior to the completion of the merger or the earlier termination of the merger agreement, we will not (i) initiate, solicit, or provide non-public or confidential information to facilitate any inquiry that constitutes, or may reasonably be expected to lead to, a proposal or

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offer relating to an acquisition transaction, or (ii) enter into, continue, or otherwise participate in any discussions or negotiations with any third party regarding, or furnish to any person any non-public information, or provide access to our properties, books, or records with respect to, any inquiries that constitute, or may reasonably be expected to lead to, an acquisition transaction.

However, prior to receipt of our stockholders approval of the merger agreement, if we receive any bona fide written offer or proposal with respect to a potential or proposed acquisition transaction that was not solicited, initiated, or knowingly encouraged by us in violation of the merger agreement and which our board of directors determines is or could reasonably be expected to result in a proposal that is superior to the terms of the merger agreement, we are allowed to (1) furnish (subject to the execution of a confidentiality agreement) confidential or non-public information to, and negotiate with, the potential third party acquirer and (2) upon compliance by us with the termination provisions of the merger agreement with CytRx, including the payment to CytRx of a $1,500,000 termination fee, enter into an agreement relating to the superior proposal.

Conditions to the Merger (page 70)

Before we can complete the merger, a number of conditions must be satisfied, including:

approval of the merger agreement by our stockholders;

none of the parties to the merger agreement being subject to any law, order, injunction, judgment, or ruling by any governmental authority that prohibits the consummation of the merger or makes the consummation of the merger illegal;

the effectiveness under the Securities Act of 1933, as amended, of the registration statement of which this proxy statement/prospectus is a part;

the exemption, qualification or registration under applicable state securities laws of the shares of CytRx common stock issuable in payment of the initial merger consideration;

the listing on The Nasdaq Capital Market of the shares of CytRx common stock issuable in payment of the initial merger consideration;

the absence of any lawsuit (1) seeking to restrain or prohibit the consummation of the merger or seeking to obtain damages from Innovive, CytRx, or Merger Subsidiary, (2) seeking the disposition of any material assets or businesses of Innovive, or (3) otherwise seeking to limit the actions of CytRx with respect to the material assets or business of Innovive after the merger;

the continued accuracy of the representations and warranties of us and CytRx that are contained in the merger agreement;

the resignation, effective as of the effective time of the merger, of each of our directors and officers;

the performance by us and CytRx of all of the obligations that we and CytRx are required to perform under the merger agreement prior to the time of the merger; and

the holders of not more than 5% of the outstanding shares of our common stock having properly exercised their rights as dissenting stockholders.

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Termination of the Merger Agreement (page 71)

We and CytRx may agree at any time to terminate the merger agreement without completing the merger. The merger agreement may also be terminated in certain other circumstances specified in the merger agreement, including, without limitation and subject to the detailed terms and conditions specified in the merger agreement:

by either us or CytRx, if the merger has not been completed by September 30, 2008 other than due to the fault of the party seeking to terminate the merger agreement and other than due to the failure of the condition regarding effectiveness of the registration statement of which this proxy statement/prospectus is a part;

by either us or CytRx, if the other party is in material breach of its representations, warranties, or covenants contained in the merger agreement;

by either us or CytRx following the entry of any final and non-appealable judgment, injunction, order, or decree by a court or governmental agency restraining or prohibiting the completion of the merger;

by us, if our board of directors decides to accept an unsolicited superior proposal for an acquisition transaction and pays the termination fee described below to CytRx;

by CytRx, if our board of directors changes or withdraws, or fails to reaffirm, its recommendation to Innovive s stockholders that they approve the merger agreement;

by CytRx, if we receive a proposal regarding an acquisition transaction from any person and our board of directors takes a neutral position or makes no recommendation with respect to the proposal and does not publicly reaffirm its recommendation in favor of the merger agreement; and

by either us or CytRx, if our stockholders fail to approve the merger agreement at the special meeting.

Termination Fee (page 72)

The merger agreement provides that, upon termination of the merger agreement under specified circumstances, we will be obligated to pay CytRx a termination fee of $1,500,000. We will owe the termination fee if the merger agreement is terminated because (1) our board of directors decides to accept an unsolicited superior proposal for an acquisition transaction, (2) our board of directors changes or withdraws, or fails to reaffirm, its recommendation to our stockholders that they approve the merger agreement, (3) if we receive a proposal regarding an acquisition transaction from any person and our board of directors takes a neutral position or makes no recommendation with respect to the proposal and does not publicly reaffirm its recommendation in favor of the merger agreement, (4) we breach specified provisions in the merger agreement, or (5) our stockholders fail to approve the merger agreement and we enter into another acquisition transaction within one year after the termination of the merger agreement with a party that made a proposal for such acquisition transaction prior to the special meeting of stockholders.

Indemnification and Offset (page 73)

The merger agreement contains indemnification rights for the benefit of CytRx (1) to the extent that our actual net liabilities (as defined in the merger agreement) as of June 6, 2008 exceeded our estimated net liabilities of $3,746,538 on that date as represented by us in the merger agreement, (2) for all losses (including the first $50,000 of any such losses) to CytRx resulting from breaches of our representations and warranties once such losses exceed a $50,000 threshold and (3) actual deposits returned to or recovered by CytRx or the

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surviving corporation are less than the deposits previously disclosed by us. CytRx s recourse for indemnification will be limited to its right of offset against any earnout merger consideration. The termination fee and indemnification provisions of the merger agreement and right of offset are generally the sole remedies for CytRx with respect to any breaches of Innovive s representations and warranties in the merger agreement.

Stockholder Representative (pages 60 and 73)

If the merger agreement is approved at the special meeting, you will be deemed to have irrevocably appointed Steven Kelly, our President and Chief Executive Officer, as your agent and attorney-in-fact for purposes of the merger agreement if the merger is completed. You will be bound by all actions taken by the stockholder representative in connection with the merger agreement, and CytRx will be entitled to rely on any action or decision of the stockholder representative as being your decision, act, consent or instruction. With some exceptions, CytRx will be relieved from any liability to any person for any acts done by it in accordance with such decision, act, consent or instruction of the stockholder representative. The stockholder representative will not be required to take any action involving any expense to the stockholder representative unless the payment of such expense is made or provided for in a manner satisfactory to him. The reasonable legal fees and other expenses, if any, incurred by the stockholder representative in performance of his duties, not to exceed $20,000 in the aggregate, will be advanced by CytRx. CytRx also will compensate the stockholder representative at the rate of $250 per hour, not to exceed $10,000 in the aggregate, for the performance of his duties.

The stockholder representative will establish and maintain a register of our stockholders and warrant holders for purposes of payment and distribution of any earnout merger consideration. Your right to receive any earnout merger consideration will not be transferable, except by operation of law.

Loan and Security Agreement (page 76)

In connection with the merger agreement, we entered into a loan and security agreement with CytRx pursuant to which CytRx made an initial advance to us of approximately $1,725,000, which was used to pay some of our current accounts payable and accrued expenses. Under the loan agreement, we may request that CytRx make additional advances in the cumulative aggregate principal amount of up to approximately $3,775,000 to fund our working capital requirements pending the special meeting and the completion of the merger. All additional advances requested by us will be at CytRx s discretion. As of July 31, 2008, we had requested, and CytRx had made, approximately $662,000 of additional advances under the loan and security agreement.

All advances under the loan agreement are secured by a lien on all or substantially all of our assets, bear interest at the rate of 12.5% per annum, and generally are due and payable, in full, together with accrued interest, on the earlier of the date of termination of the merger agreement or September 30, 2008.

In consideration for entering into the loan agreement and making the initial advance, we granted CytRx under the loan agreement a one-year option to purchase up to 2,000,000 shares of common stock of Innovive at an exercise price of $0.01 per share. The option will become exercisable only if we terminate the merger agreement to pursue a superior proposal as permitted by the merger agreement.

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Selected Historical Financial Information of CytRx

Set forth below is selected historical financial information of CytRx as of and for the years ended December 31, 2003 through 2007 and as of and for the three months ended March 31, 2008 and 2007. The results of operations for the three months ended March 31, 2008 and 2007 are not necessarily indicative of the results of operations for the full year or any other interim period. CytRx management prepared the unaudited information on the same basis as it prepared CytRx s audited consolidated financial statements. In the opinion of CytRx management, the unaudited information reflects all adjustments, consisting of only normal recurring adjustments, necessary for a fair presentation of this information. You should read the following information in conjunction with CytRx s historical financial statements and related notes included as Appendix E to this proxy statement/prospectus.

	Three Months Ended March 31,		Years Ended December 31,				
	2008	2007	2007	2006	2005	2004	2003
	(unaudited)						
	(in thousands, except per share information)						
Statement of Operations Information:							
Revenues:							
Service revenue	$ 2,181	$ 1,447	$ 7,242	$ 1,859	$ 83	$	$
Licensing revenue			101	101	101	428	94
Grant revenue		116	116	106			
Total revenues	$ 2,181	$ 1,563	$ 7,459	$ 2,066	$ 184	$ 428	$ 94
Deemed dividend for anti-dilution adjustments made to outstanding common stock warrants	(757)			(488)	(1,076)		
Net loss applicable to common stock	$ (6,131)	$ (4,546)	$ (21,890)	$ (17,240)	$ (16,169)	$ (16,392)	$ (17,845)
Basic and diluted loss per share applicable to common stock	$ (0.07)	$ (0.06)	$ (0.26)	$ (0.25)	$ (0.28)	$ (0.48)	$ (0.65)
Balance Sheet Information:							
Cash, cash equivalents and short-term investments	$ 43,539	$ 36,352	$ 60,450	$ 30,381	$ 8,299	$ 2,999	$ 11,644
Total assets	$ 50,540	$ 38,072	$ 64,146	$ 31,636	$ 9,939	$ 5,049	$ 12,324
Total stockholders equity	$ 33,391	$ 12,794	$ 40,224	$ 5,150	$ 7,208	$ 1,595	$ 10,193

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Selected Historical Financial Information of Innovive

Set forth below is selected historical financial information of Innovive as of and for the years ended December 31, 2005 through 2007, for the period March 24, 2004 (inception) to December 31, 2007, for the period March 24, 2004 (inception) to March 31, 2008, and as of and for the three months ended March 31, 2008 and 2007. The results of operations for the three months ended March 31, 2008 and 2007 are not necessarily indicative of the results of operations for the full year or any other interim period. Innovive management prepared the unaudited information on the same basis as it prepared Innovive s audited financial statements. In the opinion of Innovive management, the unaudited information reflects all adjustments, consisting of only normal recurring adjustments, necessary for a fair presentation of this information. You should read the following information in conjunction with Innovive s historical financial statements and related notes included as Appendix F to this proxy statement/prospectus.

	Three Months Ended March 31,		Period from March 24, 2004 (inception) to March 31,	Year Ended December 31,			Period from March 24, 2004 (inception) to December 31,
	2008	2007	2008	2007	2006	2005	2007
	(unaudited)						
	(in thousands, except per share information)						
Statement of Operations Information:							
Research and development	$ 732	$ 2,727	$ 31,040	$ 14,274	$ 12,237	$ 3,628	$ 30,308
General and administrative	686	964	10,116	4,154	3,420	1,656	9,430
Total operating expenses	1,418	3,691	41,156	18,428	15,657	5,284	39,738
Loss from operations	(1,418)	(3,691)	(41,156)	(18,428)	(15,657)	(5,284)	(39,738)
Interest income	18	55	477	286	156	16	459
Interest expense			1,606		1,189	411	1,606
Other expense	177		220	43			43
Net loss	(1,576)	(3,636)	(42,505)	(18,185)	(16,690)	(5,679)	(40,928)
Imputed preferred stock dividends			809		809		809
Net loss applicable to common shares	$ (1,576)	$ (3,636)	$ (43,314)	$ (18,185)	$ (17,499)	$ (5,679)	$ (41,737)
	$ (0.11)	$ (0.40)		$ (1.41)	$ (2.74)	$ (1.83)	

Net loss per common share basic and diluted					
Weighted average common shares outstanding basic and diluted	14,610,003	9,147,068	12,902,475	6,391,802	3,107,338
Balance Sheet Information:					
Cash and cash equivalents and short-term investments	$ 302	$ 464	$ 2,670	$ 2,545	$ 134
Working capital (deficiency)	(3,671)	(2,020)	(2,222)	1,330	(4,039)
Total assets	948	1,573	3,241	4,228	500
Deficit accumulated during the development stage	(43,313)	(27,188)	(41,737)	(23,552)	(6,053)
Total stockholders equity (deficiency)	(3,526)	(1,895)	(2,074)	1,456	(5,134)

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RISK FACTORS

In addition to the other information contained in this proxy statement/prospectus, we urge you to consider the following factors before deciding how to vote on the approval and adoption of the merger agreement.

Risks Associated with the Merger

There is no guarantee that the merger will be completed.

The merger is subject to a number of conditions, including approval by Innovive stockholders. There is no assurance that the merger will be approved or that the other conditions to the completion of the merger will be satisfied. If the merger is not completed, we will either need to complete another strategic transaction or file for bankruptcy protection.

Innovive and CytRx may not achieve the benefits they expect from the merger, which may have a material adverse effect on the combined company s business, financial, and operating results.

Innovive and CytRx entered into the merger agreement with the expectation that the merger will result in benefits to the combined company. Post-merger challenges include the following:

maintaining the listing of CytRx common stock on The Nasdaq Capital Market to promote liquidity for stockholders of the combined company and potentially greater access to capital; and

using the assets and resources of the combined company to successfully develop the existing product candidates of the combined company.

If the combined company is not successful in addressing these and other challenges, then the benefits of the merger may not be realized and, as a result, the combined company s operating results and the market price of CytRx s common stock may be adversely affected.

If the costs associated with the merger exceed the benefits, the combined company may experience adverse financial results, including increased losses.

Innovive and CytRx will incur significant transaction costs as a result of the merger, including legal and accounting fees that may exceed their current estimates. In addition, Innovive and CytRx expect that the combined company will incur integration expenses, which cannot be precisely estimated at this time. Actual transaction costs may substantially exceed the current estimates of Innovive and CytRx and may adversely affect the combined company s financial condition and operating results. If the benefits of the merger do not exceed the costs associated with the merger, the combined company s financial results could be adversely affected, resulting in, among other things, increased losses, and decreased trading prices for CytRx common stock.

CytRx expects to continue to incur operating losses, and the combined company will need to raise additional funds to cover the cost of operation. If the combined company is not able to raise necessary additional funds, it may have to reduce or stop operations.

CytRx has had no commercial revenues to date and cannot predict when it will. CytRx had an accumulated deficit of approximately $170.5 million as of March 31, 2008. CytRx cannot be certain that the combined company after the merger will achieve or sustain profitability in the future. Until the combined company begins generating significant revenue, it will be required to obtain funding through the sale of equity securities, which may result in dilution to CytRx s then-existing stockholders, or other means. Additional funding may not be available to the combined company on acceptable terms, or at all. If the combined

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company is unable to obtain adequate financing on a timely basis, it may be required to delay, reduce or stop operations, any of which would have a material adverse effect on its business.

The merger agreement limits our ability to pursue alternatives to the merger, and if we do so, CytRx would be entitled to exercise its option to purchase Innovive common stock granted in the loan and security agreement, which would be dilutive to our stockholders.

The merger agreement contains no-shop provisions that, subject to specified exceptions, limit our ability to discuss, facilitate or commit to competing acquisition transactions. In addition, a termination fee of $1,500,000 is payable by us if we terminate the merger agreement to pursue a superior proposal. These provisions might discourage a potential competing acquirer that might have an interest in acquiring all or a significant part of Innovive from considering or proposing that acquisition even if it were prepared to pay consideration greater than the merger consideration proposed in the merger, or might result in a potential competing acquirer proposing to pay less consideration to acquire Innovive than it might have been willing to pay absent these no-shop provisions.

If we were to terminate the merger agreement to pursue a superior proposal, CytRx would be entitled to exercise its option granted in the loan and security agreement to purchase up to 2,000,000 shares of our common stock at an exercise price of $0.01 per share. CytRx would be likely to exercise its option in connection with the completion of a superior proposal transaction, which would materially reduce the amount of the consideration that otherwise would be received in the transaction by our other stockholders.

The support agreements may deter competing bids.

Our directors and officers and their affiliates who are entitled to vote approximately 22% of the shares of Innovive common stock entitled to vote at the special meeting have agreed in the support agreements to vote their shares in favor of the merger agreement and against any competing acquisition transaction. The support agreements may discourage other potential acquirers and would make it more difficult for a competing acquirer to obtain approval of its bid.

Because the market price of CytRx common stock may fluctuate, you cannot be sure of the market value of CytRx common stock that you will receive in the merger.

Upon completion of the merger, CytRx will pay initial merger consideration of $3,000,000 in the form of shares of CytRx common stock valued at $0.94 per share, which equals the average daily volume-weighted closing price of CytRx common stock as reported on The Nasdaq Capital Market over the ten trading days prior to the signing of the merger agreement, and is not subject to change. The market price of CytRx common stock will likely be different, and may be lower, than $0.94 on the date that this proxy statement/prospectus is mailed to you, or the date of the special meeting, and on the date you receive shares of CytRx common stock in the merger. Differences in CytRx s stock price may result from a variety of factors, including factors beyond CytRx s control. For a discussion of factors that may affect CytRx s stock price, see Risk Factors Associated with CytRx s Business, Risk Factors Associated with CytRx s Investment in RXi and Risk Factors Associated with CytRx Common Stock below in this section.

You cannot be sure when you will receive any earnout merger consideration, and you may never receive any earnout merger consideration.

In addition to the initial merger consideration, CytRx will pay future earnout merger consideration of up to $18,253,462, subject to the achievement of specified net sales under Innovive s existing license agreements. No Innovive products have been approved for marketing, and we believe that we are at least two years away from obtaining marketing approval for any products under our existing license agreement. CytRx may be unable to obtain marketing approval for any Innovive products. Even if CytRx obtains such approvals, there is no assurance that it will be able to achieve sufficient net sales to require payment of all or any portion

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of the earnout merger consideration, so you may never receive any earnout merger consideration. The earnout merger consideration also is subject to possible offset by CytRx for indemnification claims under the merger agreement.

The merger might be a taxable transaction for U.S. federal income tax purposes, in which event you will recognize gain or loss to the extent that the value of the merger consideration you receive is greater or less than your tax basis in your Innovive shares.

The merger might constitute a fully taxable exchange, in which case each U.S. holder of Innovive common stock will recognize income, gain or loss for U.S. federal income tax purposes measured by the difference between the fair market value of the merger consideration received in the merger and the holder s tax basis in the Innovive common stock. Even if the merger constitutes a tax-free reorganization, each U.S. holder of Innovive common stock will recognize (i) taxable income on the portion of any earnout merger consideration characterized as imputed interest and (ii) taxable gain on the receipt of any earnout merger consideration received in the form of cash, to the extent it exceeds the U.S. holder s adjusted tax basis in the Innovive common stock allocable to such earnout merger consideration.

If the merger is not completed, we will have incurred substantial expenses without realizing the expected benefits of the merger. We also will have to repay CytRx for advances under the loan and security agreement, and may not to be able to do so.

We have incurred substantial expenses in connection with the merger described in this proxy statement/prospectus, the payment of all or substantially all of which was funded by our borrowings from CytRx under the loan and security agreement. We expect to borrow additional amounts prior to the special meeting and the completion of the merger. The completion of the merger depends on the approval of our stockholders and the satisfaction of the other conditions to the merger. If the merger is not completed, we would not have realized the expected benefits of the merger.

If the merger is not completed, our borrowings under the loan and security agreement, plus accrued interest, will become immediately due and payable to CytRx. As of July 31, 2008, CytRx had advanced to us under the loan and security agreement a total of approximately $2,387,000, and we may request additional advances of up to $3,113,000 under the loan and security agreement. We have no commitments and arrangements for any financing to repay such advances, so we expect that we would be unable to repay such advances if the merger agreement is not approved at the special meeting or the merger is not completed. In this event, CytRx would be entitled to pursue all of its remedies under the loan and security agreement, including the possible foreclosure sale of all or substantially all of our assets.

Our officers and directors may have financial interests in the merger that may be different from, or in addition to, the interests of our stockholders, generally.

Some of our officers may receive severance benefits under their existing employment agreements, and our officers and directors may have other financial interests in the merger that may be different from, or in addition to, the interests of our stockholders, generally. Our board of directors was aware of these interests and took them into account in its decision to approve and adopt the merger agreement. For information concerning these interests, please see the discussion under the caption The Merger Interests of Innovive s Directors and Officers in the Merger.

If the merger is not consummated by September 30, 2008, either we or CytRx may choose not to proceed with the merger.

Either we or CytRx may terminate the merger agreement if the merger has not been completed by September 30, 2008, unless the failure of the merger to be completed by such date has resulted from the failure

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of the party seeking to terminate the merger agreement to perform its obligations or the failure of the condition regarding effectiveness of the registration statement of which this proxy statement/prospectus is a part.

The fairness opinion obtained by us from our financial advisor will not reflect changes in circumstances subsequent to the date of the merger agreement.

We have obtained a fairness opinion dated as of June 6, 2008 from our financial advisor, Chartered Capital Advisers, Inc. We did not seek or obtain from Chartered an updated opinion as of the date of this proxy statement/prospectus. Changes in the operations and prospects of CytRx or us, general market and economic conditions and other factors that may be beyond the control of CytRx and us, and on which the fairness opinion was based, may alter our value or the price of shares of our common stock or of CytRx common stock by the time the merger is completed. Chartered s opinion does not speak to the time the merger will be completed or to any other date other than the date of such opinion. As a result, the opinion will not address the fairness of the merger consideration, from a financial point of view, at the time the merger is completed. For a description of the opinion that we received from Chartered, please refer to Opinion of Innovive s Financial Advisor beginning on page 49 of this proxy statement/prospectus.

The shares of CytRx common stock to be received in the merger will have different rights from the shares of Innovive common stock.

Upon completion of the merger, our stockholders will become CytRx stockholders. Your rights as CytRx stockholders will be governed by the restated certificate of incorporation and restated bylaws of CytRx and the CytRx rights agreement, which are different from the rights associated with Innovive common stock. See Comparison of Rights of Holders of CytRx Common Stock and Innovive Common Stock beginning on page 165 for a discussion of the different rights associated with CytRx common stock.

Risks Associated with CytRx s Common Stock

CytRx common stock may be delisted from The Nasdaq Capital Market if the stock price does not increase.

CytRx received notice from The Nasdaq Stock Market on May 28, 2008, that CytRx common stock had closed below $1.00 per share for 30 consecutive business days, and CytRx was therefore not in compliance with the minimum bid price required by Nasdaq Marketplace Rule 4310(c)(4). In accordance with Marketplace Rule 4310(c)(8)(D), CytRx may regain compliance if at any time by November 24, 2008, CytRx common stock closes at or above $1.00 for 10 consecutive business days and CytRx otherwise meets the Nasdaq s continuing listing requirements. Nasdaq also informed CytRx that if CytRx does not regain compliance by November 24, 2008, CytRx will be granted up to an additional 180 calendar days to regain full compliance while continuing to trade during this time on The Nasdaq Capital Market if at that time CytRx meets the Nasdaq s initial listing requirements other than the minimum bid price rule. If CytRx eventually fails to comply with this condition for continued listing and CytRx common stock is delisted from The Nasdaq Small Capital Market, there is no assurance that CytRx common stock will be listed for trading or quoted elsewhere and an active trading market for CytRx common stock may cease to exist, which would materially and adversely impact the market value of CytRx common stock.

CytRx s outstanding options and warrants and the availability for resale of CytRx s shares issued in CytRx s private financings may adversely affect the trading price of CytRx s common stock.

As of June 30, 2008, there were outstanding stock options and warrants to purchase approximately 18.2 million shares of CytRx s common stock at a weighted-average exercise price of $1.73 per share. CytRx s outstanding options and warrants could adversely affect CytRx s ability to obtain future financing or engage in certain mergers or other transactions, since the holders of options and warrants can be expected to exercise them at a time when CytRx may be able to obtain additional capital through a new

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offering of securities on terms more favorable to CytRx than the terms of outstanding options and warrants. For the life of the options and warrants, the holders have the opportunity to profit from a rise in the market price of CytRx s common stock without assuming the risk of ownership. The issuance of shares upon the exercise of outstanding options and warrants will also dilute the ownership interests of CytRx s existing stockholders. Many of CytRx s outstanding warrants contain anti-dilution provisions pertaining to dividends or distributions with respect to CytRx s common stock. CytRx s outstanding warrants to purchase approximately 800,000 shares also contain anti-dilution provisions that are triggered upon any issuance of securities by CytRx below the prevailing market price of CytRx s common stock, and CytRx s outstanding warrants to purchase approximately 11.5 million shares contain anti-dilution provisions that are triggered upon any dividend of cash or property. CytRx s recent distribution to CytRx s stockholders of shares of RXi common stock triggered a reduction in the exercise price and an increase in the number of shares underlying these warrants. In the event that these anti-dilution provisions are triggered by CytRx in the future, CytRx would be required to further reduce the exercise price and increase the number of shares underlying these warrants, which would have a dilutive effect on CytRx s stockholders.

CytRx has registered with the SEC the resale by the holders of all or substantially all shares of CytRx common stock issuable upon exercise of its outstanding options and warrants. The availability of these shares for public resale, as well as actual resales of these shares, could adversely affect the trading price of CytRx s common stock.

CytRx may issue preferred stock in the future, and the terms of the preferred stock may reduce the value of CytRx s common stock.

CytRx is authorized to issue shares of preferred stock in one or more series. CytRx s board of directors may determine the terms of future preferred stock offerings without further action by CytRx s stockholders. If CytRx issues preferred stock, it could affect the rights of CytRx stockholders at that time or reduce the value of CytRx common stock. In particular, specific rights granted to future holders of preferred stock may include voting rights, preferences as to dividends and liquidation, conversion and redemption rights, sinking fund provisions, and restrictions on CytRx s ability to merge with or sell CytRx s assets to a third party.

CytRx may experience volatility in its stock price, which may adversely affect the trading price of CytRx s common stock.

The market price of CytRx s common stock has ranged from a low of approximately $0.43 to a high of approximately $5.49 per share since January 1, 2007, and it may continue to experience significant volatility from time to time. Factors such as the following may affect such volatility:

announcements of regulatory developments or technological innovations by CytRx or CytRx s competitors;

changes in CytRx s relationship with CytRx s licensors and other strategic partners;

changes in CytRx s stock holdings or other relationships with RXi;

CytRx s quarterly operating results;

litigation involving or affecting CytRx;

shortfalls in CytRx s actual financial results compared to CytRx s guidance or the forecasts of stock market analysts;

developments in patent or other technology ownership rights;

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acquisitions or strategic alliances by CytRx or CytRx s competitors;

public concern regarding the safety of CytRx s products; and

government regulation of drug pricing.

Other factors which may affect CytRx s stock price are general changes in the economy, the financial markets or the pharmaceutical or biotechnology industries.

CytRx s anti-takeover provisions may make it more difficult to change CytRx s management, or may discourage others from acquiring CytRx, and thereby adversely affect stockholder value.

CytRx s rights plan and provisions in CytRx s bylaws are intended to protect CytRx s stockholders interests by encouraging anyone seeking control of CytRx to negotiate with CytRx s board of directors. These provisions may discourage or prevent a person or group from acquiring CytRx without the approval of CytRx s board of directors, even if the acquisition would be beneficial to CytRx s stockholders.

CytRx has a classified board of directors, which means that at least two stockholder meetings, instead of one, will be required to effect a change in the majority control of CytRx s board of directors. This applies to every election of directors, not just an election occurring after a change in control. The classification of CytRx s board increases the amount of time it takes to change majority control of CytRx s board of directors and may cause potential acquirers to lose interest in a potential purchase of CytRx, regardless of whether such purchase would be beneficial to CytRx or its stockholders. The additional time and cost to change a majority of the members of CytRx s board of directors makes it more difficult and may discourage CytRx s existing stockholders from seeking to change CytRx s existing management in order to change the strategic direction or operational performance of CytRx s company.

CytRx s restated bylaws provide that directors may only be removed for cause by the affirmative vote of the holders of at least a majority of the outstanding shares of CytRx s capital stock then entitled to vote at an election of directors. This provision prevents stockholders from removing any incumbent director without cause. CytRx s bylaws also provide that a stockholder must give CytRx at least 120 days notice of a proposal or director nomination that such stockholder desires to present at any annual meeting or special meeting of stockholders. Such provision prevents a stockholder from making a proposal or director nomination at a stockholder meeting without CytRx having advance notice of that proposal or director nomination. This could make a change in control more difficult by providing CytRx s directors with more time to prepare an opposition to a proposed change in control. By making it more difficult to remove or install new directors, these bylaw provisions may also make CytRx s existing management less responsive to the views of CytRx s stockholders with respect to CytRx s operations and other issues such as management selection and management compensation.

CytRx does not intend to pay cash dividends on its common stock in the foreseeable future.

CytRx has not declared or paid any cash dividends on CytRx s common stock or other securities, and CytRx currently does not anticipate paying any cash dividends in the foreseeable future. Because CytRx does not anticipate paying cash dividends for the foreseeable future, CytRx s stockholders will not realize a return on their investment in CytRx s common stock except to the extent of any appreciation in the times new roman; FONT-SIZE: 10pt">30.8

Dan Reardon

714

100

%

$

30.8

10/13/2016

$

30.8

Hubert Gibb

714

100

%

$

30.8

10/14/2011

10/13/2016

$

30.8

Anthony Hickox

714

100

%

$

30.8

10/14/2011

10/13/2016

$

30.8

Robert Kaiser

714

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10/14/2011

10/13/2016

$

30.8

Peter Hoffman

714

100

%

$

27.3

12/06/2011

12/05/2016

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27.3

Elaine New

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27.3

12/06/2011

12/05/2016

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27.3

Katrin Hoffman

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12/06/2011

12/05/2016

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27.3

Robert Kaiser

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12/06/2011

12/05/2016

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Dan Reardon

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12/06/2011

12/05/2016

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Hubert Gibb

714

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27.3

12/06/2011

12/05/2016

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27.3

Anthony Hickox

714

100

%

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27.3

12/06/2011

12/05/2016

$

27.3

Robert Kaiser (now resigned)

714

100

%

$

62.3

09/01/2011

08/31/2016

$

62.3

Total Granted

11,424

1) 50% of the options vested on December 31, 2011
2) 50% of the options vest on December 31, 2012

2012 Director Compensation

Our Board is responsible for consideration and determination of director compensation.

OTHER MATTERS

We participate in a procedure known as “householding.” This means that if you share the same last name with other stockholders living in your household, you may receive only one copy of our Notice. Pursuant to the SEC rules, stockholders of record who have the same address and last name and do not participate in electronic delivery of proxy materials will receive only one copy of our Notice, unless one or more of these stockholders notifies us that they wish to continue receiving individual copies. This procedure will reduce our printing costs and postage fees.

If you are eligible for householding, but you and other stockholders of record with whom you share an address currently receive multiple copies of the Notice, or if you hold stock in more than one account, and in either case you wish to receive only a single copy of each of the Notice for your household, please contact our Corporate Secretary at Seven Arts Entertainment Inc., 8439 Sunset Boulevard, Suite 402, West Hollywood, CA 90069, Attn: Edward Bottenheim or by telephone at (323) 372-3083.

If you participate in householding and wish to receive a separate copy of the Notice, or if you do not wish to participate in householding and prefer to receive separate copies in the future, please contact our Corporate Secretary as indicated above.

Beneficial owners can request information about householding from their banks, brokers or other holders of record.

The Board knows of no other matters that will be presented for consideration at our Special Meeting. However, if other matters are properly brought before the Special Meeting, the proxy holders will vote your shares in their discretion accompanying this Proxy Statement are:

· Annex A Revised 2012 Stock Incentive Plan

A COPY OF THE COMPANY'S ANNUAL REPORT ON FORM 10-K WILL BE SENT WITHOUT CHARGE TO ANY STOCKHOLDER REQUESTING IT IN WRITING FROM: SEVEN ARTS ENTERTAINMENT INC., 8439 SUNSET BOULEVARD, SUITE 402, WEST HOLLYWOOD, CA 90069, ATTENTION: PETER HOFFMAN.

By Order of the Board,

/s/ Peter M. Hoffman
Peter M. Hoffman
Chief Executive Officer

PROXY PROXY

SEVEN ARTS ENTERTAINMENT INC.
Special Meeting of Stockholders
January 22, 2013
9:00 a.m. local time
Seven Arts Entertainment Inc.
8439 Sunset Blvd., Suite 402
West Hollywood, CA 90069

The undersigned hereby appoints Peter Hoffman and Elaine New, and each of them, as Proxies of the undersigned with full power of substitution, and hereby authorizes them to represent and to vote all the shares of common stock of Seven Arts Entertainment Inc. held of record by the undersigned on December 5, 2012 at the Special Meeting of Stockholders of Seven Arts Entertainment Inc. to be held January 22, 2013, or at any adjournment of postponement thereof.

IF YOU ARE NOT VOTING BY INTERNET, COMPLETE THIS PROXY CARD, SIGN, DATE, DETACH AND RETURN IN THE ENCLOSED ENVELOPE.

OR FAX: +1 801 277 3147

OR EMAIL TO: Julie@interwesttc.com

PLEASE DETACH ALONG PERFORATED LINE AND MAIL IN THE ENVELOPE PROVIDED.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held January 22, 2013. The Proxy Statement and our 2011 Annual Report to Stockholders are available at: www.Shareholdermaterial.com/SAPX.

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PLEASE MARK VOTES AS IN x
THIS EXAMPLE:

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS

The Board of Directors recommends a vote FOR Proposal Nos. 1, 2, 3, and 4. This Proxy, when properly executed, will be voted as specified below. This Proxy will be voted FOR Proposal Nos. 1 and 2 if no specification is made.

o I/We do plan to attend the 2012 Special Meeting of Stockholders.

		FOR	AGAINST	ABSTAIN
1.	Approval of Amendment to Articles of Incorporation. – Preferred and Common Stock. To approve an amendment to our Amended Articles of Incorporation to designate 1,000,000 shares of the Company's authorized capital stock as one or more series of preferred stock and to designate 249,000,000 shares of the Company's authorized capital stock as common stock.	o	o	o
2.	Amendment to Articles of Incorporation – Increase Or Decrease Shares Of Common Stock. To approve an amendment to our Amended Articles of Incorporation to authorize the Board of Directors without further stockholder approval from time to time to increase or decrease the number of shares of common stock, such increase or decrease not to result in a change in the Company's authorized capital stock except as required by the Nevada Revised Statutes. This Proposal will not be adopted unless Proposal No. 3, below, is approved by stockholders.	o	o	o
3.	Amendment to Articles of Incorporation – Reclassification Of Unissued Shares. To approve an amendment to our Amended Articles of Incorporation to authorize the	o	o	o

	Board of Directors without further stockholder approval from time to time to reclassify unissued shares of capital stock as other classes or series of capital stock. This Proposal will not be adopted unless Proposal No. 2, above, is approved by the stockholders.			
4.	Approval Of Revised 2012 Stock Incentive Plan. To authorize the Board to increase the number of shares of the Company's common stock issuable in the Company's 2012 Stock Incentive Plan from 71,429 to 15,000,000.	o	o	o

SIGNATURE DATE SIGNATURE DATE

Please sign exactly as your name(s) is (are) shown on the share certificate to which the proxy applies. When shares are held by joint tenants, both should sign. When signing as an attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by President or other authorized officer. If a partnership, please sign in partnership name by authorized person.

PLEASE DETACH ALONG PERFORATED LINE AND MAIL IN THE ENVELOPE PROVIDED.

ANNEX A

SEVEN ARTS ENTERTAINMENT INC.
2012 STOCK INCENTIVE PLAN (2)
For Employees and Other Service Providers
Established June 22, 2012

SectionPurpose.
1.

(a) The purpose of this 2012 Stock Incentive Plan (the "Plan") is to enable Seven Arts Entertainment Inc. (the "Company") and its Subsidiaries to attract, retain, motivate, and reward employees, and other service providers of the Company and its Subsidiaries, to provide for equitable and competitive compensation opportunities, to recognize individual contributions and reward achievement of Company goals, and to promote the creation of long-term value for stockholders by strengthening the mutuality of interests between those employees and other service providers and the Company's stockholders.

(b) The Plan authorizes stock-based incentives for Participants. Awards may be made in the form of (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) Restricted Stock; and (iv) any combination of the foregoing.

SectionDefinitions. The following terms have the respective meanings, in addition to the capitalized terms defined in
2. Section 1 hereof or as otherwise defined throughout this document:

(a) "Award" means any Option, Restricted Stock, or Stock granted for services rendered, together with any related right or interest, granted to a Participant under the Plan.

(b) "Award Agreement" means any Option Agreement, Restricted Stock Agreement, or any other agreement under which the Company (or a Subsidiary) grants an Eligible Person an Award.

(c) "Beneficiary" means the person(s) or trust(s) designated as being entitled to receive the benefits under a Participant's Award upon and following a Participant's death. Unless otherwise determined by the Committee, a Participant may designate one or more persons or one or more trusts as his or her Beneficiary.

(d) "Board" means the Company's Board of Directors.

(e) "Cause" means, unless otherwise provided by the Committee, (i) "Cause" as defined in any Individual Agreement to which the Participant is a party, or (ii) if there is no such Individual Agreement or if it does not define Cause: (A) conviction of the Participant for committing a felony under federal law or in the law of the state in which such action occurred, (B) dishonesty in the course of fulfilling the Participant's employment or service duties, (C) willful and deliberate failure on the part of the Participant to perform the Participant's employment or service duties in any material respect, or (D) prior to a Corporate Transaction, such other events as shall be determined by the Committee. The Committee shall, unless otherwise provided in an Individual Agreement with the Participant, have the sole discretion to determine whether "Cause" exists, and its determination shall be final.

(f) "Code" means the Internal Revenue Code of 1986, as amended from time to time, any successor thereto, and including any regulations promulgated thereunder.

(g) "Committee" means the Compensation Committee created and appointed by the Board.

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(h) "Corporate Transaction" means the occurrence, in a single transaction or in a series of related transactions, of any of the following: (i) any person or group of persons (as defined in Sections 13(d) and 14(d) of the Exchange Act) together with his/her/their affiliates, excluding employee benefit plans of the Company, is or becomes, directly or indirectly, the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities; or (ii) a merger or consolidation of the Company with any other corporation or entity is consummated regardless of which entity is the survivor, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or its parent) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the Company is completely liquidated or all or substantially all of the Company's assets are sold.

(i) "Covered Employee" means an Eligible Person who is an employee of the Company, or a Subsidiary.

(j) "Covered Service Provider" means an Eligible Person who is an independent contractor providing services to the Company.

(k) "Date of Grant" means the date on which the Committee has completed all corporate action necessary to give the Participant a legally binding right to the Award, including the setting of the number of shares of Stock subject to the Award and the exercise price.

(l) "Disability" means a permanent and total disability resulting from a physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, as determined by the Committee based on medical evaluation.

(m) "Effective Date" means June 22 2012.

(n) "Eligible Persons" means those persons who are designated by the Committee under Section 5(a) of this Plan to receive Awards.

(o) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and shall include any successor thereto.

(p) "Fair Market Value" or "FMV" means, as of any date, the fair market value of a share of the Company's Stock, as determined in good faith and under procedures established by the Committee as follows:

(i) if on the Date of Grant or other determination date the Stock is listed on an established securities market, the Fair Market Value of a share of Stock shall be the closing price of the Stock on such exchange or in such market (if there is more than one such exchange or market, the Committee shall determine the appropriate exchange or market) on the Date of Grant or such other determination date;

(ii) if on the Date of Grant or other determination date the Stock is listed on an established securities market, but there is no such reported closing price, the Fair Market Value shall be the mean between the highest bid and lowest asked prices or between the high and low sale prices on the Date of Grant or other determination date;

(iii) if on the Date of Grant or other determination date the Stock is listed on an established securities market, but no sale of Stock is reported for such trading day, the Fair Market Value shall be the closing price on the next preceding day on which any sale shall have been reported before the Date of the Grant or other determination date; or

(iv) if the Stock is not listed or admitted to trading on a national securities exchange, the Fair Market Value shall be the value of the Stock as determined by the reasonable application by the Committee of a reasonable valuation method in conformance with the requirements of Treasury Regulations Sections 1.422-2(e)(20(iii) and 1.409A-1(b)(5)(iv)(B).

(q)"Incentive Stock Option" or "ISO" means any Option intended to be, designated as, and that otherwise qualifies as an "Incentive Stock Option" within the meaning of Code Section 422.

(r) "Individual Agreement" means an employment or similar agreement between a Participant and the Company or one of its Subsidiaries.

(s)"Non-Employee Director" has the meaning set forth under Section 16 of the Exchange Act.

(t) "Nonstatutory Stock Option" means any Option that is not an Incentive Stock Option.

(u) "Option" means a right to purchase Stock granted under Section 6(b) of the Plan.

(v) "Outside Director" has the meaning set forth in Code Section 162(m).

(w) "Other Stock-Based Awards" means Awards granted to a Participant that are valued, in whole or in part, by reference to, or otherwise based on, shares of Stock.

(x) "Participant" means a person who has been granted an Award under the Plan that remains outstanding, including a person who is no longer an Eligible Person.

(y) "Plan" means Seven Arts Entertainment Inc. 2012 Stock Incentive Plan.

(z) "Restricted Stock" means Stock granted under this Plan, which is subject to certain restrictions and to a risk of forfeiture.

(aa) "Section 16 Participant" means a Participant under the Plan who is subject to Section 16 of the Exchange Act.

(bb) "Stock" means shares of the Company's stock which is common stock for purposes for purposes of Section 305 of the Code and the implementing regulations, with $0.01 par value per share, and any other equity securities of the Company that may be substituted or resubstituted for such Stock. In all cases under this plan, Stock shall constitute "service recipient stock" within the meaning of Treasury Regulation Section 1.409A-1(b)(5)(iii).

(cc) "Subsidiary" means any corporation in an unbroken chain of corporations beginning with the Company, if each of the corporations (other than the last corporation in the unbroken chain) owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in that chain.

(dd) "Ten Percent or More Stockholder" means an Eligible Person who owns or is deemed to own (by reason of the attribution rules of Code Section 424(d)) more than 10% of the combined voting power of all classes of Stock of the Company or any parent or subsidiary corporation.

SectionAdministration.
3.

(a) Authority of the Committee. The Plan shall be administered by the Committee. Any interpretation or administration of the Plan by the Committee, and all actions and determinations of the Committee, shall be final, binding and conclusive on the Company, its stockholders, Subsidiaries, all Participants in the Plan, their respective legal representatives, successors and assigns, and all persons claiming under or through any of them. The Committee shall consider such factors as it deems relevant to making such decisions, determinations, and interpretations. A Participant or other holder of an Award may contest a decision or action of the Committee with respect to such person or Award only on the grounds that such decision or action is arbitrary or capricious or was unlawful.

(b) Composition of the Committee. The Committee shall consist of directors of the Company appointed in accordance with the Articles and By-Laws of the Company.

(c) Manner of Exercise of Committee Authority. The Committee shall have the full power and authority to interpret and administer the Plan in its sole discretion, including exercising all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan. The Committee's powers and authorities include, without limitation, the following: (i) the sole ability to determine: eligibility criteria for Awards; (ii) to select the Eligible Persons to whom Awards may from time to time be granted; (iii) to determine the time or times at which Awards shall be granted; (iv) to determine the number of shares of Stock to be covered by each Award; (v) to determine and modify from time to time the specific terms and conditions , including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the form of written instruments evidencing the Awards; (vi) to determine the vesting and exercisability of any Award and to accelerate at any time the vesting or exercisability of all or any portion of any Award; (vii) subject to the provisions of this Plan, to extend at any time the period in which Stock Options may be exercised; (viii) to determine the exercise or purchase price of such shares of Stock; (ix) to determine if and when Awards are forfeited or expire under their terms; (x) to interpret and construe the Plan provisions; any amendments, and any rules and regulations relating to the Plan; (xi) to make exceptions to any Plan provisions in good faith and for the benefit of the Company; and (xii) to make all other determinations deemed necessary or advisable for the administration of the Plan.

(d) Delegation of Authority. The Committee may delegate to one or more of its members or to one or more agents such administrative duties as it may deem advisable, and the Committee or any person to whom it has delegated duties as aforesaid may employ one or more persons to render advice with respect to any responsibility the Committee or such person may have under the Plan; provided, that such delegation may not include the selection or grant of Awards to Participants or Eligible Persons who are executive officers of the Company or any Subsidiary, affiliate or Section 16 Participants.

(e) Committee Vacancies. The Board shall fill all vacancies in the Committee. The Board may from time to time appoint additional members to the Committee and may at any time remove one or more Committee members and substitute others. One member of the Committee shall be selected by the Board as chairman. The Committee shall hold its meetings at such times and places as it shall deem advisable. All determinations of the Committee shall be made by not less than a majority of its members either present in-person or participating by a telephone conference at a meeting or by written consent. The Committee shall keep minutes of its meetings. The Committee may appoint a secretary to keep such minutes and may make such rules and regulations for the conduct of its business as it shall deem advisable, but in accordance with the written charter prepared by the Board and which may be amended from time to time by the Board. The secretary shall not need to be a member of the Committee or a member of the Board.

(f) Limitation of Liability. The Committee and each member thereof, and any person acting pursuant to authority delegated by the Committee, shall be entitled, in good faith, to rely or act upon any report or other information furnished by any executive officer, other officer or employee of the Company or a Subsidiary, the Company's independent auditors, consultants or any other agents assisting in the administration of the Plan. Members of the Committee, any person acting pursuant to authority delegated by the Committee, and any officer or employee of the Company or a Subsidiary acting at the direction or on behalf of the Committee or a delegee shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action or determination.

SectionStock Subject to Plan.
4.

(a) Overall Number of Shares Available. Subject to adjustment as provided under Section 10(c), the total number of shares of Stock reserved and available for delivery in connection with Awards under the Plan shall be 20,000,000 shares. Any shares of Stock issued under the Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares. The authorized number of reserved and available shares may be increased from time to time by approval of the Board and, if such approval is required, by the stockholders of the Company.

(b) Accounting Procedures. The Committee may adopt reasonable accounting procedures to ensure an appropriate accounting of Stock subject to the Plan, avoid double counting (as, for example, in the case of tandem or substitute Awards) and make adjustments in accordance with this Section 4(b). Shares shall be counted against those reserved to the extent such shares have been delivered and are no longer subject to a risk of forfeiture. Accordingly, (i) to the extent that an Award under the Plan is canceled, expired, forfeited, settled in cash, settled by delivery of fewer shares than the number underlying the Award, or otherwise terminated without delivery of Stock to the Participant, the Stock retained by or returned to the Company will not be deemed to have been delivered under the Plan; and (ii) Stock that is withheld from such Award or separately surrendered by the Participant in payment of the exercise price or taxes relating to such Award shall be deemed to constitute Stock not delivered and will be available under the Plan. The Committee may determine that Awards may be outstanding that relate to more Stock than the aggregate shares of Stock remaining available under the Plan so long as Awards will not in fact result in delivery and vesting of shares of Stock in excess of the number then available under the Plan. In addition, in the case of any Award granted in assumption of or in substitution for an award of a company or business acquired by the Company or a Subsidiary or affiliate or with which the Company or a Subsidiary or affiliate combines, shares delivered or deliverable in connection with such assumed or substitute Award shall not be counted against the number of shares of Stock reserved under the Plan. The authorized number of reserved and available shares may be increased from time to time by approval of the Board and, if such approval is required, by the stockholders of the Company.

(c) Individual Annual Award Limits. No Participant may be granted Options or other Awards under the Plan with respect to an aggregate of more than 500,000 shares of Stock (subject to adjustment as otherwise may be provided for throughout this Plan) during any calendar year.

SectionEligibility.
5.

(a) Eligibility. Grants of Awards may be made from time to time to those officers, employees and Service Providers of the Company or any Subsidiary who are designated by the Committee in its sole and exclusive discretion as eligible to receive such Awards ("Eligible Persons"). However, Options intended to qualify as ISOs shall be granted only to Eligible Persons while actually employed by the Company or a Subsidiary. The Committee may grant more than one Award to the same Eligible Person. Awards may be made to members of the Committee and must be approved and granted by a majority of the disinterested members of the Board.

(b) Substitutions/Acquisitions. Holders of awards granted by a company or business acquired by the Company or a Subsidiary, or with which the Company or a Subsidiary combines, may be eligible for substitute Awards under this Plan that will be granted in assumption of or in substitution for such outstanding awards in connection with such acquisition or combination transaction; provided that such awards satisfy the requirements of Treasury Regulations Section 1.409A-1(b)(5)(v)(D). In such cases, holders of the assumed or substituted awards will become Participants in the Plan; provided, however, that such assumption or substitution in no way causes an Award under this Plan to become subject to the terms and conditions of Code Section 409A.

(c) Participation. An Eligible Person shall become a Participant in the Plan and shall perfect his or her Award only after he or she has completed the applicable Award Agreement in a manner that is satisfactory to the Committee and has delivered said Award Agreement to the Committee. A Participant shall continue his or her participation in the Plan, even if no longer an Eligible Person, until any and all of his or her interests that are held under the Plan expire or are paid. Participants who are on military leaves of absence, sick leaves, and any other bona fide leaves of absence are not considered to be separated from service and shall be deemed employed so long as the leave does not extend beyond three (3) months or, if longer, the individual retains reemployment rights under an applicable statute or by contract.

SectionSpecific Terms of Awards Granted Under the Plan.
6.

(a) General Terms of All Awards. All Awards granted under the Plan. Award Agreements may provide for grants of Awards on the specific terms and conditions set forth in this Section 6. Alternatively, the Committee may impose on any individual Award, as specified in the individual Award Agreement, such additional terms and conditions, not inconsistent with the provisions of the Plan, or applicable law, as the Committee shall determine, including terms relating to the forfeiture of Awards in the event of termination of employment or service by the Participant and terms permitting a Participant to make elections relating to his or her Award. The Committee shall retain full power and discretion with respect to any term or condition of an Award that is not mandatory under the Plan and the terms of the Award Agreement; provided that the exercise of such discretion shall in no event cause an Award to become subject to the terms and conditions of Code Section 409A, unless otherwise agreed upon between the Company (or Subsidiary) and the Eligible Person. The Committee shall require the payment of lawful consideration for an Award to the extent necessary to satisfy the requirements of the Nevada Revised Statutes, and may otherwise require payment of consideration for an Award except as limited by the Plan and as otherwise required by applicable law.

If it is determined by the Committee prior to the grant of any Award that such Award would be subject to Code Section 409A, the Award Agreement shall incorporate the terms and conditions required by Code Section 409A. To the extent applicable, this Plan and the Award Agreements shall be interpreted in accordance with Code Section 409A and its implementing regulations.

In the event the Committee determines after the Date of Grant that any Award granted hereunder may be subject to Code Section 409A, the Committee may adopt such amendments to the Plan and/or applicable Award Agreement or adopt other policies and procedures (including those with retroactive effect) or take any other actions that the Committee determines are necessary and appropriate to (i) exempt the Award from Code Section 409A and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (ii) comply with the requirements of Code Section 409A.

(b) Option Awards. Options granted under the Plan shall be evidenced by an agreement ("Option Agreement"). Options that are awarded may be of one of two types which shall be indicated on the face of the Option Agreement: (i) ISOs or (ii) Nonstatutory Stock Options. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(i) Option Term; Time and Method of Exercise. The Committee shall determine the term of each Option; provided that in no event shall the term of any Option exceed a period of 10 years from the Date of Grant (or with respect to an ISO, 5 years from the Date of Grant in the case of a Participant who at the Date of Grant is a Ten Percent or More Stockholder). The Committee shall determine the time or times at which or the circumstances under which an Option may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the methods by which such exercise price may be paid or deemed to be paid and the form of such payment, including, without limitation, cash, Stock (including by withholding Stock deliverable upon exercise), other Awards or awards granted under other plans of the Company or any Subsidiary, or other property, and the methods by or forms in which Stock will be delivered or deemed to be delivered in satisfaction of Options to Participants. The Committee shall have the right, at any time after the Date of Grant, to reduce or eliminate any restrictions on the Participant's right to exercise all or part of the Stock Option, except that no Stock Option shall first become exercisable within one year from the Date of Grant.

(ii) Exercise Price. The option price per share of Stock purchasable under a Nonstatutory Stock Option or an Incentive Stock Option shall be determined by the Committee at or immediately prior to the Date of Grant, shall be set forth on the applicable Option Agreement, and shall be not less than 100% of the Fair Market Value of the Stock at the Date of Grant (or, with respect to an Incentive Stock Option, and a Participant who at the Date of Grant is a Ten Percent or More Stockholder, 110% of the Fair Market Value of the Stock at the Date of Grant). Prior to the Date of Grant, the Committee shall specify the method by and date on which the Fair Market Value of the Option will be determined; said date shall be specified on the Option Agreement.

(iii) Non-Transferability of Options. No Option shall be transferable by any Participant other than by will or by the laws of descent and distribution, except that, if so provided in the Option Agreement, the Participant may transfer the Option, other than an ISO, (i) pursuant to a qualified domestic relations order (as defined in the Code or the Employment Retirement Income Security Act of 1974, as amended); or (ii) during the Participant's lifetime to one or more members of the Participant's family, to one or more trusts for the benefit of one or more of the Participant's family, or to a partnership or partnerships of members of the Participant's family, or to a charitable organization as defined in Code Section 501(c)(3), provided that the transfer would not result in the loss of any exemption under Rule 16b-3 of the Exchange Act with respect to any Option. The transferee of an Option will be subject to all restrictions, terms and conditions applicable to the Option prior to its transfer, except that the Option will not be further transferable by the transferee other than by will or by the laws of descent and distribution.

(iv) Disposition upon Termination of Employment.

(A) Termination by Death. Subject to Sections 6(b)(i) and 6(b)(v), if any Participant's employment (or service) with the Company or any Subsidiary terminates by reason of death, any Option held by that Participant shall become immediately and automatically vested and exercisable. If termination of a Participant's employment (or service) is due to death, then any Option held by that Participant may thereafter be exercised for a period of two years (or with respect to an ISO, for a period of 18 months or such other lesser period as the Committee may specify at or after grant) from the date of death. Notwithstanding the foregoing, in no event will any Option be exercisable after the expiration of the option period of such Option. The balance of the Option shall be forfeited if not exercised within two years (or 18 months with respect to ISOs or such lesser period as the Committee may specify).

(B) Termination by Reason of Disability. Subject to Sections 6(b)(i) and 6(b)(v), if a Participant's employment (or service) with the Company or any Subsidiary terminates by reason of Disability, any Option held by that Participant shall become immediately and automatically vested and exercisable. If termination of a Participant's employment (or service) is due to Disability, then any Option held by that Participant may thereafter be exercised by the Participant or by the Participant's duly authorized legal representative if the Participant is unable to exercise the Option as a result of the Participant's Disability, for a period of two years (or with respect to an ISO, for a period of one year or such other lesser period as the Committee may specify at or after grant) from the date of such termination of employment. If the Participant dies within that two-year period (or with respect to an ISO, for a period of one year or such other lesser period as the Committee may specify at or after grant), any unexercised Option held by that Participant shall thereafter be exercisable by the estate of the Participant (acting through its fiduciary) for the duration of the two-year period (or the one year period in the case of an ISO or such lesser period as the Committee may specify) from the date of termination of employment. Notwithstanding the foregoing, in no event will any Option be exercisable after the expiration of the option period of such Option. The balance of the Option shall be forfeited if not exercised within two years (or one year with respect to ISOs or such lesser period as the Committee may specify).

(C) Termination for Cause. Unless otherwise determined by the Committee at or after the time of granting any Option, if a Participant's employment (or service) with the Company or any Subsidiary terminates for Cause, any unvested Options will be forfeited and terminated immediately upon termination and any vested Options held by that Participant shall terminate 30 days after the date employment (or service) terminates. Notwithstanding the foregoing, in no event will any Option be exercisable after the expiration of the option period of such Option. The balance of the Option shall be forfeited.

(D) Other Termination/Retirement. Unless otherwise determined by the Committee at or after the time of granting any Option, if a Participant retires from employment with the Company (or a Subsidiary) or a Participant's employment (or service) with the Company (or a Subsidiary) terminates for any reason other than death, Disability, or for Cause, all vested ISOs held by that Participant shall terminate three months after the date employment (or service) terminates, and all vested Nonstatutory Stock Options held by that Participant shall terminate one year after the date employment (or service) terminates. Notwithstanding the foregoing, in no event will any Option be exercisable after the expiration of the option period (which shall be established in the Option Agreement) of such Option. The balance of the Option shall be forfeited.

(E) Leave of Absence. In the event a Participant is granted a military leave of absence, a sick leave, or any other bona fide leave of absence by the Company or any Subsidiary, the Participant's employment with the Company or such Subsidiary will not be considered terminated, and the Participant shall be deemed an employee of the Company or such Subsidiary during such leave of absence or any extension thereof granted by the Company or such Subsidiary. Notwithstanding the foregoing, in the case of an ISO, a leave of absence of more than three months will be viewed as a termination of employment unless continued employment is guaranteed by contract or statute. If the period of such leave exceeds three months and the Participant's right to reemployment is not provided either by statute or by contract, the employment relationship is deemed to terminate on the first day immediately following such three-month period.

(v) Incentive Stock Options. Notwithstanding Sections 6(b)(iii) and 6(b)(iv), an ISO shall be exercisable by (A) a Participant's authorized legal representative (if the Participant is unable to exercise the ISO as a result of the Participant's Disability) only if, and to the extent, permitted by Section 422 of the Code and (B) by the Participant's estate, in the case of death, or authorized legal representative, in the case of Disability, no later than ten years from the date the ISO was granted (in addition to any other restrictions or limitations that may apply). Notwithstanding anything to the contrary herein, to the extent required for ISO treatment under Code Section 422, the aggregate Fair Market Value as of the Date of Grant under this Plan and any other plan of the Company (or its parent or subsidiary corporations) for the first time by an Eligible Person during any calendar year shall not exceed $ 100,000. If and to the extent that any Stocks are issued under a portion of the Stock Option that exceeds the $100,000 limitation under Code Section 422, such Stocks shall not be treated as issued under an ISO notwithstanding any designation otherwise. If an Award Agreement specifies that that a Stock Option is intended to be treated as an ISO, the Stock Option shall to the greatest extent possible comply with the requirements of Code Section 422 and shall be so construed; provided, however, that any such designation shall not be interpreted as a representation, guarantee or other undertaking on the part of the Company that the Stock Option is or will be determined to qualify as an ISO. Certain decisions, amendments, interpretations by the Committee may cause a Stock Option to cease to qualify as an ISO and, to the extent known beforehand and possible, the Committee shall seek the consent of the affected Participant.

(c) Restricted Stock. Restricted Stock granted under the Plan shall be evidenced by an agreement ("Restricted Stock Agreement"). The Committee is authorized to grant Restricted Stock to Participants on the following terms and conditions:

(i) Grant and Restrictions. Restricted Stock shall be subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the Committee may impose, which restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise and under such other circumstances as the Committee may determine at the Date of Grant, and which shall be set forth in the applicable Restricted Stock Agreement, or thereafter. Except to the extent restricted under the terms of the Plan and any Restricted Stock Agreement, a Participant granted Restricted Stock shall have all of the rights of a stockholder, including the right to vote the Restricted Stock and the right to receive dividends thereon; provided, however, that the Committee

may require mandatory reinvestment of dividends in additional Restricted Stock, may provide that no dividends will be paid on Restricted Stock or retained by the Participant, or may impose other restrictions on the rights attached to Restricted Stock.

(ii) Forfeiture. Except as otherwise determined by the Committee, upon termination of employment or service during the applicable restriction period, Restricted Stock that is at that time subject to restrictions shall be forfeited and reacquired by the Company; provided that the Committee may provide, by rule or regulation or in any Restricted Stock Agreement, or may determine in any individual case, that restrictions or forfeiture conditions relating to Restricted Stock will lapse in whole or in part, including in the event of terminations resulting from specified causes.

(iii) Certificates for Stock. Restricted Stock granted under the Plan shall be evidenced in such manner as the Committee shall determine. Certificates representing Restricted Stock shall be registered in the name of the Participant and shall bear an appropriate legend referring to the terms, conditions and restrictions applicable to the Award of such Restricted Stock. The Company shall retain physical possession of the stock certificates until the time that the restrictions thereon have lapsed, and the Participant shall have delivered a stock power to the Company, endorsed in blank, relating to the Stock covered by such Restricted Stock. The distribution of Stock upon the lapse of restrictions shall be made to the Participant on or before the period ending on the later of: (i) the 15th day of the third month following the end of the Participant's first taxable year in which the right to payment is no longer subject to restrictions; or (ii) the 15th day of the third month following the end of the Company's first taxable year in which the right to payment is no longer subject to restrictions.

(iv) Dividends and Splits. As a condition to the grant of an Award of Restricted Stock, the Committee may require that any dividends paid on a share of Restricted Stock shall be either (A) paid with respect to such Restricted Stock at the dividend payment date in cash, in kind, or in a number of shares of unrestricted Stock having a Fair Market Value equal to the amount of such dividends, or (B) automatically reinvested in additional Restricted Stock or held in kind, which shall be subject to the same terms as applied to the original Restricted Stock to which it relates. Unless otherwise determined by the Committee, Stock distributed in connection with a Stock split or Stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such Stock or other property has been distributed.

(d) Bonus Stock and Awards in Lieu of Obligations. The Committee is authorized to grant to Participants Stock as a bonus, or to grant Stock or other Awards in lieu of obligations of the Company or a Subsidiary or affiliate to pay cash or deliver other property under the Plan or under other plans or compensatory arrangements, subject to such terms as shall be determined by the Committee; provided, that such grants shall not be in lieu of prior promises to pay deferrals of compensation so that any Award under this Plan that would not otherwise be subject to Code Section 409A does not become subject to Code Section 409A due to a grant in lieu of other obligation of the Company or a Subsidiary; provided further, that any distributions of such Stock as a bonus shall be made to the Participant on or before the later of: (i) the 15th day of the third month following the end of the Participant's first taxable year in which the Participant earned the Bonus; or (ii) the 15th day of the third month following the end of the Company's first taxable year in which the Participant earned the bonus.

(e) Other Stock-Based Awards. The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock or factors that may influence the value of Stock, including, without limitation, convertible or exchangeable debt securities, other rights convertible or exchangeable into Stock, purchase rights for Stock, Awards with value and payment contingent upon performance of the Company or business units thereof or any other factors designated by the Committee, and Awards valued by reference to the book value of Stock or the value of securities of or the performance of specified subsidiaries or affiliates or other business units. The Committee shall determine the terms and conditions of such Awards. Stock delivered pursuant to an Award in the nature of a purchase right granted under this Section shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including, without limitation, cash,

Stock, other Awards, or other property, as the Committee shall determine. Cash awards, as an element of or supplement to any other Award under the Plan, may also be granted pursuant to this Section.

SectionAdditional Provisions Applicable to Awards.
7.

(a) Stand-Alone, Additional, Tandem, and Substitute Awards. Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Subsidiary or affiliate, or any business entity to be acquired by the Company or a Subsidiary or affiliate, or any other right of a Participant to receive payment from the Company or any Subsidiary or affiliate. Awards granted in addition to or in tandem with other Awards may be granted either as of the same time as or a different time from the grant of such other Awards. Subject to the Plan's terms, the Committee may determine that, in granting a new Award, the in-the-money value or fair value of any surrendered Award or award or the value of any other right to payment surrendered by the Participant may be applied to the purchase of any other Award; provided, that such surrender does not result in a "modification," "extension," "substitution" or "assumption" of a Stock right, as determined under Treasury Regulation Section 1.409A-1(b)(5)(v) that would cause such Stock rights to be considered the grant of a new Stock right which is subject to the terms and conditions of Code Section 409A. Any transaction otherwise authorized under this Section 7(a) remains subject to all applicable restrictions under the Plan and may not result in an Award that is subject to the terms and conditions of Code Section 409A by virtue of such transaction; in such event, any transaction that would otherwise be permissible under this Section 7(a) shall be prohibited unless the Participant and the Company mutually agree in writing to cause an Award to become subject to the terms and conditions of Code Section 409A under this Section 7(a).

(b) Form and Timing of Payment Under Awards; Deferrals. Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or a Subsidiary or affiliate upon the exercise of an Option or other Award or settlement of an Award may be made in such forms as the Committee shall determine, including, without limitation, cash, Stock, other Awards or other property, and may be made in a single payment or transfer, or in installments.

(c) Certain Limitations on Awards to Ensure Compliance with Code Section 409A. Other provisions of the Plan notwithstanding, the Award Agreement evidencing any "409A Award" (which for this purpose means only such an Award held by a Participant which is subject to the terms and conditions of Code Section 409A) shall incorporate the terms and conditions necessary to avoid the consequences specified in Code Section 409A(a)(1). Any terms or conditions inconsistent with the requirements of Code Section 409A and its implementing regulations shall be automatically modified and limited (even retroactively) to the extent necessary to conform said Award with Code Section 409A. Notwithstanding anything to the contrary herein, the Company shall not be liable for any unintended adverse tax consequences which may be imposed on the Participant due to receipt, exercise or settlement of any Stock Option or other Award granted hereunder, including the taxes and penalties of Code Section 409A.

SectionCorporate Transactions.
8.

(a) Corporate Transaction in which Awards are not Assumed. Upon the occurrence of a Corporate Transaction in which outstanding Options, Restricted Stock Awards, and Other Stock-Based Awards are not being assumed or continued:

(i) All outstanding shares of Restricted Stock shall be deemed to have vested,

(ii) Either of the following two actions shall be taken:

(A) fifteen days prior to the scheduled consummation of a Corporate Transaction, all Options outstanding hereunder shall become immediately exercisable and shall remain exercisable for a period of fifteen days, or

(B) the Committee may elect, in its sole discretion, to cancel any outstanding Awards of Options or Restricted Stock and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Committee acting in good faith), in the case of Restricted Stock, equal to the formula or fixed price per share paid to holders of shares of Stock and, in the case of Options, equal to the product of the number of shares of Stock subject to the Option (the "Award Shares") multiplied by the amount, if any, by which (I) the formula or fixed price per share paid to holders of shares of Stock pursuant to such transaction exceeds (II) the Option Price Exercise Price applicable to such Award Shares.

(iii) With respect to the Company's establishment of an exercise window, (i) any exercise of an Option during such fifteen-day period shall be conditioned upon the consummation of the event and shall be effective only immediately before the consummation of the event, and (ii) upon consummation of any Corporate Transaction, the Plan and all outstanding but unexercised Options shall terminate. The Committee shall send notice of an event that will result in such a termination to all individuals who hold Options not later than the time at which the Company gives notice thereof to its stockholders.

(b) Corporate Transaction in which Awards are Assumed. The Plan, Options, Restricted Stock Awards, and Other Stock-Based Awards theretofore granted shall continue in the manner and under the terms so provided in the event of any Corporate Transaction to the extent that provision is made in writing in connection with such Corporate Transaction for the assumption or continuation of the Options, Restricted Stock Awards, and Other Stock-Based Awards theretofore granted, or for the substitution for such Options, Restricted Stock Awards, and Other Stock-Based Awards for new common stock options and restricted stock relating to the stock of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock) and option exercise prices in accordance with the provisions of Sections 5(b) and 10(c) and Treasury Regulation Section.1.409A-1(b)(5)(v)(D).

SectionAdditional Award Forfeiture Provisions.
9.

The Committee may condition a Participant's right to receive a grant of an Award, to exercise the Award, to receive a settlement or distribution with respect to the Award or to retain cash, Stock, other Awards, or other property acquired in connection with an Award, upon compliance by the Participant with specified conditions that protect the business interests of the Company and its Subsidiaries and affiliates from harmful actions of the Participant, including conditions relating to non-competition, confidentiality of information relating to or possessed by the Company, non-solicitation of customers, suppliers, and employees of the Company, cooperation in litigation, non-disparagement of the Company and its Subsidiaries and affiliates and the officers and directors of the Company and its Subsidiaries and affiliates, and other restrictions upon or covenants of the Participant, including during specified periods following termination of employment or service to the Company. Accordingly, an Award Agreement may include terms providing for a "clawback" or forfeiture from the Participant of the profit or gain realized by a Participant in connection with an Award, including cash or other proceeds received upon sale of Stock acquired in connection with an Award.

SectionGeneral Provisions.
10.

(a) Compliance with Legal and Other Requirements.

(i) The Company may, to the extent deemed necessary or advisable by the Committee, postpone the issuance or delivery of Stock or payment of other benefits under any Award until completion of such registration or qualification of such Stock or other required action under any federal or state law, rule or regulation, listing or other required action with respect to any stock exchange or automated quotation system upon which the Stock or other securities of the Company are listed or quoted, or compliance with any other obligation of the Company, as the Committee may consider appropriate, and may require any Participant to make such representations, furnish such information and comply with or be subject to such other conditions as it may consider appropriate in connection with the issuance or delivery of Stock or payment of other benefits in compliance with applicable laws, rules, and regulations, listing requirements, or other obligations. The foregoing notwithstanding, in connection with the occurrence of a Corporate Transaction, the Company shall take or cause to be taken no action, and shall undertake or permit to arise no legal or contractual obligation, that results or would result in any postponement of the issuance or delivery of Stock or payment of benefits under any Award or the imposition of any other conditions on such issuance, delivery or payment, to the extent that such postponement or other condition would represent a greater burden on a Participant than existed on the 90th day preceding the Corporate Transaction.

(ii) If the Participant is subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934, as amended, the grant of this Option shall not be effective until such person complies with the reporting requirement of Section 16(a).

(b) Limits on Transferability; Beneficiaries.

(i) Awards granted under the Plan shall not be transferable other than by will or by the laws of descent, and Options may be exercised as provided for under Section 6(b). A Beneficiary, transferee, or other person claiming any rights under the Plan from or through any Participant (except in the case of an Option which is governed by Section 6(b)) shall be subject to all terms and conditions of the Plan and any Award Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional terms and conditions deemed necessary or appropriate by the Committee. Any attempted sale, pledge, assignment, hypothecation or other transfer of an Award contrary to the provisions hereof and the levy of any execution, attachment or similar process upon an Award shall be null and void and without force or effect and shall result in automatic termination of the Award.

(ii) (A) As a condition to the transfer of any shares of Stock issued upon exercise of an Award granted under this Plan, the Company may require an opinion of counsel, satisfactory to the Company, to the effect that such transfer will not be in violation of the Securities Act of 1933 or any other applicable securities laws or that such transfer has been registered under federal and all applicable state securities laws; (B) further, the Company shall be authorized to refrain from delivering or transferring shares of Stock issued under this Plan until the Board determines that such delivery or transfer will not violate applicable securities laws and the Participant has tendered to the Company any federal, state or local tax owed by the Participant as a result of exercising the Award, or disposing of any Stock, when the Company has a legal liability to satisfy such tax; (C) the Company shall not be liable for damages due to delay in the delivery or issuance of any stock certificate for any reason whatsoever, including, but not limited to, a delay caused by listing requirements of any securities exchange or any registration requirements under the Securities Act of 1933, the Securities Exchange Act of 1934, or under any other state or federal law, rule or regulations; (D) the Company is under no obligation to take any action or incur any expense in order to register or qualify the delivery or transfer of shares of Stock under applicable securities laws or to perfect any exemption from such registration or qualification; and (E) furthermore, the Company will have no liability to any Participant for refusing to deliver or transfer shares of Stock if such refusal is based upon the foregoing provisions of this Section.

(c) Effect of Certain Changes. In the event of any merger, reorganization, consolidation, recapitalization, share dividend, share split, combination of shares or other change in corporate structure of the Company affecting the Stock, the Committee shall make appropriate or proportionate substitution or adjustment in: (i) the aggregate number of Stock reserved for issuance under the Plan, (ii) the number and kind of shares of Stock or other securities subject to any then outstanding Awards issued under the Plan; (iii) the price of the shares of Stock subject to outstanding Stock Options granted under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options) as to which such Stock Options remain exercisable; and (iv) the repurchase price per share subject to each outstanding Restricted Stock Award and any other outstanding Awards granted under the Plan. Notwithstanding the foregoing, any substitution or adjustment by the Committee shall comply with Treasury Regulations Sections 1.409A-1(b)(5)(v)(D) and 1.424-1(a) (except 1.424-1(a)(2)) which will be deemed to be satisfied if the ratio of the exercise price to the Fair Market Value of the shares subject to the Awards immediately after the substitution or adjustment is not greater than the ratio of the exercise price to the Fair Market Value of the shares subject to the Stock right immediately before the substitution or adjustment. The Committee's substitution or adjustment shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan as a result of any such substitution or adjustment; but the Committee may, in its sole discretion, authorize a cash payment to be made to the Participant in lieu of fractional shares.

(d) Tax Provisions.

(i) Withholding. The Committee shall so require, as a condition of exercise, each Participant to agree that: (A) no later than the date of exercise of any Option granted hereunder, the optionee will pay to the Company or make arrangements satisfactory to the Committee regarding payment of any federal, state or local taxes of any kind required by law to be withheld upon the exercise of such Option; and (B) the Company shall, to the extent permitted or required by law, have the right to deduct federal, state and local taxes of any kind required by law to be withheld upon the exercise of such Option from any payment of any kind otherwise due to the Participant. For withholding tax purposes, the shares of Stock shall be valued on the date the withholding obligations are incurred. The Company shall not be obligated to advise any optionee of the existence of any such tax or the amount that the Company will be so required to withhold.

(ii) Required Consent to and Notification of Code Section 83(b) Election. No election under Code Section 83(b) or under a similar provision of the laws of a jurisdiction outside the United States may be made unless expressly permitted by the terms of the Award Agreement or by action of the Committee in writing prior to the making of such election. In any case in which a Participant is permitted to make such an election in connection with an Award, the Participant shall notify the Company of such election within ten days of filing notice of the election with the Internal Revenue Service or other governmental authority, in addition to any filing and notification required pursuant to regulations issued under Code Section 83(b) or other applicable provision.

(iii) Requirement of Notification upon Disqualifying Disposition under Code Section 421(b). If any Participant shall make any disposition of shares of Stock delivered pursuant to the exercise of an ISO under the circumstances described in Code Section 421(b) (i.e., a disqualifying disposition), such Participant shall notify the Company of such disposition within ten days thereof.

(iv) Contest of Tax Rulings. The Company shall have the right, but not the obligation, to contest, at its expense, any tax ruling or decision, administrative or judicial, on any issue which is related to the Plan and which the Board believes to be important to holders of Options issued under the Plan and to conduct any such contest or any litigation arising therefrom to a final decision.

(e) Changes to the Plan. The Board at any time and from time to time may suspend, terminate, modify or amend the Plan; provided, however, that the Company shall submit for the approval of a majority of the stockholders of the Company presented or represented and entitled to vote at a duly constituted and held meeting of the stockholders, any amendment that would: (i) materially increase the benefits accruing to Participants under the Plan, (ii) increase the number of shares of Stock as to which Awards may be granted under the Plan, (iii) extend the term of the Plan, (iv) materially modify the requirements as to eligibility for participation in the Plan, (v) expand the types of Awards provided under the Plan, or (vi) be otherwise required by applicable laws, regulations or rules. Any such increase or modification that may result from adjustments authorized by Section 10(c) hereof shall not require such approval. In addition, no such amendment or alteration shall be made which would impair the rights of any Participant, without such Participant's written consent, under any Award theretofore granted, provided that no such consent shall be required with respect to any amendment or alteration either (i) is required or advisable in order for the Company, the Plan or the Award to satisfy or conform to any law or regulation or to meet the requirements of any accounting standard, or (ii) is not reasonably likely to significantly diminish the benefits provided under such Award, or that any such diminishment is adequately compensated.

(f) Unfunded Status of Awards, Creation of Rabbi Trusts. The Plan is intended to constitute an "unfunded" plan for equity incentive compensation. With respect to any payments not yet made to a Participant or obligations to deliver Stock pursuant to an Award, nothing contained in the Plan or any Award shall give any such Participant any rights that are greater than those of a general creditor of the Company; provided that the Committee may authorize the creation of rabbi trusts and deposit therein cash, Stock, other Awards or other property, or make other arrangements to meet the Company's obligations under the Plan. Such trusts or other arrangements shall be consistent with the "unfunded" status of the Plan unless the Committee otherwise determines.

(g) Nonexclusivity of the Plan. Neither the adoption of the Plan by the Board nor its submission to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board or a committee thereof to adopt such other incentive or compensation arrangements, apart from the Plan, as it may deem desirable, including incentive or compensation arrangements and awards that do not qualify under Code Section 162(m) or to which Code Section 409A does apply, and such other arrangements may be either applicable generally or only in specific cases.

(h) Payments in the Event of Forfeitures; Fractional Shares. Unless otherwise determined by the Committee, in the event of a forfeiture of an Award with respect to which a Participant paid cash consideration, the Participant shall be repaid the amount of such cash consideration. No fractional shares of Stock shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(i) Governing Law. The validity, construction, and effect of the Plan, any rules and regulations relating to the Plan and any Award Agreement shall be determined in accordance with the laws of the State of Nevada, without giving effect to principles of conflicts of laws, and applicable provisions of federal law.

(j) Limitation on Rights Conferred Under The Plan. Neither the Plan nor any action taken hereunder shall be construed as (i) giving any Eligible Person or Participant the right to continue as an Eligible Person or Participant or in the employ or service of the Company or a Subsidiary or affiliate, (ii) interfering in any way with the right of the Company or a Subsidiary or affiliate to terminate any Eligible Person's or Participant's employment or service at any time (subject to the terms and provisions of any separate written agreements), (iii) giving an Eligible Person or Participant any claim to be granted any Award under the Plan or to be treated uniformly with other Participants and employees, or (iv) conferring on a Participant any of the rights of a stockholder of the Company unless and until the Participant is duly issued or transferred shares of Stock in accordance with the terms of an Award. Any Award shall not be deemed compensation for purposes of computing benefits under any retirement plan of the Company or any Subsidiary or affiliate and shall not affect any benefits under any other benefit plan under which the availability or amount of benefits is related to the level of compensation (unless required by any such other plan or arrangement with specific reference to Awards under this Plan).

(k) Termination of Right of Action. Every right of action arising out of or in connection with the Plan by or on behalf of the Company or of any Subsidiary, or by any stockholder of the Company or of any Subsidiary against any past, present or future member of the Board, or against any employer, or by an employee (past, present or future) against the Company or any Subsidiary will, irrespective of the place where an action may be brought and irrespective of the place of residence of any such stockholder, director or employee, cease and be barred as of the expiration of three years from the date of the act or omission in respect of which such right of action is alleged to have risen.

(l) Assumption. The terms and conditions of any outstanding Awards granted pursuant to this Plan shall be assumed by, be binding upon and inure to the benefit of any successor company to the Company and shall continue to be governed by, to the extent applicable, the terms and conditions of this Plan. Such successor Company shall not be otherwise obligated to assume this Plan.

(m) Severability; Entire Agreement. If any of the provisions of this Plan or any Award Agreement is finally held to be invalid, illegal or unenforceable (whether in whole or in part), such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or unenforceability, and the remaining provisions shall not be affected thereby; provided, that, if any of such provisions is finally held to be inva160;

EXCESS OF GROSS INCOME OVER DIRECT OPERATING EXPENSES	$	735,703

See Notes to Historical Summary of Gross Income and Direct Operating Expenses.

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Edgewood Vista – Fargo, ND Notes to Historical Summary of Gross Income and Direct Operating Expenses for the Four Months Ended December 31, 2007

Note 1. Nature of Business

The Edgewood Vista – Fargo, ND, a three-story senior housing facility, which contains approximately 156,001 rentable square feet and underground heated parking, seven individual single-story patio homes of approximately 1,600 square feet each and a separate management office building, is located at 4420 and 4440 37th Avenue South, Fargo, ND. The property was acquired on March 6, 2008 from affiliates of Edgewood Vista Senior Living, Inc. The Historical Summary of Gross Income and Direct Operating Expenses includes information related to the operations of Edgewood Vista – Fargo, ND for the four months ended December 31, 2007 as recorded by the property's previous owner, subject to the exclusions described below. Edgewood Vista-Fargo, ND was a new property with a lease commencement date of September 1, 2007.

Note 2. Basis of Presentation

IRET, Inc., purchased Edgewood Vista – Fargo, ND on March 6, 2008. The historical summary has been prepared for the purpose of complying with Regulation S-X, Rule 3-14 of the Securities and Exchange Commission ("SEC"), which requires certain information with respect to real estate operations acquired to be included with certain filings with the SEC. This historical summary includes the historical gross income and direct operating expenses of Edgewood Vista – Fargo, ND, exclusive of the following expenses, which may not be comparable to the corresponding amounts reflected in proposed future operations:

(a) depreciation of property and equipment

(b) interest expense

Note 3. Summary of Significant Accounting Policies Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Capitalization Policy - Expenditures for renewals and improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Expenditures for maintenance and repairs, which do not add to the value or extend useful lives, are charged to expense as incurred.

Revenue Recognition - Rental revenue is recognized on the straight-line basis, which averages minimum rents over the terms of the lease. This lease is classified as an operating leases and expires in February 2015. The following is a schedule by years of future actual minimum rents receivable on the non-cancelable operating lease in effect as of December 31, 2007.

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Edgewood Vista – Fargo, ND Notes to Historical Summary of Gross Income and Direct Operating Expenses – continued

Year	Amount
2008	$ 1,938,841
2009	2,310,823
2010	2,449,210
2011	2,313,879
2012	2,283,738
Thereafter	4,948,099
Total	$ 16,244,590

Expense Reimbursement – Certain expenses, including real estate taxes, insurance, utilities, and maintenance, are paid directly by the tenant in accordance with the lease. These expenses are not reflected in the Historical Summaries.

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INVESTORS REAL ESTATE TRUST
Unaudited Pro Forma Consolidated Balance Sheet as of January 31, 2008

(in thousands)	IRET Consolidated 01/31/08 Unaudited (a)	Edgewood Vista – East Grand Forks, MN (b)	Edgewood Vista – Billings, MT (b)	Edgewood Vista – Sioux, Falls, SD (b)	Minneapolis 701 25th Avenue Medical (c)	Edgewood Vista – Belgrade, MT (d)	Edgewood Vista – Columbus, NE (d)	Edgewood Vista – Grand Island, NE (d)	Edgewood Vista – Norfolk, NE (d)	Edgew V Fa
ASSETS										
Real estate investments										
Property owned	$ 1,558,560	$ 1,673	$ 1,897	$ 1,315	$ 7,874	$ 814	$ 867	$ 807	$ 752	$ 21
Less accumulated depreciation/amortization	(209,400)	0	0	0	0	0	0	0	0	
	$ 1,349,160	$ 1,673	$ 1,897	$ 1,315	$ 7,874	$ 814	$ 867	$ 807	$ 752	$ 21
Undeveloped land	18,635	0	0	0	0	0	0	0	0	
Mortgage loans receivable, net of allowance	548	0	0	0	0	0	0	0	0	
Total real estate investments	$ 1,368,343	$ 1,673	$ 1,897	$ 1,315	$ 7,874	$ 814	$ 867	$ 807	$ 752	$ 21
Other assets										
Cash and cash equivalents	$ 76,392	$ (3,600)	$ (3,331)	$ (2,421)	$ 39	$ (2,135)	$ (1,481)	$ (1,431)	$ (1,319)	$ (7
Marketable securities-available-for-sale	2,160	0	0	0	0	0	0	0	0	
Receivable arising from straight-lining of rents, net of allowance	13,753	0	0	0	0	0	0	0	0	
Accounts receivable - net of allowance	3,842	0	0	0	0	0	0	0	0	
Real estate deposits	1,103	0	0	0	(173)	0	0	0	0	
Prepaid and other assets	821	0	5	5	0	0	0	0	0	
Intangible assets, net of accumulated amortization	29,025	3,354	2,392	2,065	840	1,321	614	624	567	4
Tax, insurance, and other escrow	8,060	106	72	76	0	0	0	0	0	
Property and equipment, net	1,487	0	0	0	0	0	0	0	0	
Goodwill	1,396	0	0	0	0	0	0	0	0	
Deferred charges and leasing costs - net	13,528	0	0	0	0	0	0	0	0	
TOTAL ASSETS	$ 1,519,910	$ 1,533	$ 1,035	$ 1,040	$ 8,580	$ 0	$ 0	$ 0	$ 0	$ 19
LIABILITIES AND SHAREHOLDERS' EQUITY										
LIABILITIES										
Accounts payable and accrued expenses	$ 29,573	$ 61	$ 37	$ 35	$ 330	$ 0	$ 0	$ 0	$ 0	$
Mortgages payable	975,785	1,472	998	1,005	6.950	0	0	0	0	14
Other debt	1,019	0	0	0	0	0	0	0	0	
TOTAL LIABILITIES	$ 1,006,377	$ 1,533	$ 1,035	$ 1,040	$ 7,280	$ 0	$ 0	$ 0	$ 0	$ 15

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MINORITY INTEREST IN PARTNERSHIPS	12,768	0	0	0	0	0	0	0	0	0	0	12,768
MINORITY INTEREST OF UNIT HOLDERS IN OPERATING PARTNERSHIP (20,395,411 units on January31, 2008 and 19,981,259 units on April 30, 2007)	155,301	0	0	0	1,211	0	0	0	0	4,000	4,148	164,660
SHAREHOLDERS' EQUITY												
Preferred shares of beneficial interest (Cumulative redeemable preferred shares, no par value, 1,150,000 shares issued and outstanding at January 31, 2008 and April 30, 2007, aggregate liquidation preference of $28,750,000)	27,317	0	0	0	0	0	0	0	0	0	0	27,317
Common shares of beneficial interest (Unlimited authorization, no par value, 56,977,406 shares issued and outstanding at January 31, 2008, 48,570,461 shares issued and outstanding at April 30, 2007)	433,645	0	0	0	0	0	0	0	0	0	0	433,645
Accumulated distributions in excess of net income	$ (115,546)	$ 0	$ 0	$ 0	$ 89	$ 0	$ 0	$ 0	$ 0	$ 0	$ 526	$ (114,931)

Accumulated other comprehensive loss	48	0	0	0	0	0	0	0	0	0	0	0	48
TOTAL SHAREHOLDERS' EQUITY	$ 345,464	$ 0	$ 0	$ 0	$ 89	$ 0	$ 0	$ 0	$ 0	$ 0	$ 526	$	346,079
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 1,519,910	$ 1,533	$ 1,035	$ 1,040	$ 8,580	$ 0	$ 0	$ 0	$ 0	$ 19,105	$ 40,374	$	1,591,577

(a) The IRET historical balance sheet reflects the financial position of the Company as of January 31, 2008, as reported in the Company's Form 10-Q filed March 11, 2008. Includes Urbandale 3900 106th Street acquired June 20, 2007 and Intertech Building acquired December 28, 2007.

(b) Represents the necessary adjustments to reflect the acquisition of three senior housing facilities from affiliates of Edgewood Vista on February 29, 2008, as if such acquisition had occurred on January 31, 2008.

(c) Represents the necessary adjustments to reflect the acquisition of a medical office building acquired as a part of a portfolio of six medical office properties that were acquired on March 3, 2008, as if such acquisition had occurred on January 31, 2008.

(d) Represents the necessary adjustments to the reflect the acquisition of a senior housing facility, acquired as part of a five senior housing acquisition from affiliates of Edgewood Vista Senior Living, Inc., that were acquired on March 6, 2008, as if such acquisition had occurred on January 31, 2008.

(e) Represents the necessary adjustments to reflect the acquisition of real estate properties (five medical properties) that were acquired on March 3, 2008, as if such acquisitions had occurred on January 31, 2008.

Investors Real Estate Trust
Unaudited Pro Forma Consolidated Statement of Operations
For the Nine Months Ended January 31, 2008, and Twelve Months Ended April 30, 2007

The unaudited pro forma Consolidated Statement of Operations for the nine months ended January 31, 2008, and for the year ended April 30, 2007, is presented as if the acquisitions had occurred on May 1, 2006. The unaudited pro forma Consolidated Statement of Operations for the nine months ended January 31, 2008, and for the twelve months ended April 30, 2007, is not necessarily indicative of what the actual results of operations would have been assuming the transactions had occurred as of the beginning of the period presented, nor does it purport to represent the results of operations for future periods.

Unaudited Pro Forma Consolidated Statement of Operations for Nine Months Ended January 31, 2008 (unaudited)

(in thousands, except per share data)	Nine Months Ended January 31 2008	Urbandale 3900 106th Street (1)	Edgewood Vista – Intertech Building (2)	Edgewood Vista – East Grand Forks, MN (3)	Edgewood Vista – Billings, MT (3)	Minneapolis Vista – Sioux, Falls, SD (3)	701 25th Avenue – Medical (4)	Edgewood Vista – Belgrade, MT (5)	Edgewood Vista – Columbus, NE (5)	Edgewood Vista – Grand Island, NE (5)	Edgewood Vista – Norfolk, NE (5)	Edgewood Vista – Fargo, ND (5)	Insignificant Acquisitions (6)	Total Consolidated Pro Forma
REVENUE														
Real estate rentals	$ 133,469	$ 161	$ 748	$ 380	$ 267	$ 235	$ 714	$ 141	$ 95	$ 95	$ 90	$ 1,766	$ 5,441	$ 143,602
Tenant reimbursement	28,919	53	12	0	0	0	547	0	0	0	0	0	2,590	