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**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**Form 10-Q**

(Mark One)

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

For the quarterly period ended September 30, 2007

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number: 000-50577

**Dynavax Technologies Corporation**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
incorporation or organization)*

**33-0728374**  
*(IRS Employer  
Identification No.)*

**2929 Seventh Street, Suite 100  
Berkeley, CA 94710-2753  
(510) 848-5100**

*(Address, including Zip Code, and telephone number, including area code, of the registrant's principal executive offices)*

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

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

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of October 31, 2007, the registrant had outstanding 39,764,520 shares of common stock.

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*This Quarterly Report on Form 10-Q includes trademarks and registered trademarks of Dynavax Technologies Corporation. Products or service names of other companies mentioned in this Quarterly Report on Form 10-Q may be trademarks or registered trademarks of their respective owners.*

## FORWARD-LOOKING STATEMENTS

*This Quarterly report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 which are subject to a number of risks and uncertainties. Our forward-looking statements include discussions regarding our business and financing strategies, future research and development, preclinical and clinical product development efforts, intellectual property rights and ability to commercialize our product candidates, as well as the timing of the clinical development of our products, uncertainty regarding our future operating results and prospects for profitability. Our actual results may vary materially from those in such forward-looking statements as a result of various factors that are identified in “Item 1A – Risk Factors” and elsewhere in this document. All forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. We assume no obligation to update any forward-looking statements.*

## PART I. FINANCIAL STATEMENTS

## ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**Dynavax Technologies Corporation**  
**Condensed Consolidated Balance Sheets**  
**(In thousands, except per share amounts)**

	September 30, 2007 (unaudited)	December 31, 2006 (Note 1)
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 14,642	\$ 14,154
Marketable securities available-for-sale	21,279	58,677
Investments held by Symphony Dynamo, Inc. (SDI)	32,804	13,363
Restricted cash	408	408
Accounts receivable	574	2,154
Inventory	263	257
Prepaid expenses and other current assets	3,529	673
Total current assets	73,499	89,686
Property and equipment, net	6,380	5,200
Goodwill	2,312	2,312
Other intangible assets, net	3,627	4,382
Other assets	2,178	1,310
Total assets	<u>\$ 87,996</u>	<u>\$ 102,890</u>
<b>Liabilities, noncontrolling interest and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 1,951	\$ 2,181
Accrued liabilities	11,075	10,742
Deferred revenues	781	778
Total current liabilities	13,807	13,701
Deferred revenues, noncurrent	10,000	10,000
Liability from Program Option exercised under the SDI collaboration	15,000	—
Other long-term liabilities	3,627	117
Noncontrolling interest in SDI	10,342	2,016
Commitments and contingencies		
Stockholders' equity:		
Preferred stock: \$0.001 par value; 5,000 shares authorized and no shares issued and outstanding at September 30, 2007 and December 31, 2006	—	—
Common stock: \$0.001 par value; 100,000 shares authorized at September 30, 2007 and December 31, 2006; 39,765 and 39,715 shares issued and outstanding at September 30, 2007 and December 31, 2006, respectively	40	40
Additional paid-in capital	250,770	244,787
Accumulated other comprehensive income:		
Unrealized gain on marketable securities available-for-sale	23	28
Cumulative translation adjustment	225	144
Accumulated other comprehensive income	248	172
Accumulated deficit	(215,838)	(167,943)
Total stockholders' equity	35,220	77,056
Total liabilities, noncontrolling interest and stockholders' equity	<u>\$ 87,996</u>	<u>\$ 102,890</u>

See accompanying notes.

**Dynavax Technologies Corporation**  
**Condensed Consolidated Statements of Operations**  
**(In thousands, except per share amounts)**  
**(Unaudited)**

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2007</u>	<u>2006</u>	<u>2007</u>	<u>2006</u>
Revenues:				
Collaboration revenue	\$ 719	\$ 166	\$ 2,218	\$ 166
Services and license revenue	162	692	732	916
Grant revenue	133	734	1,848	1,327
Total revenues	<u>1,014</u>	<u>1,592</u>	<u>4,798</u>	<u>2,409</u>
Operating expenses:				
Research and development	14,909	12,781	47,705	30,135
General and administrative	5,029	4,656	13,414	10,639
Acquired in-process research and development	—	—	—	4,180
Amortization of intangible assets	251	251	754	447
Total operating expenses	<u>20,189</u>	<u>17,688</u>	<u>61,873</u>	<u>45,401</u>
Loss from operations	(19,175)	(16,096)	(57,075)	(42,992)
Interest and other income, net	453	673	2,506	2,093
Loss including noncontrolling interest in Symphony Dynamo, Inc.	(18,722)	(15,423)	(54,569)	(40,899)
Amount attributed to noncontrolling interest in Symphony Dynamo, Inc.	1,621	3,271	6,674	5,302
Net loss	<u>\$ (17,101)</u>	<u>\$ (12,152)</u>	<u>\$ (47,895)</u>	<u>\$ (35,597)</u>
Basic and diluted net loss per share	<u>\$ (0.43)</u>	<u>\$ (0.40)</u>	<u>\$ (1.21)</u>	<u>\$ (1.17)</u>
Shares used to compute basic and diluted net loss per share	<u>39,753</u>	<u>30,605</u>	<u>39,740</u>	<u>30,551</u>

*See accompanying notes.*

**Dynavax Technologies Corporation**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	Nine Months Ended September 30,	
	2007	2006
<b>Operating activities</b>		
Net loss	\$ (47,895)	\$ (35,597)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,091	797
Amount attributed to noncontrolling interest in Symphony Dynamo, Inc. (SDI)	(6,674)	(5,302)
Acquired in-process research and development	—	4,180
Amortization of intangible assets	755	447
Gain on disposal of property and equipment	—	(50)
Accretion and amortization on marketable securities	(1,578)	152
Realized loss on sale of marketable securities	—	23
Increase in interest payable	356	
Stock-based compensation expense	2,482	2,366
Changes in operating assets and liabilities:		
Accounts receivable	1,580	(707)
Prepaid expenses and other current assets	(1,740)	160
Inventory	(6)	—
Other assets	1,365	(507)
Accounts payable	(230)	1,933
Accrued liabilities	30	2,035
Deferred revenues	3	10,511
Net cash used in operating activities	<u>(50,461)</u>	<u>(19,559)</u>
<b>Investing activities</b>		
Change in investments held by SDI	(19,441)	(17,727)
Cash paid for acquisition, net of cash acquired	—	(14,045)
Purchases of marketable securities	(41,479)	(19,627)
Proceeds from sales of marketable securities	—	10,987
Proceeds from maturities of marketable securities	80,450	49,758
Purchases disposal of property and equipment, net	(2,314)	(478)
Net cash provided by investing activities	<u>17,216</u>	<u>8,868</u>
<b>Financing activities</b>		
Proceeds from purchase of noncontrolling interest by preferred shareholders in SDI, net of fees	30,000	17,405
Proceeds from Deerfield financing agreement	3,500	—
Issuance cost associated with common stock offering	(19)	—
Proceeds from employee stock purchase plan	149	114
Proceeds from exercise of stock options	22	311
Net cash provided by financing activities	<u>33,652</u>	<u>17,830</u>
Effect of exchange rate on cash and cash equivalents	81	87
Net increase in cash and cash equivalents	488	7,226
Cash and cash equivalents at beginning of period	14,154	8,725
Cash and cash equivalents at end of period	<u>\$ 14,642</u>	<u>\$ 15,951</u>
<b>Supplemental disclosure of non-cash investing and financing activities</b>		
Disposal of fully depreciated property and equipment	\$ 26	\$ 255
Warrants issued in conjunction with Deerfield financing agreement	\$ 3,349	\$ —
Warrants issued in conjunction with SDI transaction	\$ —	\$ 5,646
Liability from Program Option exercised under the SDI collaboration	<u>\$ 15,000</u>	<u>\$ —</u>

*See accompanying notes.*

**Dynavax Technologies Corporation**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Organization and Summary of Significant Accounting Policies**

Dynavax Technologies Corporation is a biopharmaceutical company that discovers, develops and intends to commercialize innovative Toll-like Receptor 9, or TLR9, agonist-based products to treat and prevent infectious diseases, allergies, cancer and chronic inflammatory diseases using versatile, proprietary approaches that alter immune system responses in highly specific ways. Our TLR9 agonists are based on immunostimulatory sequences, or ISS, which are short DNA sequences that enhance the ability of the immune system to fight disease and control chronic inflammation.

**Basis of Presentation**

Our accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. In our opinion, these unaudited condensed consolidated financial statements include all adjustments, consisting only of normal recurring adjustments, which we consider necessary to fairly state our financial position and the results of our operations and cash flows. Interim-period results are not necessarily indicative of results of operations or cash flows for a full-year period or any other interim-period. The condensed consolidated balance sheet at December 31, 2006 has been derived from audited financial statements at that date, but does not include all disclosures required by U.S. generally accepted accounting principles for complete financial statements.

These unaudited condensed consolidated financial statements and the notes accompanying them should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2006 as filed with the Securities and Exchange Commission, or SEC, on March 16, 2007.

The unaudited condensed consolidated financial statements include the accounts of Dynavax and our wholly-owned subsidiaries as well as a variable interest entity, Symphony Dynamo, Inc., for which we are the primary beneficiary as defined by Financial Accounting Standards Board, or FASB, Interpretation No. 46 (revised 2003), "Consolidation of Variable Interest Entities," or FIN 46R. All intercompany accounts and transactions have been eliminated. We operate in one business segment, which is the discovery and development of biopharmaceutical products.

**Use of Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Actual results may differ from these estimates.

**Significant Accounting Policies**

We believe that there have been no significant changes in our critical accounting policies during the nine months ended September 30, 2007 as compared with those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2006.

**Recent Accounting Pronouncements**

In March 2007, the FASB discussed Emerging Issues Task Force (EITF) Issue No. 07-3, "Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development Activities", which addressed the accounting for nonrefundable advance payments. The EITF concluded that nonrefundable advance payments for goods or services to be received in the future for use in research and development activities should be deferred and capitalized. The capitalized amounts should be expensed as the related goods are delivered or the services performed. If an entity's expectations change such that it does not expect it will need the goods to be delivered or the services to be rendered, capitalized nonrefundable advance payment should be charged to expense. Issue 07-3 is effective for new contracts entered into during fiscal years beginning after December 15, 2007, including interim periods within those fiscal years. Early adoption of the provision of the consensus is not permitted. Accordingly, we must adopt Issue 07-3 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

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In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159 (SFAS 159), "The Fair Value Option for Financial Assets and Financial Liabilities", which allows entities to account for most financial instruments at fair value rather than under other applicable generally accepted accounting principles such as historical cost. The accounting results in the instrument being marked to fair value every reporting period with the gain/loss from a change in fair value recorded in the income statement. SFAS 159 is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. Accordingly, we must adopt SFAS 157 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

In September 2006, the FASB issued SFAS 157, "Fair Value Measurements." SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. Accordingly, we must adopt SFAS 157 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

In July 2006, the FASB released Financial Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" (FIN 48). FIN 48 prescribes the minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. FIN 48 also requires additional disclosure of the beginning and ending unrecognized tax benefits and details regarding the uncertainties that may cause the unrecognized benefits to increase or decrease within a twelve month period.

We adopted the provisions of FIN 48 on January 1, 2007. There was no impact on our consolidated financial position, results of operations and cash flows as a result of adoption. We have no unrecognized tax benefit as of September 30, 2007, including no accrued amounts for interest and penalties. Our policy will be to recognize interest and penalties related to income taxes as a component of general and administrative expense. We are subject to income tax examinations for U.S. incomes taxes and state income taxes from 1996 forward. We are subject to tax examinations in Singapore and Germany from 2003 and 2004 forward, respectively. We do not anticipate that total unrecognized tax benefits will significantly change prior to September 30, 2008.

## **2. Inventory**

Inventories as of September 30, 2007 consist of the following (in thousands):

	September 30, 2007	December 31, 2006
Raw materials	\$ 195	\$ 194
Finished goods	68	63
Total	<u>\$ 263</u>	<u>\$ 257</u>

## **3. Intangible Assets**

Intangible assets consist of manufacturing process, customer relationships, and developed technology acquired in connection with the acquisition of Rhein Biotech GmbH, or Rhein or Dynavax Europe, in April 2006. Purchased intangible assets other than goodwill are amortized on a straight-line basis over their respective useful lives. The following table presents details of the purchased intangible assets as of September 30, 2007 (in thousands, except years):

	Original Estimated Useful Life (in Years)	Gross	Accumulated Amortization	Net
Manufacturing process	5	\$ 3,670	\$ 1,060	\$ 2,610
Customer relationships	5	1,230	355	875
Developed technology	7	180	38	142
Total	5.1	<u>\$ 5,080</u>	<u>\$ 1,453</u>	<u>\$ 3,627</u>

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The estimated future amortization expense of purchased intangible assets is as follows (in thousands):

<u>Year ending December 31,</u>	
2007 (remaining three months)	\$ 251
2008	1,006
2009	1,006
2010	1,005
2011	325
Thereafter	34
Total	<u>\$ 3,627</u>

#### **4. Collaborative Research and Development Agreements**

In September 2006, we entered into a research collaboration and license agreement with AstraZeneca AB, or AstraZeneca, for the discovery and development of TLR9 agonist-based therapies for the treatment of asthma and chronic obstructive pulmonary disease, or COPD. Under the terms of the agreement, we are collaborating with AstraZeneca to identify lead TLR9 agonists and conduct appropriate research phase studies. AstraZeneca is responsible for any development and worldwide commercialization of products arising out of the research program. We received an upfront payment of \$10 million upon signing the agreement and are eligible to receive research funding, preclinical milestones and future development milestones that in total could approximate \$136 million. Upon commercialization, we are also eligible to receive royalties based on product sales. Collaboration revenue resulting from the performance of research services amounted to \$0.7 million and \$2.2 million for the three and nine months ended September 30, 2007, respectively. As of September 30, 2007, our deferred revenue was \$10.5 million associated with the upfront fee and amounts billed in advance for research services per the contract terms.

In 2003, we were awarded government grants totaling \$8.3 million to fund research and development. Certain of these grants have been extended through the first quarter of 2008. In August 2007, we were awarded a two-year \$3.25 million grant to continue development of a novel universal influenza vaccine for controlling seasonal and emerging pandemic flu strains. Revenue associated with these grants is recognized as the related expenses are incurred. For the nine months ended September 30, 2007 and 2006, we recognized revenue of approximately \$1.8 million and \$1.3 million, respectively.

#### **5. Symphony Dynamo, Inc.**

In April 2006, we entered into a series of related agreements with Symphony Capital Partners, LP to advance specific Dynavax ISS-based programs for cancer, hepatitis B therapy and hepatitis C therapy through certain stages of clinical development. Pursuant to the agreements, Symphony Dynamo, Inc., or SDI, agreed to fund up to \$50.0 million for the clinical development of these programs and we licensed to SDI our intellectual property rights related to these programs. SDI is a wholly-owned subsidiary of Symphony Dynamo Holdings LLC, or Holdings, which provided \$20.0 million in funding to SDI at closing and \$30.0 million in April 2007. We are primarily responsible for the development of these programs.

Pursuant to the agreements, we issued to Holdings five-year warrants to purchase 2,000,000 shares of common stock at \$7.32 per share, representing a 25% premium over the applicable 60-day trading range average of \$5.86 per share. The warrant exercise price is subject to reduction to \$5.86 per share under certain circumstances. The warrants may be exercised or surrendered for a cash payment upon consummation of an all cash merger or acquisition of Dynavax, the obligation for which would be settled by the surviving entity. The warrants issued upon closing were assigned a value of \$5.6 million using the Black-Scholes valuation model, and were recorded as a reduction in the noncontrolling interest in SDI and an increase in additional paid in capital.

In consideration for the warrants, we received an exclusive purchase option, defined as the Purchase Option, to acquire all of the programs through the purchase of all of the equity in SDI during the five-year term at specified prices. The Purchase Option exercise price is payable in cash or a combination of cash and shares of Dynavax common stock, at our sole discretion. We also received an option to purchase either the hepatitis B or hepatitis C program, defined as the Program Option. We exercised the Program Option in April 2007 for the hepatitis B program. The exercise of the Program Option requires a payment obligation of \$15 million to Holdings upon the expiration of the SDI collaboration in 2011 if the Purchase Option for all programs is not exercised at any time through the remaining term of the collaboration. The long-term liability for the Program Option is payable in cash only and will be fully creditable against the exercise price for any subsequent exercise of the Purchase Option. If we do not exercise our exclusive right to purchase the remaining programs licensed under the agreement, the intellectual property rights to those programs at the end of the development period will remain with SDI. The long-term liability of \$15.0 million was offset against the noncontrolling interest in SDI.

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In accordance with Financial Accounting Standards Board Interpretation No. 46 (revised 2003), "Consolidation of Variable Interest Entities", or FIN 46R, we have determined that SDI is a variable interest entity for which we are the primary beneficiary. As a result, the financial position and results of operations of SDI have been included in our consolidated financial statements as of September 30, 2007 and for the period from April 18, 2006 through December 31, 2006. Accordingly, the investments held by SDI in the consolidated balance sheet include the \$50.0 million of funding, less funds spent to date on the development of the programs. The noncontrolling interest in SDI reflects \$50.0 million of funding reduced by (i) the structuring fee and other closing costs of \$2.6 million, (ii) the value assigned to the warrants issued to Holdings upon closing of \$5.6 million, (iii) the Program Option obligation of \$15.0 million, and (iv) SDI's losses through September 30, 2007. Reimbursable expenses incurred under the SDI programs were \$8.5 million and \$5.5 million for the nine months ended September 30, 2007 and September 30, 2006, respectively.

### **6. Financing Agreement**

In July 2007, Deerfield Management, a healthcare investment fund and its affiliates, or Deerfield, committed up to \$30 million in project financing for a planned chamber study and subsequent field study for TOLAMBA and to advance our preclinical peanut and cat allergy programs. Deerfield's commitment is in the form of loans that can be drawn down over a three-year period, subject to achievement of specific milestones in the programs. Repayment of a portion of the loan principal for TOLAMBA is contingent upon the positive outcome of the chamber study and subsequent field study. If the TOLAMBA program is discontinued, we have no obligation to repay Deerfield up to \$9 million of the funds earmarked for that program; any other remaining outstanding principal will be due in July 2010. A portion of the funding, if utilized, will advance our peanut and cat allergy programs. Deerfield is entitled to receive an annual 5.9% cash commitment fee as well as milestone-driven payments in the form of warrants issued or issuable at an exercise premium of 20% over the average share price in the 15-day period prior to achievement of the milestone. Warrants are required to be issued and priced on successful completion of milestones and, if all milestones are successfully achieved, Deerfield would receive warrants exercisable for the purchase of a total of 5.55 million shares of the Company's common stock, during the term of the loan agreement.

During the third quarter of 2007, we received from Deerfield \$3.5 million in cash which is recorded as a long-term liability in our consolidated balance sheet as of September 30, 2007. Deerfield received warrants for the purchase of 1.25 million shares of the Company's common stock upon execution of the loan agreement at an exercise price of \$5.13 per share. The warrant issued upon closing was assigned a value of \$3.3 million using the Black-Scholes valuation model. At the date of issuance, the warrant valuation is recorded as a deferred transaction cost in other assets and an increase in additional paid in capital. The deferred transaction cost will be amortized on a straight-line basis over the remaining term of the loan and recognized as interest expense in the statement of operations. For the quarter ended September 30, 2007, we amortized \$0.2 million of deferred transaction cost in interest expense. Additionally, for the quarter ended September 30, 2007 we recognized as interest expense \$0.4 million associated with the commitment fee which is payable on October 31, 2007. In October 2007 upon our completion of a milestone, Deerfield also received warrants for the purchase of 1.3 million shares of the Company's common stock at an exercise price of \$5.75 per share; these warrants were assigned a value of \$3.7 million using the Black-Scholes valuation model.

### **7. Commitments**

We lease our facilities in Berkeley, California, or the Berkeley Lease, and Düsseldorf, Germany, or the Düsseldorf Lease, under operating leases that expire in September 2014 and August 2009, respectively. The Berkeley Lease can be terminated in September 2009 at no cost to us but otherwise extends automatically until September 2014. The Berkeley Lease provides for periods of escalating rent. The total cash payments over the life of the lease were divided by the total number of months in the lease period and the average rent is charged to expense each month during the lease period. We have entered into a sublease agreement under the Berkeley Lease for a certain portion of the leased space with scheduled payments to us totaling \$25,000 through 2007 and \$0.1 million annually thereafter until August 2010. The sublease rental income is offset against rent expense. In addition, our Berkeley Lease provided a tenant improvement allowance of \$0.4 million, which is considered a lease incentive and accordingly, has been included in accrued liabilities and other long-term liabilities in the consolidated balance sheets as of September 30, 2007 and December 31, 2006. The Berkeley Lease incentive is amortized as an offset to rent expense over the lease term, through September 2014. Total net rent expense related to our operating leases for the nine months ended September 30, 2007 and September 30, 2006, was \$1.5 million and \$1.3 million, respectively. Deferred rent was \$0.2 million as of September 30, 2007.

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Future minimum payments under the non-cancelable portion of our operating leases at September 30, 2007, excluding payments from the sublease agreement, are as follows (in thousands):

<u>Year ending December 31,</u>		
2007 (remaining three months)	\$	446
2008		1,803
2009		1,857
2010		1,912
2011		1,970
Thereafter		5,538
<b>Total</b>	<b>\$</b>	<b>13,526</b>

During the fourth quarter of 2004, we established a letter of credit with Silicon Valley Bank as security for our Berkeley Lease in the amount of \$0.4 million. The letter of credit remained outstanding as of September 30, 2007 and is collateralized by a certificate of deposit which has been included in restricted cash in the consolidated balance sheets as of September 30, 2007 and December 31, 2006. Under the terms of the Berkeley Lease, if the total amount of our cash, cash equivalents and marketable securities falls below \$20.0 million for a period of more than 30 consecutive days during the lease term, the amount of the required security deposit will increase to \$1.1 million, until such time as our projected cash and cash equivalents will exceed \$20.0 million for the remainder of the lease term, or until our actual cash and cash equivalents remains above \$20.0 million for a period of 12 consecutive months.

In addition to the non-cancelable commitments included above, we have entered into contractual arrangements that obligate us to make payments to the contractual counterparties upon the occurrence of future events. In the normal course of operations, we have entered into license and other agreements and intend to continue to seek additional rights relating to compounds or technologies in connection with our discovery, manufacturing and development programs. Under the terms of the agreements, we may be required to pay future up-front fees, milestones and royalties on net sales of products originating from the licensed technologies. We consider these potential obligations to be contingent and have summarized all significant arrangements below.

We rely on research institutions, contract research organizations, clinical investigators and clinical material manufacturers. As of September 30, 2007, under the terms of our agreements, we are obligated to make future payments as services are provided of approximately \$6 million through 2009. These agreements are terminable by us upon written notice. We are generally only liable for actual effort expended by the organizations at any point in time during the contract, subject to certain termination fees and penalties.

Under the terms of our exclusive license agreements with the Regents of the University of California, as amended, for certain technology and related patent rights and materials, we pay annual license or maintenance fees and will be required to pay milestones and royalties on net sales of products originating from the licensed technologies. As of September 30, 2007, such fees and milestone payments to the Regents could approximate \$1 million in 2008.

In April 2006, Rhein and Green Cross Vaccine Corp. ("Green Cross") entered into an exclusive license agreement whereby Green Cross granted Rhein an exclusive license relating to SUPERVAX, a hepatitis B vaccine. In exchange, Rhein is required to pay Green Cross a specified profit share until Green Cross's development costs for the product are recouped and thereafter a specified profit share for a designated period of time. To date, revenue from SUPERVAX has not been material.

### **8. Net Loss Per Share**

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding during the period. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares outstanding during the period and potentially dilutive common shares using the treasury-stock method. For purposes of this calculation, common stock subject to repurchase by us, preferred stock, options and warrants are considered to be potentially dilutive common shares and are only included in the calculation of diluted net loss per share when their effect is dilutive. Outstanding warrants and stock options to purchase 7.5 million and 5.2 million shares of common stock as of September 30, 2007 and 2006, respectively, were excluded from the calculation of diluted net loss per share because the effect would have been anti-dilutive.

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The following is a reconciliation of the numerator and denominator used in the basic and diluted net loss per share computations (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Numerator:				
Net loss	\$ (17,101)	\$ (12,152)	\$ (47,895)	\$ (35,597)
Denominator:				
Weighted-average common shares outstanding used for basic and diluted net loss per share	39,753	30,605	39,740	30,551

### 9. Comprehensive Loss

Comprehensive loss is comprised of net loss and other comprehensive income or loss. Other comprehensive income or loss includes certain changes in stockholders' equity not included in the net loss. Comprehensive loss is as follows:

	Nine Months Ended September 30,	
	2007	2006
Net loss	\$ (47,895)	\$ (35,597)
Increase (decrease) in unrealized gain on marketable securities available-for-sale	(5)	151
Increase in cumulative translation adjustment	81	87
Comprehensive loss	\$ (47,819)	\$ (35,359)

### 10. Stockholders' Equity

As of September 30, 2007, we have two share-based compensation plans: the 2004 Stock Incentive Plan, which includes the 2004 Non-Employee Director Option Program; and the 2004 Employee Stock Purchase Plan. The 1997 Equity Incentive Plan, or 1997 Plan, which expired in the first quarter of 2007. Upon expiration of the 1997 Plan, 273,188 shares previously available for grant expired. Any outstanding options under the 1997 Plan that are cancelled in future periods will automatically expire and will no longer be available for grant.

Under our stock-based compensation plans, option awards generally vest over a 4-year period contingent upon continuous service and expire 10 years from the date of grant (or earlier upon termination of continuous service). The fair value of each option is estimated on the date of grant using the Black-Scholes option valuation model and the following weighted-average assumptions:

	Employee Stock Options				Employee Stock Purchase Plan	
	Three Months Ended September 30,		Nine Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006	2007	2006
Weighted-average fair value per share	\$ 2.51	\$ 2.14	\$ 3.57	\$ 3.95	\$ 1.96	\$ 1.95
Risk-free interest rate	4.5%	4.0%	4.8%	4.8%	4.6%	4.9%
Expected life (in years)	4.0	4.0	4.5	5.7	1.2	1.2
Volatility	0.7	0.7	0.8	0.8	0.7	0.7
Expected dividends	—	—	—	—	—	—

Expected volatility is based on historical volatility of our stock and comparable peer data. The expected life of options granted is estimated based on historical option exercise and employee termination data. Executive level employees, who hold a majority of the options outstanding, and non-executive level employees were each found to have similar historical option exercise and termination behavior and thus were grouped and considered separately for valuation purposes. The risk-free rate for periods within the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of grant.

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We recognized the following amounts of stock-based compensation expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2007	2006	2007	2006
Employee and director stock-based compensation expense	\$ 971	\$ 949	\$ 2,442	\$ 2,337
Other stock-based compensation expense	13	21	40	29
<b>Total</b>	<b>\$ 984</b>	<b>\$ 970</b>	<b>\$ 2,482</b>	<b>\$ 2,366</b>

The fair value of the options is amortized to expense on a straight-line basis over the vesting periods of the options. Compensation expense recognized was based on awards ultimately expected to vest and reflects estimated forfeitures at an annual rate of 11%. As of September 30, 2007 the total unrecognized compensation cost related to non-vested options granted amounted to \$7.7 million, which is expected to be recognized over the options' remaining weighted-average vesting period of 1.7 years.

Activity under the our stock option plans was as follows:

	Options Available for Grant	Number of Options Outstanding	Weighted-Average Exercise Price Per Share
Balance at December 31, 2006	1,997,141	3,421,339	\$5.26
Options authorized	400,000	—	—
Options granted	(1,091,685)	1,091,685	\$5.76
Options exercised	—	(5,666)	\$3.86
1997 Plan shares expired	(273,188)	—	—
Options cancelled:			
Options forfeited (unvested).	196,946	(196,946)	\$5.88
Options expired (vested)	57,639	(57,639)	\$4.88
<b>Balance at September 30, 2007</b>	<b>1,286,853</b>	<b>4,252,773</b>	<b>\$5.65</b>

The following table summarizes outstanding options that are net of expected forfeitures (vested and expected to vest) and options exercisable under our stock option plans as of September 30, 2007:

	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted- Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding options (vested and expected to vest)	3,824,366	\$5.29	7.8	\$1,533,276
Options exercisable	1,718,960	\$4.52	6.6	\$1,435,550

### Employee Stock Purchase Plan

As of September 30, 2007, 496,000 shares were reserved and approved for issuance under the Employee Stock Purchase Plan (Purchase Plan), subject to adjustment for a stock split, any future stock dividend or other similar change in our common stock or capital structure. To date, employees acquired 105,956 shares of our common stock under the Purchase Plan. At September 30, 2007, 390,044 shares of our common stock remained available for future purchases.

### 11. Subsequent Events

In October 2007, we entered into a global license and development collaboration agreement with Merck & Co, Inc, to jointly develop HEPLISAV™, a novel investigational hepatitis B vaccine, which is currently being evaluated in a multi-center Phase 3 clinical trial involving adults and in patients on dialysis. Under the terms of the agreement, Merck receives worldwide exclusive rights to HEPLISAV, will fund future vaccine development, and be responsible for commercialization. Dynavax will receive an initial payment of \$31.5 million, and will be eligible to receive up to \$105 million in development and sales milestone payments, and royalties on global sales of HEPLISAV.

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

*The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve a number of risks and uncertainties. Our actual results could differ materially from those indicated by forward-looking statements as a result of various factors, including but not limited to those set forth under "Risk Factors" and those that may be identified from time to time in our reports and registration statements filed with the Securities and Exchange Commission.*

*The following discussion and analysis is intended to provide an investor with a narrative of our financial results and an evaluation of our financial condition and results of operations. This discussion should be read in conjunction with the unaudited Condensed Consolidated Financial Statements and related Notes included in Item 1 of this quarterly report and the Consolidated Financial Statements and related Notes and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K.*

### Overview

Dynavax Technologies Corporation is a biopharmaceutical company that discovers, develops and intends to commercialize innovative Toll-like Receptor 9, or TLR9, agonist-based products to treat and prevent infectious diseases, allergies, cancer and chronic inflammatory diseases using versatile, proprietary approaches that alter immune system responses in highly specific ways. Our TLR9 agonists are based on immunostimulatory sequences, or ISS, which are short DNA sequences that enhance the ability of the immune system to fight disease and control chronic inflammation.

Our product candidates include: HEPLISAV<sup>(TM)</sup>, a hepatitis B vaccine in Phase 3 partnered with Merck & Co. Inc.; TOLAMBA<sup>(TM)</sup>, a ragweed allergy immunotherapy in Phase 2; a therapy for non-Hodgkin's lymphoma (NHL) in Phase 2 and for metastatic colorectal cancer in Phase 1; and a therapy for hepatitis B in Phase 1. Our preclinical asthma and chronic obstructive pulmonary disease (COPD) program is partnered with AstraZeneca AB, or AstraZeneca. The National Institutes of Health (NIH) partially funds our preclinical work on a vaccine for influenza. Symphony Dynamo, Inc. (SDI) funds our colorectal cancer trials and our preclinical hepatitis C therapeutic program and Deerfield has committed funding for our allergy programs.

### HEPLISAV

HEPLISAV, our product candidate for hepatitis B prophylaxis, is based on proprietary ISS that specifically targets TLR9 to stimulate an innate immune response. HEPLISAV combines ISS with hepatitis B surface antigen (HBsAg) and is designed to significantly enhance the level, speed and longevity of protection. As a result of our acquisition of Rhein Biotech GmbH in April 2006, we have secured manufacturing capabilities in Düsseldorf, Germany for producing both clinical and initial commercial quantities of the HBsAg component of the vaccine. Previously reported clinical trial results have shown 100% seroprotection after two doses in subjects 18 to 39 years of age, and after three doses in difficult-to-immunize subjects 40 to 70 years of age.

In October 2007, we entered into a global license and development collaboration agreement with Merck & Co, Inc, to jointly develop HEPLISAV. Under the terms of the agreement, Merck receives worldwide exclusive rights to HEPLISAV, will fund future vaccine development, and be responsible for commercialization. Dynavax will receive an initial payment of \$31.5 million, and will be eligible to receive up to \$105 million in development and sales milestone payments, and double-digit tiered royalties on global sales of HEPLISAV. Dynavax will continue to manage the ongoing Phase 3 studies in Canada and Europe as well as other licensure-required studies. The United States Food and Drug Administration Biologics Licensing Application (BLA) and other marketing applications will be the joint responsibility of Merck and Dynavax, and will be filed by Merck. Dynavax will be responsible for manufacture of the hepatitis B surface antigen component of the vaccine for Merck, which will be produced at Dynavax Europe's Düsseldorf, Germany facility using Dynavax's proprietary technology developed there and later, at a new facility to support expected market needs.

Our ongoing multi-center Phase 3 pivotal trial known as PHAST (Phase 3 HeplisAv Short-regimen Trial), which began in Canada in late 2006 and in Germany in June 2007, enrolled over 2,400 subjects 11 to 55 years of age, and compares a conventional two-dose regimen of HEPLISAV (administered at 0 and 1 month) to the conventional three-dose regimen of Engerix-B<sup>®</sup>, marketed by GlaxoSmithKline (administered at 0, 1 and 6 months).

In June 2007, we initiated a safety and immunogenicity study in the U.S., a second clinical trial designed to support the licensure of HEPLISAV. In the U.S. study, consistent with the PHAST trial, subjects 11 to 55 years of age received a two-dose regimen of HEPLISAV, at 0 and 1 month. The primary endpoint of this trial will be measured four weeks after the second dose.

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We plan to initiate a lot-to-lot consistency study comparing three consecutive lots of HEPLISAV containing Hepatitis B surface antigen manufactured at Dynavax Europe. Approximately 2,000 subjects are anticipated to be enrolled in this trial in the U.S., Canada and Germany. The data from the PHAST trial, U.S. safety study, and the lot-to-lot consistency trial will contribute to a safety database of approximately 4,000 subjects to support a planned BLA submission.

In addition, we initiated a Phase 2 trial in August 2007 in Canada in patients with end-stage renal disease (ESRD) to evaluate the safety and immunogenicity of two different doses of HEPLISAV. The trial is enrolling adults 40 to 70 years of age who have progressive loss of renal function and are either pre-dialysis or hemodialysis patients. This is a difficult-to-immunize patient population for whom conventional hepatitis B vaccines have shown limited efficacy. We intend to focus our development activities and resources on maximizing the potential of the demonstrated superiority of HEPLISAV over conventional hepatitis B vaccine in adults, and its potential in patients with ESRD.

### ***Allergy Franchise***

In July 2007, Deerfield Management, a healthcare investment fund and its affiliates, committed up to \$30 million in project financing for a planned chamber study and subsequent field study for TOLAMBA and to advance our preclinical peanut and cat allergy programs.

### ***TOLAMBA***

TOLAMBA, our product candidate for the treatment of ragweed allergy, consists of ISS linked to the purified major allergen of ragweed, Amb a 1. TOLAMBA is designed to target the underlying cause of seasonal allergic rhinitis caused by ragweed. The linking of ISS to Amb a 1 ensures that both ISS and ragweed allergen are presented simultaneously to the same immune cells, producing a highly specific and potent inhibitory effect and suppressing the Th2 cells responsible for inflammation associated with ragweed allergy.

In October 2007, we began dosing of TOLAMBA in subjects as part of an environmental exposure chamber study that is expected to enroll a total of 300 subjects. Subjects are being screened based on a history of ragweed allergy and a positive skin test. Exposure to ragweed allergen in the chamber is being used to select those individuals with confirmed ragweed allergic disease and establish their baseline level of symptoms. Subjects are being treated and will be re-exposed in the chamber to determine the effect of the six-week, six-injection TOLAMBA regimen as compared to placebo. Data from this study are expected in the first half of 2008 and, if positive, we intend to initiate a pivotal field study to support a potential BLA submission.

To date, TOLAMBA has been administered to over 1,100 patients, and has been safe and well-tolerated. A Phase 2 study conducted in 2001-2002 showed 55% reduction ( $p=0.03$ ) in TNSS in the first season which was maintained ( $p=0.02$ ) in the second season with no additional therapy. This was a single site study with well-characterized, severe allergic patients. The Phase 2 study conducted in 2004-2005 at 19 centers in the U.S. showed a 21% reduction in symptoms in the first year ( $p=0.04$ ) which was also maintained in the second year with no additional therapy ( $p=0.02$ ). However, the largest study of TOLAMBA (the DARTT study), conducted in 2006 in 738 patients at 30 U.S. sites, failed to enroll patients with measurable ragweed-allergic disease; therefore, the effect of the treatment could not be measured and the study did not achieve its primary endpoints.

### ***Peanut Allergy Immunotherapy***

Our peanut allergy program involves direct linkage of certain peanut allergens to a proprietary TLR9 agonist. This approach is designed to mask the IgE binding sites of the native allergen to ensure the safety of the intervention, and to induce an allergen-specific Th1 to Th2 immune shift, to reprogram the immune response in allergic patients. Our approach to peanut allergy provided protection in a mouse model of peanut induced anaphylaxis. Subject to successful completion of product selection and optimization activities and preclinical studies, we plan to initiate clinical studies in 2009.

### ***Cat Allergy Immunotherapy***

Our cat allergy program, similar to our approach to peanut and ragweed allergies, involves direct linkage of the major cat allergen to a proprietary TLR9 agonist. Subject to successful completion of product selection and optimization activities and preclinical studies, we plan to initiate clinical studies in 2009. We anticipate that the clinical development path for a disease-modifying cat allergy therapy to be focused on established challenge studies, in which both patient selection and study timing can be tightly controlled.

***Symphony Dynamo, Inc.***

In April 2006, we entered into a series of related agreements with Symphony Capital Partners, LP to advance specific Dynavax ISS-based programs for cancer therapy, hepatitis B therapy and hepatitis C therapy through certain stages of clinical development. Pursuant to the agreements, SDI agreed to fund up to \$50.0 million for the clinical development of these programs and we licensed to SDI our intellectual property rights related to these programs. SDI is a wholly-owned subsidiary of Symphony Dynamo Holdings LLC, or Holdings, which provided \$20.0 million in funding to SDI at closing and \$30.0 million in April 2007. We are primarily responsible for the development of these programs.

Pursuant to the agreements, we issued to Holdings five-year warrants to purchase 2,000,000 shares of our common stock at \$7.32 per share, representing a 25% premium over the 60-day trading range average of \$5.86 per share. The warrant exercise price is subject to reduction to \$5.86 per share under certain circumstances. The warrants may be exercised or surrendered for a cash payment upon consummation of an all cash merger or acquisition of Dynavax, the obligation for which would be settled by the surviving entity. In consideration for the warrants, we received an exclusive purchase option to acquire all of the programs through the purchase of all of the equity in SDI during the five-year term at specified prices, defined as the Purchase Option. The Purchase Option exercise price is payable in cash or a combination of cash and shares of our common stock, at our sole discretion. We also received an option to purchase either the hepatitis B or hepatitis C program, defined as the Program Option. Dynavax exercised the Program Option in April 2007 for the hepatitis B program. The exercise of the Program Option requires a payment obligation of \$15 million to Holdings upon the expiration of the SDI collaboration in 2011 if the purchase option for all programs is not exercised at any time through the remaining term of the collaboration. The long-term liability for the Program Option is payable in cash only and will be fully creditable against the exercise price for any subsequent exercise of the Purchase Option. If we do not exercise our exclusive right to purchase the remaining programs licensed under the agreement, the intellectual property rights to those programs at the end of the development period will remain with SDI.

In oncology, we believe that the potent and multifaceted biological activities of ISS offer a number of distinct approaches to cancer therapy in a wide range of tumor types. In December 2006, we initiated a Phase 1 dose escalation clinical trial of our cancer product candidate in combination with a standard chemotherapeutic regimen for metastatic colorectal cancer. We are also pursuing the development of a second generation ISS technology that could potentially be used for cancer therapy.

A Phase 2 study has been completed in non-Hodgkin's lymphoma (NHL) of ISS in combination with Rituxan<sup>TM</sup> (rituximab). In December 2006, we announced preliminary data from this Phase 2 study based on 23 patients with histologically confirmed CD20+, B-cell follicular NHL who had relapsed after at least one prior treatment regimen for lymphoma. This study showed a possible correlation between biomarker response to ISS and clinical outcomes; patients with high biomarker induction had a doubling of response rate and progression free survival versus patients with low biomarker induction. The combination of rituximab and our ISS was well-tolerated, and adverse events were minimal. We previously reported a Phase 1, dose-escalation trial of our ISS in combination with rituximab in 20 patients with NHL in which dose-dependent pharmacological activity was demonstrated without significant toxicity.

***Hepatitis B Immunotherapy***

We are developing a novel therapy to treat chronic hepatitis B infection that combines hepatitis B surface antigen and hepatitis B core antigen. In March 2007, we initiated a Phase 1 study of this therapy in 20 healthy subjects, to evaluate the safety and immunogenicity of two dosing regimens.

***AstraZeneca Research Collaboration and License Agreement***

In September 2006, we entered into a research collaboration and license agreement with AstraZeneca for the discovery and development of TLR9 agonist-based therapies for the treatment of asthma and chronic obstructive pulmonary disease, or COPD. The collaboration is using our proprietary second-generation TLR9 agonist immunostimulatory sequences or ISS. Under the terms of the agreement, we are collaborating with AstraZeneca to identify lead TLR9 agonists and conduct appropriate research phase studies. AstraZeneca is responsible for any development and worldwide commercialization of products arising out of the research program. We have the option to co-promote in the United States products arising from the collaboration.

### *Influenza Vaccine*

In August 2007, we were awarded a two-year \$3.25 million grant from the National Institute of Allergy and Infectious Diseases (NIAID), a division of the National Institutes of Health (NIH), to continue development of a novel universal influenza vaccine for controlling seasonal and emerging pandemic flu strains. Our research focuses on a new vaccine that incorporates a second-generation TLR9 agonist and the conserved influenza antigen nucleoprotein (NP). The new grant is directed toward advancing preclinical research into IND-enabling studies and product development.

In 2006, we reported preclinical data that indicated our flu vaccine can improve the immunogenicity of standard flu vaccines. The data from mouse and primate models demonstrated that co-administration of our flu vaccine with standard vaccine enhances the immune response of the standard vaccine, allows reduction of standard vaccine dosage, and provides protection that is not strain-dependent. The preclinical work was funded in part by a research and development grant for a pandemic flu vaccine from the NIAID.

### *SUPERVAX*

In April 2006, we completed the acquisition of Rhein Biotech GmbH, or Rhein, or Dynavax Europe. As a result, we acquired a hepatitis B vaccine called SUPERVAX that has been tested in more than 600 subjects and has demonstrated safety and 99% seroprotection when administered on a two-dose schedule. SUPERVAX was launched in Argentina in December 2006 and is approved for marketing and sales through a third party partner.

### **Critical Accounting Policies and the Use of Estimates**

We believe that there have been no significant changes in our critical accounting policies during the nine months ended September 30, 2007 as compared with those disclosed in our Annual Report on Form 10-K for the year ended December 31, 2006.

### **Results of Operations**

#### *Revenues*

Revenues consist of amounts earned from collaborations, services, license fees and grants. Collaboration revenue includes revenue recognized under our collaboration agreement with AstraZeneca. Services and license fees include research and development and contract manufacturing services, license fees and royalty payments. Grant revenue includes amounts earned under government and private agency grants.

The following is a summary of our revenues (in thousands, except percentages):

	Three Months Ended September 30,		Increase (Decrease) from 2006 to 2007		Nine Months Ended September 30,		Increase (Decrease) from 2006 to 2007	
	2007	2006	\$	%	2007	2006	\$	%
<b>Revenues:</b>								
Collaboration revenue	\$ 719	\$ 166	\$ 553	333%	\$ 2,218	\$ 166	\$ 2,052	1236%
Services and license revenue	162	692	(530)	(77%)	732	916	(184)	(20%)
Grant revenue	133	734	(601)	(82%)	1,848	1,327	521	39%
<b>Total revenues</b>	<b>\$ 1,014</b>	<b>\$ 1,592</b>	<b>\$ (578)</b>	<b>(36%)</b>	<b>\$ 4,798</b>	<b>\$ 2,409</b>	<b>\$ 2,389</b>	<b>99%</b>

Total revenues for the nine months ended September 30, 2007 were \$4.8 million, compared to \$2.4 million for the same period in 2006. The increase is primarily due to collaboration revenue from AstraZeneca, and grants primarily awarded by the National Institute of Allergy and Infectious Diseases.

We anticipate that our total revenues will continue to increase in 2007 as compared to 2006 due primarily to the commercialization collaboration with Merck and research funding under our collaboration with AstraZeneca.

#### *Research and Development*

Research and development expenses consist of compensation and related personnel costs which include benefits, recruitment, travel and supply costs; outside services; allocated facility costs and non-cash stock-based compensation. Outside services relate to our

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preclinical experiments and clinical trials, regulatory filings, manufacturing our product candidates, and the costs of selling SUPERVAX formulated bulk vaccine. We expense our research and development costs as they are incurred.

The following is a summary of our research and development expense (in thousands):

	Three Months Ended September 30,		Increase (Decrease) from 2006 to 2007		Nine Months Ended September 30,		Increase (Decrease) from 2006 to 2007	
	2007	2006	\$	%	2007	2006	\$	%
<b>Research and development:</b>								
Compensation and related personnel costs	\$ 4,756	\$ 3,711	\$ 1,045	28%	\$ 14,270	\$ 9,256	\$ 5,014	54%
Outside services	8,153	7,410	743	10%	27,955	16,456	11,499	70%
Facility costs	1,730	1,415	315	22%	4,689	3,622	1,067	29%
Non-cash stock-based compensation	270	245	25	10%	791	801	(10)	(1%)
Total research and development	<u>\$ 14,909</u>	<u>\$ 12,781</u>	<u>\$ 2,128</u>	17%	<u>\$ 47,705</u>	<u>\$ 30,135</u>	<u>\$ 17,570</u>	58%

Research and development expenses for the nine months ended September 30, 2007 increased by \$17.6 million, or 58%, over the same period in 2006. The increase was primarily due to outside services which included a one-time \$5 million payment in June 2007 for a non-exclusive license to certain patents and patent applications for the purpose of commercializing HEPLISAV. The remaining growth in outside services was due to increased clinical trial and clinical material manufacturing costs related to HEPLISAV and expenses incurred to support SDI programs and Dynavax Europe operations. Compensation and related personnel costs increased in 2007 resulting from continued organizational growth to further develop our clinical candidates and the impact of Dynavax Europe.

We anticipate that our research and development expenses will increase significantly in 2007 as compared to 2006, primarily in connection with the advancement of HEPLISAV, TOLAMBA and our programs in cancer, hepatitis C therapy, asthma and flu.

### *General and Administrative*

General and administrative expenses consist primarily of compensation and related personnel costs; outside services such as accounting, consulting, business development, investor relations and insurance; legal costs that include corporate and patent expenses, net of patent cost recoveries; allocated facility costs; and non-cash stock-based compensation.

The following is a summary of our general and administrative expense (in thousands):

	Three Months Ended September 30,		Increase (Decrease) from 2006 to 2007		Nine Months Ended September 30,		Increase (Decrease) from 2006 to 2007	
	2007	2006	\$	%	2007	2006	\$	%
<b>General and administrative:</b>								
Compensation and related personnel costs	\$ 1,850	\$ 1,937	\$ (87)	(4%)	\$ 5,378	\$ 4,743	\$ 635	13%
Outside services	1,057	1,215	(158)	(13%)	3,415	2,678	737	28%
Legal costs	1,245	625	620	99%	2,490	1,257	1,233	98%
Facility costs	167	154	13	8%	450	446	4	1%
Other	—	—	—	—	—	(50)	50	(100%)
Non-cash stock-based compensation	710	725	(15)	(2%)	1,681	1,565	116	7%
Total general and administrative	<u>\$ 5,029</u>	<u>\$ 4,656</u>	<u>\$ 373</u>	8%	<u>\$ 13,414</u>	<u>\$ 10,639</u>	<u>\$ 2,775</u>	26%

General and administrative expenses for the nine months ended September 30, 2007 increased by \$2.8 million, or 26%, over the same period in 2006. The increase primarily reflects additional legal costs associated with patent interference activities. Compensation and related personnel costs increased in 2007 as a result of overall organizational growth including the operations of Dynavax Europe. Outside services increased in 2007 related to higher professional fees incurred to support SDI programs, various corporate development activities and Dynavax Europe operations.

We expect general and administrative expenses to increase modestly in 2007 as compared to 2006, resulting from continued organizational growth and expenses incurred to support the advancement of our clinical development programs and corporate development activities.

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### *Amortization of Intangible Assets*

Intangible assets resulting from our April 2006 acquisition of Dynavax Europe consist primarily of manufacturing process, customer relationships and developed technology. Amortization of intangible assets was \$0.3 million and \$0.8 million, respectively, for the three and nine months ended September 30, 2007.

### *Interest and Other Income, Net*

Interest income is reported net of accretion/amortization on marketable securities, realized gains and losses on investments, and interest expense from the Deerfield financing agreement. Other income includes gains and losses on foreign currency transaction from our activities primarily with Dynavax Europe and gains and losses on disposals of property and equipment. The following is a summary of our interest and other income, net (in thousands):

	Three Months Ended September 30,		Increase (Decrease) from 2006 to 2007		Nine Months Ended September 30,		Increase (Decrease) from 2006 to 2007	
	2007	2006	\$	%	2007	2006	\$	%
<b>Interest and other income, net:</b>								
Interest income, net	\$ 308	\$ 651	\$ (343)	(53%)	\$ 2,355	\$ 2,061	\$ 294	14%
Other income net	145	22	123	559%	151	32	119	372%
Total interest and other income, net	<u>\$ 453</u>	<u>\$ 673</u>	<u>\$ (220)</u>	(33%)	<u>\$ 2,506</u>	<u>\$ 2,093</u>	<u>\$ 413</u>	20%

Interest and other income, net was \$2.5 million for the nine months ended September 30, 2007 compared to \$2.1 million reported for the same period in 2006. The increase was primarily due to approximately \$1.0 million of interest earned on the investments held by SDI and the investment of proceeds from our equity offerings in the fourth quarter of 2006, offset by \$0.6 million of interest expense incurred from the Deerfield financing agreement executed in July of 2007.

### *Amount Attributed to Noncontrolling Interest in Symphony Dynamo, Inc.*

Pursuant to the agreements that we entered into with SDI in April 2006 and in accordance with Financial Accounting Standards Board Interpretation No. 46 (revised 2003), "Consolidation of Variable Interest Entities," or FIN 46R, the results of operations of SDI have been included in our consolidated financial statements from the date of formation on April 18, 2006. We have deducted the losses attributed to the noncontrolling interest from our condensed consolidated statement of operations to the extent that the offsetting amount of the noncontrolling interest in the condensed consolidated balance sheet is zero. For the three and nine months ended September 30, 2007, the loss attributed to the noncontrolling interest was \$1.6 million and \$6.7 million, respectively, compared to \$3.3 million and \$5.3 million for the same periods in 2006.

### **Recent Accounting Pronouncements**

In March 2007, the FASB discussed Emerging Issues Task Force (EITF) Issue No. 07-3, "Accounting for Nonrefundable Advance Payments for Goods or Services to Be Used in Future Research and Development Activities", addressed the accounting for nonrefundable advance payments. The EITF concluded that nonrefundable advance payments for goods or services to be received in the future for use in research and development activities should be deferred and capitalized. The capitalized amounts should be expensed as the related goods are delivered or the services performed. If an entity's expectations change such that it does not expect it will need the goods to be delivered or the services to be rendered, capitalized nonrefundable advance payment should be charged to expense. Issue 07-3 is effective for new contracts entered into during fiscal years beginning after December 15, 2007, including interim periods within those fiscal years. Early adoption of the provision of the consensus is not permitted. Accordingly, we must adopt Issue 07-3 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159 (SFAS 159), "The Fair Value Option for Financial Assets and Financial Liabilities", which allows entities to account for most financial instruments at fair value rather than under other applicable generally accepted accounting principles such as historical cost. The accounting results in the instrument being marked to fair value every reporting period with the gain/loss from a change in fair value recorded in the income statement. SFAS 159

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is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. Accordingly, we must adopt SFAS 157 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

In September 2006, the FASB issued SFAS 157, "Fair Value Measurements." SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. Accordingly, we must adopt SFAS 157 in the first quarter of fiscal 2008 and we are currently evaluating the effect that the adoption will have on our consolidated results of operations and financial condition.

In July 2006, the FASB released the Financial Interpretation No. 48 "Accounting for Uncertainty in Income Taxes" (FIN 48). FIN 48 prescribes the minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. FIN 48 also requires additional disclosure of the beginning and ending unrecognized tax benefits and details regarding the uncertainties that may cause the unrecognized benefits to increase or decrease within a twelve month period.

We adopted the provisions of FIN 48 on January 1, 2007. There was no impact on our consolidated financial position, results of operations and cash flows as a result of adoption. We have no unrecognized tax benefit as of September 30, 2007, including no accrued amounts for interest and penalties. Our policy will be to recognize interest and penalties related to income taxes as a component of general and administrative expense. We are subject to income tax examinations for U.S. incomes taxes and state income taxes from 1996 forward. We are subject to tax examinations in Singapore and Germany from 2003 and 2004 forward, respectively. We do not anticipate that total unrecognized tax benefits will significantly change prior to September 30, 2008.

### **Liquidity and Capital Resources**

As of September 30, 2007, we had \$68.7 million in cash, cash equivalents and marketable securities and investments held by SDI. Our funds are currently invested in a variety of securities, including institutional money market funds, commercial paper, government and non-government debt securities and corporate obligations.

We have financed our operations since inception primarily through the sale of shares of our common stock, shares of our convertible preferred stock, and ordinary shares in a subsidiary, which have yielded a total of approximately \$222 million in net cash proceeds. Additionally, we have financed our operations through amounts received under collaborative agreements and government grants. We have also financed certain of our research and development activities under our agreements with SDI and Deerfield.

We completed an initial public offering in February 2004, raising net proceeds of approximately \$46.5 million from the sale of 6,900,000 shares of common stock. In the fourth quarter of 2005, we completed an underwritten public offering that resulted in net proceeds of approximately \$33.1 million from the sale of 5,720,000 shares of our common stock. In the fourth quarter of 2006, we completed a follow-on offering raising approximately \$29.3 million from the sale of 7,130,000 shares of common stock. We use these proceeds to fund our current operations.

In August 2006 we entered into an equity line of credit arrangement with Azimuth Opportunity Ltd. Specifically, we entered into a Common Stock Purchase Agreement with Azimuth, which provides that, upon the terms and subject to the conditions set forth therein, Azimuth is committed to purchase up to the lesser of \$30 million of our common stock, or the number of shares which is one less than 20% of the issued and outstanding shares of our common stock as of the effective date of the purchase agreement over the 18-month term of the purchase agreement. From time to time over the term of the purchase agreement, and at our sole discretion, we may present Azimuth with draw down notices constituting offers to purchase our common stock. The per share purchase price for these shares is at a discount ranging from 5.2% to 7.0%. In December 2006, we completed a draw down on our equity line of credit resulting in net proceeds of approximately \$14.8 million from the sale of 1,663,456 shares of our common stock. \$15 million remains available on our equity line of credit.

In July 2007, Deerfield Management, a healthcare investment fund and its affiliates, or Deerfield, committed up to \$30 million in project financing for a planned chamber study and subsequent field study for TOLAMBA and to advance our preclinical peanut and cat allergy programs. Deerfield's commitment is in the form of loans that can be drawn down over a three-year period, subject to achievement of specific milestones in the programs. Repayment of a portion of the loan principal for TOLAMBA is contingent upon the positive outcome of the chamber study and subsequent field study. If the TOLAMBA program is discontinued, we have no obligation to repay Deerfield up to \$9 million of the funds earmarked for that program; any other remaining outstanding principal will

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be due in July 2010. A portion of the funding, if utilized, will advance our peanut and cat allergy programs. Deerfield is entitled to receive an annual 5.9% cash commitment fee as well as milestone-driven payments in the form of warrants issued or issuable at an exercise premium of 20% over the average share price in the 15-day period prior to achievement of the milestone. If all milestones are successfully achieved, Deerfield would receive warrants for the purchase of up to a total of 5.55 million shares of the Company's common stock during the term of the loan agreement.

In October 2007, we entered into a global license and development collaboration agreement with Merck & Co, Inc, to jointly develop HEPLISAV. Under the terms of the agreement, Merck receives worldwide exclusive rights to HEPLISAV, will fund future vaccine development, and be responsible for commercialization. Dynavax will receive an initial payment of \$31.5 million, and will be eligible to receive up to \$105 million in development and sales milestone payments, and double-digit tiered royalties on global sales of HEPLISAV.

Cash used in operating activities was \$50.5 million during the nine months ended September 30, 2007 compared to \$19.6 million for the same period in 2006. The increase in cash usage over the prior year was due primarily to the increase in our net loss and the amount attributed to the noncontrolling interest in SDI.

Cash provided by investing activities was \$17.2 million during the nine months ended September 30, 2007 compared to \$8.9 million for the same period in 2006. The increase was attributed to the net proceeds from sales and maturities of marketable securities.

Cash provided by financing activities was \$33.7 million during the nine months ended September 30, 2007 compared to \$17.8 million for the same period in 2006. Cash provided by financing activities primarily included the proceeds from the purchase of noncontrolling interest by preferred shareholders in Symphony Dynamo, Inc. and from the Deerfield financing agreement.

We currently anticipate that our cash and marketable securities, investments held by SDI, available funds under our Azimuth equity line of credit, collaboration agreements, and Deerfield financing arrangement will enable us to maintain our operations for at least the next twelve months. Because of the significant time it will take for any of our product candidates to complete clinical trials, achieve regulatory approval and generate significant revenue, we will require substantial additional capital resources. We may raise additional funds through public or private equity offerings, debt financings, capital lease transactions, corporate collaborations or other means. We may attempt to raise additional capital due to favorable market conditions or strategic considerations even if we have sufficient funds for planned operations.

Additional financing may not be available on acceptable terms, if at all and therefore may adversely affect our ability to operate as a going concern. If at any time sufficient capital is not available, either through existing capital resources or through raising additional funds, we may be required to delay, scale back or eliminate some or all of our research or development programs, fail to meet the diligence obligations under existing licenses or enter into collaborative arrangements at an earlier stage of development on less favorable terms than we would otherwise choose.

### ***Contractual Obligations***

The following summarizes our significant contractual obligations as of September 30, 2007 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

<b>Contractual Obligations:</b>	<b>Total</b>	<b>Less than 1 Year</b>	<b>1-3 Years</b>	<b>4-5 Years</b>	<b>More than 5 years</b>
Future minimum payments under our operating lease, excluding payments from the sublease agreement	\$ 13,526	\$ 446	\$ 5,571	\$ 3,999	\$ 3,510
Long-term liability from the Program Option exercised under the SDI collaboration	15,000	—	—	15,000	—
Future commitment fees under our financing agreement with Deerfield	5,310	356	4,954	—	—
Long-term liability from Deerfield financing agreement	3,500	—	3,500	—	—
<b>Total</b>	<b>\$ 37,336</b>	<b>\$ 802</b>	<b>\$ 14,025</b>	<b>\$ 18,999</b>	<b>\$ 3,510</b>

We lease our facilities in Berkeley, California, or the Berkeley Lease, and Düsseldorf, Germany, or the Düsseldorf Lease, under operating leases that expire in September 2014 and August 2009, respectively. The Berkeley Lease can be terminated at no cost to us in September 2009 but otherwise extends automatically until September 2014. We have entered into a sublease agreement under the Berkeley Lease for a certain portion of the leased space with scheduled payments to us totaling \$25,000 through 2007 and \$0.1 million annually thereafter until August 2010. The sublease rental income is offset against rent expense.

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In April 2007 we exercised an option to repurchase our hepatitis B program from Symphony Dynamo. The exercise of the Program Option triggers a payment obligation of \$15 million upon the expiration of the SDI collaboration if the Purchase Option for all programs is not exercised. The price for the Program Option is payable in cash only and will be fully creditable against the exercise price for any subsequent exercise of the Purchase Option.

As of September 30, 2007, we have drawn down \$3.5 million from the Deerfield financing agreement in which the outstanding principal will be due in July 2010.

During the fourth quarter of 2004, we established a letter of credit with Silicon Valley Bank as security for our Berkeley Lease in the amount of \$0.4 million. The letter of credit remained outstanding as of September 30, 2007 and is collateralized by a certificate of deposit which has been included in restricted cash in the consolidated balance sheets as of September 30, 2007 and December 31, 2006. Under the terms of the Berkeley Lease, if the total amount of our cash, cash equivalents and marketable securities falls below \$20.0 million for a period of more than 30 consecutive days during the lease term, the amount of the required security deposit will increase to \$1.1 million, until such time as our projected cash and cash equivalents will exceed \$20.0 million for the remainder of the lease term, or until our actual cash and cash equivalents remains above \$20.0 million for a period of 12 consecutive months.

In addition to the non-cancelable commitments included above, we have entered into contractual arrangements that obligate us to make payments to the contractual counterparties upon the occurrence of future events. In the normal course of operations, we have entered into license and other agreements and intend to continue to seek additional rights relating to compounds or technologies in connection with our discovery, manufacturing and development programs. Under the terms of the agreements, we may be required to pay future up-front fees, milestones and royalties on net sales of products originating from the licensed technologies. We consider these potential obligations to be contingent and have summarized all significant arrangements below.

We rely on research institutions, contract research organizations, clinical investigators and clinical material manufacturers. As of September 30, 2007, under the terms of our agreements, we are obligated to make future payments as services are provided of approximately \$6 million through 2009. These agreements are terminable by us upon written notice. We are generally only liable for actual effort expended by the organizations at any point in time during the contract, subject to certain termination fees and penalties.

Under the terms of our exclusive license agreements with the Regents of the University of California, as amended, for certain technology and related patent rights and materials, we pay annual license or maintenance fees and will be required to pay milestones and royalties on net sales of products originating from the licensed technologies. As of September 30, 2007, such fees and milestone payments to the Regents could approximate \$1 million in 2008.

In April 2006, Rhein and Green Cross Vaccine Corp. entered into an exclusive license agreement whereby Green Cross granted Rhein an exclusive license relating to SUPERVAX, a hepatitis B vaccine. In exchange, Rhein is required to pay Green Cross a specified profit share until Green Cross's development costs for the product are recouped and thereafter a specified profit share for a designated period of time. To date SUPERVAX revenue has not been material.

### ***Off-balance Sheet Arrangements***

We do not have any off-balance sheet arrangements as defined by the SEC and Financial Accounting Standards Board, and accordingly, no such arrangements are likely to have a current or future effect on our financial position. As described above, SDI is not an off-balance sheet arrangement as it is considered a variable interest entity and included in our financial statements.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The primary objective of our investment activities is to preserve principal while at the same time maximize the income we receive from our investments without significantly increasing risk. Some of the securities that we invest in may have market risk. This means that a change in prevailing interest rates may cause the market value of the investment to fluctuate. To minimize this risk, we maintain our portfolio of cash equivalents and investments in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and corporate obligations. Because of the short-term maturities of our cash equivalents and marketable securities, we do not believe that an increase in market rates would have any significant negative impact on the realized value of our investments.

*Interest Rate Risk.* We do not use derivative financial instruments in our investment portfolio. Due to the short duration and

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conservative nature of our cash equivalents and marketable securities, we do not expect any material loss with respect to our investment portfolio.

*Foreign Currency Risk.* We have certain investments outside the U.S. to support the operations of Dynavax Europe and have some exposure to foreign exchange rate fluctuations. The cumulative translation adjustment reported in the consolidated balance sheet as of September 30, 2007 was \$0.2 million primarily related to translation of Dynavax Europe activities from Euro to U.S. dollars.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **(a) Evaluation of disclosure controls and procedures**

The Company's management, under the supervision and with the participation of the Company's Chief Executive Officer, or CEO, and Chief Financial Officer, or CFO, performed an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this report. Based on that evaluation, the CEO and CFO concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, or Exchange Act, as of the end of period covered by this report have been designed and are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

#### **(b) Changes in internal controls**

There has been no change in our internal controls over financial reporting during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

From time to time in the ordinary course of business, we receive claims or allegations regarding various matters, including employment, vendor and other similar situations in the conduct of our operations. We do not believe any of the current claims or allegations are material to our current business or operations.

### ITEM 1A. RISK FACTORS

*Various statements in this Quarterly Report on Form 10-Q are forward-looking statements concerning our future products, timing of development activities, expenses, revenues, liquidity and cash needs, as well as our plans and strategies. These forward-looking statements are based on current expectations and we assume no obligation to update this information. Numerous factors could cause our actual results to differ significantly from the results described in these forward-looking statements, including the following risk factors.*

#### **We have incurred substantial losses since inception and do not have any commercial products that generate significant revenue.**

We have experienced significant net losses in each year since our inception. Our accumulated deficit was \$215.8 million as of September 30, 2007. To date, our revenue has resulted from collaboration agreements, services and license fees from customers of Dynavax Europe, and government and private agency grants. The grants are subject to annual review based on the achievement of milestones and other factors and are scheduled to terminate in 2009. We anticipate that we will incur substantial additional net losses for the foreseeable future as the result of our investment in research and development activities.

We do not have any products that generate significant revenue. Clinical trials for certain of our product candidates are ongoing. These and our other product candidates may never be commercialized, and we may never achieve profitability. Our ability to generate revenue depends upon:

- demonstrating in clinical trials that our product candidates are safe and effective, in particular, in the current and planned trials for our product candidates;
- obtaining regulatory approvals for our product candidates; and
- entering into and maintaining successful collaborative relationships.

If we are unable to generate significant revenues or achieve profitability, we may be required to reduce or discontinue our current and planned operations or raise additional capital on less favorable terms.

#### **If we are unable to secure additional funding, we will have to reduce or discontinue operations.**

We believe our existing capital resources will be adequate to satisfy our capital needs for at least the next twelve months. Because of the significant time and resources it will take to develop and commercialize our product candidates, we will require substantial additional capital resources in order to continue our operations, and any such funding may not allow us to continue operations as currently planned. We expect capital outlays and operating expenditures to increase over the next several years as we expand our operations, and any change in plans may increase these outlays and expenditures. We may be unable to obtain additional capital on acceptable terms, or at all and we may be required to delay, reduce the scope of, or eliminate some or all of our programs, or discontinue our operations.

#### **The success of our TLR9 product candidates depends on achieving successful clinical results and regulatory approval. Failure to obtain regulatory approvals could require us to discontinue operations.**

None of our TLR9 product candidates have been approved for sale. Any product candidate we develop is subject to extensive regulation by federal, state and local governmental authorities in the United States, including the FDA, and by foreign regulatory agencies. Our success is primarily dependent on our ability to obtain regulatory approval for our most advanced TLR9 product candidates. Approval processes in the United States and in other countries are uncertain, take many years and require the expenditure of substantial resources.

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We will need to demonstrate in clinical trials that a product candidate is safe and effective before we can obtain the necessary approvals from the FDA and foreign regulatory agencies. If we identify any safety issues associated with our product candidates, we may be restricted from initiating further trials for those products. Moreover, we may not see sufficient signs of efficacy in those studies. The FDA or foreign regulatory agencies may require us to conduct additional clinical trials prior to approval.

Many new drug candidates, including many drug candidates that have completed Phase 3 clinical trials, have shown promising results in early clinical trials and subsequently failed to establish sufficient safety and efficacy to obtain regulatory approval. Despite the time and money expended, regulatory approvals are uncertain. Failure to successfully complete clinical trials and show that our products are safe and effective would have a material adverse effect on our business and results of operations.

**Our clinical trials may be extended, suspended, delayed or terminated at any time. Even short delays in the commencement and progress of our trials may lead to substantial delays in the regulatory approval process for our product candidates, which will impair our ability to generate revenues.**

We may extend, suspend or terminate clinical trials at any time for various reasons, including regulatory actions by the FDA or foreign regulatory agencies, actions by institutional review boards, failure to comply with good clinical practice requirements, concerns regarding health risks to test subjects or inadequate supply of the product candidate. In addition, our ability to conduct clinical trials for some of our product candidates is limited due to the seasonal nature. Even a small delay in a trial for any product candidate could require us to delay commencement of the trial until the target population is available for testing, which could result in a delay of an entire year.

Our registration and commercial timelines depend on results of the current and planned clinical trials and further discussions with the FDA. Any extension, suspension, termination or unanticipated delays of our clinical trials could:

- adversely affect our ability to timely and successfully commercialize or market these product candidates;
- result in significant additional costs;
- potentially diminish any competitive advantages for those products;
- adversely affect our ability to enter into collaborations, receive milestone payments or royalties from potential collaborators;
- cause us to abandon the development of the affected product candidate; or
- limit our ability to obtain additional financing on acceptable terms, if at all.

**If we receive regulatory approval for our product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review.**

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be modified based on data from subsequent studies or long-term use. As a result, limitations on labeling indications or marketing claims, or withdrawal from the market may be required if problems occur after commercialization.

In addition, we or our contract manufacturers will be required to adhere to federal regulations setting forth current good manufacturing practice. The regulations require that our product candidates be manufactured and our records maintained in a prescribed manner with respect to manufacturing, testing and quality control activities. Furthermore, we or our contract manufacturers must pass a pre-approval inspection of manufacturing facilities by the FDA and foreign regulatory agencies before obtaining marketing approval and will be subject to periodic inspection by the FDA and corresponding foreign regulatory agencies under reciprocal agreements with the FDA. Further, to the extent that we contract with third parties for the manufacture of our products, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection.

Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil

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penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenues and our stock price.

**Our most advanced product candidates in clinical trials rely on a single lead ISS compound, 1018 ISS, and most of our earlier stage programs rely on ISS-based technology. Serious adverse safety data relating to either 1018 ISS or other ISS-based technology may require us to reduce the scope of or discontinue our operations.**

Our most advanced product candidates in clinical trials are based on our 1018 ISS compound, and substantially all of our research and development programs use ISS-based technology. If any of our product candidates in clinical trials produce serious adverse safety data, we may be required to delay or discontinue all of our clinical trials. In addition, as all of our clinical product candidates contain ISS, a common safety risk across therapeutic areas may hinder our ability to enter into potential collaborations and if adverse safety data are found to apply to our ISS-based technology as a whole, we may be required to significantly reduce or discontinue our operations.

**We rely on third parties and our facility in Düsseldorf, Germany to supply materials necessary to manufacture our clinical product candidates for our clinical trials and for fulfilling our manufacturing obligations under our collaboration with Merck. Loss of these suppliers or key employees in Düsseldorf, or failure to timely replace them may delay our clinical trials and research and development efforts and may result in additional costs, delays or significantly higher costs in manufacturing our product candidates or breach of our obligations under our Merck collaboration.**

We rely on a number of third parties and our facility in Düsseldorf for the multiple steps involved in the manufacturing process of our product candidates, including, for example, ISS, a key component material that is necessary for our product candidates, the combination of the antigens and ISS, and the fill and finish. Termination or interruption of these relationships may occur due to circumstances that are outside of our control, resulting in higher cost or delays in our product development efforts.

We and these third parties are required to comply with applicable FDA current good manufacturing practice regulations and other international regulatory requirements. If one of these parties fails to maintain compliance with these regulations, the production of our product candidates could be interrupted, resulting in delays and additional costs. Additionally, these third parties and our manufacturing facility must undergo a pre-approval inspection before we can obtain marketing authorization for any of our product candidates.

We have relied on a single supplier to produce our ISS for clinical trials. To date, we have manufactured only small quantities of ISS ourselves for research purposes. If we were unable to maintain or replace our existing source for ISS, we would have to establish internal ISS manufacturing capability which would result in increased capital and operating costs and delays in developing and commercializing our product candidates. We or other third parties may not be able to produce ISS at a cost, quantity and quality that are available from our current third-party supplier.

We currently utilize our facility in Düsseldorf to manufacture the hepatitis B surface antigen for HEPLISAV, which is part of our collaboration with Merck & Co., Inc, or Merck. We are obligated to manufacture, on behalf of Merck, HEPLISAV for clinical development and commercial quantities of hepatitis B surface antigen until such time as we can effect the appropriate technology transfer to Merck. Accordingly, we will have to allocate the entire capacity of our Düsseldorf facility to meet our obligations under the Merck collaboration. Moreover, in order to meet our commercial supply obligations to Merck, we expect to have to establish commercial-scale manufacturing capability for HEPLISAV, which will involve increased capital and operating costs and the assumption of risks associated with the construction, validation and operation of a new commercial manufacturing facility as well as the continued operation of our existing facility. There can be no assurance that we can successfully meet our supply obligations to Merck and maintain our internal product candidate timelines and, if we undertake the establishment of a new commercial manufacturing facility, that we can finance the capital costs and ongoing expenses that we would need to undertake until or if HEPLISAV achieves commercial success. There also can be no assurance that the cost of meeting our supply obligation to Merck will be covered by the negotiated supply price.

**We rely on contract research organizations to conduct our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.**

We rely on third parties to conduct our clinical trials. If these third parties do not perform their obligations or meet expected

deadlines our planned clinical trials may be extended, delayed or terminated. Any extension, delay or termination of our clinical trials would delay our ability to commercialize our products and could have a material adverse effect on our business and operations.

**If any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications or marketing claims, we may be unable to generate significant revenues, if any.**

Even if we obtain regulatory approval for our product candidates and are able to successfully commercialize them, our products may not gain market acceptance among physicians, patients, health care payors and the medical community. The FDA or other regulatory agencies could limit the labeling indication for which our product candidates may be marketed or could otherwise limit marketing efforts for our products. If we are unable to successfully market any approved product candidates, or marketing efforts are restricted by regulatory limits, our ability to generate revenues could be significantly impaired.

**A key part of our business strategy is to establish collaborative relationships to commercialize and fund development of our product candidates. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to develop and commercialize our products successfully, if at all.**

We will need to establish collaborative relationships to obtain domestic and international sales, marketing and distribution capabilities for our product candidates. We also intend to enter into collaborative relationships to provide funding to support our research and development programs. The process of establishing collaborative relationships is difficult, time-consuming and involves significant uncertainty. Moreover, even if we do establish collaborative relationships, our collaborators may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, a change in business strategy, a change of control or other reasons. If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development or commercialization efforts related to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator. If we are unable to establish and maintain collaborative relationships on acceptable terms, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

In October 2007, we entered into a collaborative arrangement with Merck in which we and Merck will further develop and commercialize HEPLISAV. Pursuant to the terms of the collaboration, we are obligated to complete ongoing clinical studies, manufacture and supply on behalf of Merck, and conduct technology transfer with respect to our existing HEPLISAV development program. Although we will be reimbursed for specified development efforts and the delivery of clinical material to Merck in the further development and commercialization of HEPLISAV, Merck controls the development and commercialization plans for the product. There can be no assurance that we will successfully and timely fulfill our obligations under the collaboration, that Merck may not develop or market a potentially competitive product, or that HEPLISAV, even if successfully developed, can achieve commercial success sufficient for us to achieve all of the milestones and royalties contemplated under the collaborative arrangement.

**Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors despite these disadvantages we may be unable to generate revenues and our business will be harmed.**

We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing therapies to treat or prevent infectious diseases, allergy, asthma and cancer, as well as those focusing more generally on the immune system. Competitors may develop more effective, more affordable or more convenient products or may achieve earlier patent protection or commercialization of their products. These competitive products may render our product candidates obsolete or limit our ability to generate revenues from our product candidates. Many of the companies developing competing technologies and products have significantly greater financial resources and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and marketing than we do.

Existing and potential competitors may also compete with us for qualified scientific and management personnel, as well as for technology that would be advantageous to our business. If we are unable to compete successfully, we may not be able to obtain financing, enter into collaborative arrangements, sell our product candidates or generate revenues.

**We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees would affect our ability to develop and commercialize our product candidates and achieve our objectives.**

We are highly dependent on the principal members of our management, operations and scientific staff, including our Chief Executive Officer, Dr. Dino Dina. We experience intense competition for qualified personnel. Our future success also depends in part on the continued service of our executive management team, key scientific and management personnel and our ability to recruit, train and retain essential scientific personnel for our drug discovery and development programs, including those who will be responsible for overseeing our preclinical testing and clinical trials as well as for the establishment of collaborations with other companies. If we lose the services of any key personnel, our research and product development goals, including the identification and establishment of key collaborations, operations and marketing efforts could be delayed or curtailed.

**We may develop, seek regulatory approval for and market our product candidates outside the United States, requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates.**

We may introduce certain of our product candidates in various markets outside the United States. Developing, seeking regulatory approval for and marketing our product candidates outside the United States could impose substantial burdens on our resources and divert management's attention from domestic operations. International operations are subject to risk, including:

- the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;
- compliance with varying international regulatory requirements, laws and treaties;
- securing international distribution, marketing and sales capabilities;
- adequate protection of our intellectual property rights;
- legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;
- adverse tax consequences;
- the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and
- regional and geopolitical risks.

If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates, which would impair our ability to generate revenues.

**We rely on our licenses from the Regents of the University of California. Impairment of these licenses or our inability to maintain them would severely harm our business.**

Our current research and development efforts depend upon our license arrangements with the Regents of the University of California, or UC. Our dependence on these licenses subjects us to numerous risks, such as disputes regarding the creation or use of intellectual property by us and UC, or scientific collaborators. Additionally, our agreements with UC generally contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to these provisions could allow UC to terminate our agreements or convert exclusive to non-exclusive licenses. In addition, our license agreements with UC may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses. If we cannot maintain licenses that are advantageous or necessary to the development or the commercialization of our product candidates, we may be required to expend significant time and resources to develop or license similar technology.

**If third parties successfully assert that we have infringed their patents and proprietary rights or challenge the validity of our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and delay or prevent development or commercialization of our product candidates.**

We may be exposed to future litigation by third parties based on claims that our product candidates or proprietary technologies infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the scope or validity of our or another party's proprietary rights, including a challenge as to the validity of our issued and pending claims. We are involved in various interference and other administrative proceedings related to our intellectual property which has caused us to incur certain legal expenses. If we become involved in any litigation and/or other significant interference

proceedings related to our intellectual property or the intellectual property of others, we will incur substantial additional expenses and it will divert the efforts of our technical and management personnel.

If we or our collaborators are unsuccessful in defending or prosecuting our issued and pending claims or in defending potential claims against our products, for example, as may arise in the commercialization of HEPLISAV or any similar product candidate in the United States, we or our collaborator could be required to pay substantial damages or be unable to commercialize our product candidates or use our proprietary technologies without a license from such third party. A license may require the payment of substantial fees or royalties, require a grant of a cross-license to our technology or may not be available on acceptable terms, if at all. In addition, we may be required to redesign our technology so it does not infringe a third party's patents, which may not be possible or could require substantial funds and time. Any of these outcomes could require us to change our business strategy and could materially impact our business and operations.

One of our potential competitors, Coley, has issued U.S. patent claims, as well as patent claims pending with the U.S. Patent and Trademark Office, or PTO, that may be asserted against our ISS products. We may need to obtain a license to one or more of these patent claims held by Coley by paying fees or royalties or offering rights to our own proprietary technologies in order to commercialize one or more of our formulations of ISS in the U.S. other than with respect to HEPLISAV. Such a license may not be available to us on acceptable terms, if at all, which could preclude or limit our ability to commercialize our products.

**If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our product candidates will decrease.**

Our success depends on our ability to:

- obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;
- operate without infringing upon the proprietary rights of others; and
- prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting United States and foreign patent applications. However, in certain cases such protection may be limited, depending in part on existing patents held by third parties, which may only allow us to obtain relatively narrow patent protection. In the United States, legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved.

The biopharmaceutical patent environment outside the United States is even more uncertain. We may be particularly affected by this uncertainty since several of our product candidates may initially address market opportunities outside the United States, where we may only be able to obtain limited patent protection.

The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

- we might not receive an issued patent for any of our patent applications or for any patent applications that we have exclusively licensed;
- the pending patent applications we have filed or to which we have exclusive rights may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other parties may limit our intellectual property protection or harm our ability to do business;

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- other parties may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent; and
- other parties may design around technologies we have licensed, patented or developed.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that is not patentable and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets adequately. Any disclosure of confidential data in the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights we may be unable to commercialize our products, enter into collaborations, generate revenues or maintain any advantage we may have with respect to existing or potential competitors.

**Our TLR9 allergy program, including the development of TOLAMBA, relies on debt funding that is accessible only on the achievement of specified development milestones. We may not be able to achieve the milestones in a timely manner and as a result may not receive or have access to sufficient funding to continue further development of TOLAMBA. Even if we achieve such milestones, we will be obligated to repay up to \$30 million in July 2010 and we may not have sufficient funds to pay such amounts upon maturity.**

In July 2007, we entered into a funding arrangement with Deerfield Management, including its Affiliates, Deerfield, to support our further development of our allergy product programs, including TOLAMBA. Our continued access to the funding is dependent upon our successful achievement of specified milestones in a timely manner. There can be no assurance that TOLAMBA will be entered into planned clinical studies or successfully achieve the planned end points, and failure to successfully further develop TOLAMBA according to our current clinical plans may result in the termination of further development efforts. Moreover, even if we achieve the planned clinical results, we will be required to issue an additional warrants to purchase up to 3,000,000 shares of our Common Stock and repay outstanding loans to Deerfield. We may be required to enter into a financing arrangement or license arrangement with one or more third parties, or some combination of these in order to repay the loan at maturity. There can be no assurance that any financing or licensing arrangement will be available or even if available, that the terms would be favorable to us and our stockholders.

**We have licensed some of our development and commercialization rights to certain of our development programs in connection with our Symphony Dynamo funding arrangement and will not receive any future royalties or revenues with respect to this intellectual property unless we exercise an option to repurchase some or all of the programs in the future. We may not obtain sufficient clinical data in order to determine whether we should exercise our option prior to the expiration of the development period, and even if we decide to exercise, we may not have the financial resources to exercise our option in a timely manner.**

In April 2006, we granted an exclusive license to the intellectual property for certain ISS compounds for cancer, hepatitis B and hepatitis C therapeutics to Symphony Dynamo, Inc., or SDI, in consideration for a commitment from Symphony Capital Partners, LP and certain of its affiliates, or Symphony, and its co-investors to provide \$50 million of committed capital to advance these programs. As part of the arrangement, we received an option granting us the exclusive right, but not the obligation, to acquire certain or all of the programs at specified points in time at specified prices during the term of the five-year development period. The development programs under the arrangement are jointly managed by SDI and us, and there can be no assurance that we will agree on various decisions that will enable us to successfully develop the potential products, or even if we are in agreement on the development plans, that the development efforts will result in sufficient clinical data to make a fully informed decision with respect to the exercise of our option. If we do not exercise the purchase option prior to its expiration, then our rights in and with respect to the SDI programs will terminate and we will no longer have rights to any of the programs licensed to SDI under the arrangement. In April 2007, we exercised our option for the hepatitis B program. The exercise of this program option triggers a payment obligation of \$15 million to Symphony upon the expiration of the SDI collaboration in 2011 if the purchase option for all programs is not exercised.

If we elect to exercise the purchase option, we will be required to make a substantial payment, which at our election may be paid partially in shares of our common stock. As a result, in order to exercise the option, we will be required to make a substantial payment of cash and possibly issue a substantial number of shares of our common stock. We do not currently have the resources to exercise the option and we may be required to enter into a financing arrangement or license arrangement with one or more third parties, or some combination of these in order to exercise the option, even if we paid a portion of the purchase price with our common stock. There can be no assurance that any financing or licensing arrangement will be available or even if available, that the terms would be favorable to us and our stockholders. In addition, the exercise of the purchase option will likely require us to record a significant charge to earnings and may adversely impact future operating results.

**We face product liability exposure, which, if not covered by insurance, could result in significant financial liability.**

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited product liability insurance coverage in the amount of \$1 million for each occurrence for clinical trials with umbrella coverage of an additional \$4 million. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

**We face uncertainty related to coverage, pricing and reimbursement and the practices of third party payors, which may make it difficult or impossible to sell our product candidates on commercially reasonable terms.**

In both domestic and foreign markets, our ability to achieve profitability will depend in part on the negotiation of a favorable price or the availability of appropriate reimbursement from third party payors. Existing laws affecting the pricing and coverage of pharmaceuticals and other medical products by government programs and other third party payors may change before any of our product candidates are approved for marketing. In addition, third party payors are increasingly challenging the price and cost-effectiveness of medical products and services. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third party payors to reimburse for our products is particularly uncertain. We will have to charge a price for our products that is sufficiently high to enable us to recover our considerable investment in product development. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to achieve profitability and could harm our future prospects and reduce our stock price.

**We use hazardous materials in our business. Any claims or liabilities relating to improper handling, storage or disposal of these materials could be time consuming and costly to resolve.**

Our research and product development activities involve the controlled storage, use and disposal of hazardous and radioactive materials and biological waste. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and certain waste products. We are currently in compliance with all government permits that are required for the storage, use and disposal of these materials. However, we cannot eliminate the risk of accidental contamination or injury to persons or property from these materials. In the event of an accident related to hazardous materials, we could be held liable for damages, cleanup costs or penalized with fines, and this liability could exceed the limits of our insurance policies and exhaust our internal resources. We may have to incur significant costs to comply with future environmental laws and regulations.

**Our stock price is subject to volatility, and your investment may suffer a decline in value.**

The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future to be, very volatile. The market price of our common stock is subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

- progress or results of any of our clinical trials or regulatory efforts, in particular any announcements regarding the progress or results of our planned trials;
- our ability to establish and maintain collaborations for the development and commercialization of our product candidates;
- our ability to raise additional capital to fund our operations;
- technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;
- changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;

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- our ability to obtain component materials and successfully enter into manufacturing relationships for our product candidates or establish manufacturing capacity on our own;
- our ability to enter into and maintain collaborations;
- maintenance of our existing exclusive licensing agreements with the Regents of the University of California;
- changes in government regulations, general economic conditions, industry announcements;
- issuance of new or changed securities analysts' reports or recommendations;
- actual or anticipated fluctuations in our quarterly financial and operating results; and
- volume of trading in our common stock

One or more of these factors could cause a decline in the price of our common stock. In addition, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because we have experienced greater than average stock price volatility, as have other biotechnology companies in recent years. We may in the future be the target of similar litigation. Securities litigation could result in substantial costs, and divert management's attention and resources, which could harm our business, operating results and financial conditions.

### **Anti-takeover provisions of our certificate of incorporation, bylaws and Delaware law may prevent or frustrate a change in control, even if an acquisition would be beneficial to our stockholders, which could affect our stock price adversely and prevent attempts by our stockholders to replace or remove our current management.**

Provisions of our certificate of incorporation and bylaws may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and adversely affect the market price of our common stock and the voting or other rights of the holders of our common stock. These provisions include:

- authorizing our Board of Directors to issue additional preferred stock with voting rights to be determined by the Board of Directors;
- limiting the persons who can call special meetings of stockholders;
- prohibiting stockholder actions by written consent;
- creating a classified board of directors pursuant to which our directors are elected for staggered three year terms;
- providing that a supermajority vote of our stockholders is required for amendment to certain provisions of our certificate of incorporation and bylaws; and
- establishing advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, we are subject to the provisions of the Delaware corporation law that, in general, prohibit any business combination with a beneficial owner of 15% or more of our common stock for five years unless the holder's acquisition of our stock was approved in advance by our Board of Directors.

### **We will continue to implement additional financial and accounting systems, procedures or controls as we grow our business and organization and to satisfy new reporting requirements.**

We are required to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the SEC. Compliance with Section 404 of the Sarbanes-Oxley Act of 2002, or Section 404, and other requirements may increase our costs and require additional management resources. We may need to continue to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to comply with new reporting requirements. Specifically, we have integrated the operations, technologies, products and personnel of Dynavax Europe into our operations and Dynavax Europe's operations will be required to be included in our assessment of internal controls over financial reporting under Section 404 by the end of 2007. There can be no assurance that we will be able to maintain a favorable assessment as to the adequacy of our internal control over financial

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reporting. If we are unable to reach an unqualified assessment, or our independent auditors are unable to issue an unqualified attestation as to the effectiveness of our internal controls over financial reporting, investors could lose confidence in the reliability of our financial reporting which could harm our business and could impact the price of our common stock.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

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

None.

### **ITEM 5. OTHER INFORMATION**

None.

### **ITEM 6. EXHIBITS**

<u>Exhibit Number</u>	<u>Document</u>
10.33†	Loan Agreement, dated July 18, 2007, between Deerfield Private design Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International. L.P., and Dynavax Technologies Corporation
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

† We have been granted confidential treatment with respect to certain portions of this agreement. Omitted portions have been filed separately with the Securities and Exchange Commission.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this report to be signed on its behalf by the undersigned, thereunto due authorized, in the City of Berkeley, State of California.

DYNAVAX TECHNOLOGIES CORPORATION

Date: November 6, 2007

By: /s/ DINO DINA, M.D.

Dino Dina, M.D.  
President, Chief Executive Officer and Director  
(Principal Executive Officer)

Date: November 6, 2007

By: /s/ DEBORAH A. SMELTZER

Deborah A. Smeltzer  
Vice President, Operations and Chief Financial Officer  
(Principal Financial Officer)

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EXHIBIT 10.33

## LOAN AGREEMENT

LOAN AGREEMENT (this "Agreement"), dated as of July 18, 2007, between Dynavax Technologies Corporation, a Delaware corporation (the "Borrower"), Deerfield Private Design Fund, L.P., ("Deerfield Private Design") Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International, L.P. (each a "Lender" and, together the "Lenders" and together with the Borrower, the "Parties").

## WITNESSETH:

WHEREAS, the Borrower wishes to borrow from the Lenders the principal amount of up to thirty million Dollars (\$30,000,000), without interest, for the purposes described in Section 2.1; and

WHEREAS, the Lenders desire on the terms hereinafter set forth to make loans to the Borrower from time to time for such purposes;

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Lenders and the Borrower agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1 General Definitions.** Wherever used in this Agreement, or the Exhibits or Schedules attached hereto, unless the context otherwise requires, the following terms have the following meanings:

"Additional Amounts" has the meaning given to it in Section 2.7(b).

"Affiliate" means, with respect to a Party, any person, corporation, partnership or other entity that directly or indirectly controls or is controlled by or is under common control with such Party. For purposes of this definition, the term "control" (including, with correlative meaning, the terms "controlled by" or "under common control with") means the actual power, either directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity, whether by the ownership of fifty percent (50%) or more of the voting stock of such entity, or by contract or otherwise.

"Available Cash" means cash, cash equivalents and short-term investments set forth in the balance sheet of the Borrower.

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“Business Day” means a day on which banks are open for business in The City of New York.

“Chamber Study” means a randomized, double-blind, placebo-controlled, parallel study. Approximately 300 subjects will be randomized to receive either Tolamba or placebo treatments to evaluate the efficacy of Tolamba to control symptoms of ragweed-induced allergic rhinitis in the Environmental Exposure Chamber (EEC).

“Commitment Fee” has the meaning given to it in Section 2.4.

“Commitment Period Expiration Date” means the earliest to occur of (a) the Final Payment Date and (b) the date on which any Commitment Termination Event occurs.

“Commitment Termination Event” means: (a) the occurrence of any Event of Default as each such Event of Default is described in Section 6.1; (b) upon notice by the Borrower to Deerfield Private Design effective on any date set forth in such notice after the release of the Chamber Study.

“Common Stock” means the publicly traded common stock of the Borrower.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person, or in respect of which that Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“Default” means any event which, at the giving of notice, lapse of time or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an Event of Default.

“Disbursement” has the meaning given to it in Section 2.2(a).

“Disbursement Date” means the date on which a Disbursement occurs.

“Disbursement Request” has the meaning given to it in Section 2.2(a).

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“Dollars” and the “\$” sign mean the lawful currency of the United States of America.

“Event of Default” has the meaning given to it in Section 6.1.

“Evidence of Disbursement” has the meaning given to it in Section 2.2(a).

“Excluded Taxes” means all income taxes, minimum or alternative minimum income taxes, withholding taxes imposed on gross amounts, any tax determined based upon income, capital gains, gross income, sales, net profits, windfall profits or similar items, franchise taxes (or any other tax measured by capital, capital stock or net worth), gross receipts taxes, branch profits taxes, margin taxes (or any other taxes imposed on or measured by net income, or imposed in lieu of net income) payable by the Lenders in any jurisdiction to any Governmental Authority (or political subdivision or taxing authority thereof) in connection with any payments received under this Agreement by the Lenders, or any such tax imposed in connection with the execution and delivery of, and the performance of its obligations under, this Agreement.

“Field Study” means a single blind observational study to assess the efficacy of Tolamba versus placebo in the control of symptoms of allergic rhinitis during the natural ragweed season in [ \* ].

“Final Payment” means such amount as may be necessary to repay the outstanding principal of the Loan (together with any other amounts accrued under this Agreement) to the Lenders pursuant to this Agreement.

“Final Payment Date” means the earlier of (i) the date on which the Borrower repays the outstanding principal of the Loan (together with any other amounts accrued under this Agreement) to the Lenders or (ii) July 18, 2010.

“Financing Documents” means this Agreement, the Note, the Registration Rights Agreement, the Warrants and any other document or instrument delivered in connection with any of the foregoing whether or not specifically mentioned herein or therein.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time, and applied on a consistent basis.

“Government Authority” means any government, governmental department, ministry, cabinet, commission, board, bureau, agency, tribunal, regulatory authority, instrumentality, judicial, legislative, fiscal, or administrative body or entity, domestic or foreign, federal, state or local having jurisdiction over the matter or matters and Person or Persons in question, including, without limitation, the Food and Drug Administration and the Securities and Exchange Commission.

“Indebtedness” means (a) all indebtedness for borrowed money, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, and (d) all Contingent Obligations, if any.

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“Indemnified Person” has the meaning given to it in Section 7.12.

“Indemnity” has the meaning given to it in Section 7.12.

“Lien” means any lien, pledge, preferential arrangement, mortgage, security interest, deed of trust, charge, assignment, hypothecation, title retention, privilege or other encumbrance on or with respect to property or interest in property having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any asset or revenue of any kind.

“Loan” means the loan to be made available by the Lenders to the Borrower pursuant to Section 2.2 in the maximum aggregate amount of thirty million Dollars (\$30,000,000) or, as the context may require, the then outstanding principal amount.

“Loss” has the meaning given to it in Section 7.12.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, prospects, condition (financial or otherwise) or property related to the Milestone Products; (b) the validity or enforceability of any provision of any Financing Document; (c) the ability, including, without limitation, the financial ability of the Borrower to timely perform its obligations under each Financing Document; or (d) the rights and remedies of the Lenders under any of the Financing Documents.

“Milestones” mean the numbered event or events set forth on Exhibit B.

“Milestone Products” means the products described in Exhibit B.

“Note” means the Note attached to this Agreement as Exhibit A.

“Obligations” means all obligations (monetary or otherwise) of the Borrower arising under or in connection with the Financing Documents.

“Organizational Documents” means the Certificate of Incorporation and By-laws of the Borrower.

“Permitted Indebtedness” means: (i) Indebtedness of Borrower in favor of Lenders arising under this Agreement or any other Financing Document; (ii) Indebtedness existing as of the date hereof (which the Borrower represents to not be in excess of \$15,000,000); (iii) Indebtedness (not including the Loan) not to exceed [ \* ] in the aggregate in any fiscal year of Borrower secured by a lien described in clause (iv) of the defined term “Permitted Liens,” provided such Indebtedness does not exceed the lesser of the cost or fair market value of the equipment financed with such Indebtedness; (iv) Subordinated Debt; (v) Indebtedness to trade creditors incurred in the ordinary course of business; and (vi) extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amount is not increased or the terms modified to impose more burdensome terms upon Borrower.

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“Permitted Liens” means: (i) statutory Liens created by operation of applicable law; (ii) Liens arising in the ordinary course of business and securing obligations that are not overdue or are being contested in good faith by appropriate proceedings; (iii) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; (iv) Liens upon or in any equipment acquired or held by Borrower (a) to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (b) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment; (v) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase; (vi) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default; (vii) non-exclusive licenses or sublicenses and exclusive licenses granted in the ordinary course of Borrower’s business and, with respect to any licenses where Borrower is the licensee or sublicensee, any interest or title of a licensor or sublicensor under any such license or sublicense; (viii) deposits to secure the performance of bids, trade contracts (other than for borrowed money), contracts for the purchase of property, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, incurred in the ordinary course of business and not representing an obligation for borrowed money; and (ix) Liens in favor of financial institutions arising in connection with Borrower’s accounts maintained in the ordinary course of Borrower’s business held at such institutions to secure standard fees for services charged by, but not financing made available by, such institutions.

“Person” means and includes any natural person, individual, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

“Primary Endpoint of the Chamber Study or Field Study” means a [ \* ] reduction in the change from baseline of Total Nasal Symptom Score compared with the placebo group with p [ \* ].

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of the date hereof, by and between the Borrower, the Deerfield Entities (as such term is defined in the Registration Rights Agreement) and the Lenders.

“Subordinated Debt” means any debt incurred by Borrower that is subordinated in writing to the debt owing by Borrower to Lenders pursuant to a Subordination Agreement in substantially the form of Exhibit D attached hereto (and identified as being such by Borrower and Deerfield Private Design).

“Subordination Agreement” means the Subordination Agreement attached hereto as Exhibit D.

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“Subsidiary or Subsidiaries” means, as to Borrower, any corporation or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Borrower.

“Taxes” means all deductions or withholdings for any and all present and future taxes, levies, imposts, stamp or other duties, fees, assessments, deductions, withholdings, all other governmental charges, and all liabilities with respect thereto.

“Warrants” means the warrants attached hereto as Exhibit C-1 and C-2 issued pursuant to Section 2.9.

**Section 1.2 Interpretation.** In this Agreement, unless the context otherwise requires, all words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties requires and the verb shall be read and construed as agreeing with the required word and pronoun; the division of this Agreement into Articles and Sections and the use of headings and captions is for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions; the words “herein,” “hereof,” “hereunder,” “hereinafter” and “hereto” and words of similar import refer to this Agreement as a whole and not to any particular Article or Section hereof; the words “include,” “including,” and derivations thereof shall be deemed to have the phrase “without limitation” attached thereto unless otherwise expressly stated; references to a specified Article, Exhibit, Section or Schedule shall be construed as a reference to that specified Article, Exhibit, Section or Schedule of this Agreement; and any reference to this Agreement or any of the Financing Documents means such agreement or document as the same shall be amended, supplemented or modified and from time to time in effect.

**Section 1.3 Business Day Adjustment.** Where the day by which a payment is due to be made is not a Business Day, that payment shall be made by the next succeeding Business Day unless that next succeeding Business Day falls in a different calendar month, in which case that payment shall be made by the Business Day immediately preceding the day by which such payment is due to be made.

## ARTICLE II

### AGREEMENT FOR THE LOAN

**Section 2.1 Use of Proceeds.** The Borrower shall use the Loan proceeds to engage in any activities related to the preclinical and clinical development of the products identified in the Milestone Products.

**Section 2.2 Disbursements.**

(a) Subject to satisfaction of the conditions contained in Article IV, a disbursement of a portion of the Loan (each a “Disbursement”) in an amount determined in accordance with Exhibit B for each Milestone shall be made when indicated on Exhibit B for such Milestone upon the Borrower’s request (a “Disbursement Request”) in

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the form of Schedule 1, delivered to Deerfield Private Design not less than five Business Days prior to the proposed date of such Disbursement. Against each Disbursement, the Borrower shall deliver to Deerfield Private Design a completed receipt (the "Evidence of Disbursement") in the form of Schedule 2, which receipt shall not be effective until the Disbursement is actually advanced to the Borrower.

(b) The Lenders shall not be required to make any Disbursement if (i) the Commitment Period Expiration Date shall have occurred, or (ii) after giving effect thereto, the aggregate outstanding principal amount of the Loan would exceed \$30,000,000.

(c) The Lenders shall not be required to make the Disbursements related to the Tolamba Payments described in Items 4 and 5 of Exhibit B if the Primary Endpoint of the Chamber Study is not achieved or subsequent to Borrower's decision to permanently discontinue the development of Tolamba.

### **Section 2.3 Repayment.**

(a) Except as may be [ \* ] by Section 2.4, the Borrower shall remit the Final Payment to Lenders on the earlier to occur of (i) the Final Payment Date and (ii) a Commitment Termination Event, it being understood that a repayment after a Commitment Termination Event will be within 3 Business Days of the occurrence of such Commitment Termination Event.

(b) Notwithstanding 2.3(a), (A) If the Chamber Study is completed and the Primary Endpoint of the Chamber Study is not achieved, then the outstanding principal amount of the Loan shall be reduced by the lesser of (i) [ \* ] and (ii) [ \* ]; and (B) if Borrower decides to permanently discontinue the development of Tolamba (a "Tolamba Discontinuance") after the results of the Field Study have been collected by the Borrower then the outstanding principal amount of the Loan shall be reduced by the lesser of (i) [ \* ] and (ii) \$9,000,000.

**Section 2.4 Commitment Fee.** Until the Final Payment Date, the Borrower shall pay a quarterly fee (the "Commitment Fee") to the Lenders in the amount of \$442,500 by the thirtieth day after the end of each of the Borrower's fiscal quarters to an account or accounts by wire transfer specified by Deerfield Private Design in writing to Borrower; provided, however, that during the fiscal quarter in which this Agreement is executed and if this Agreement is terminated on a day other than the last day of any fiscal quarter, the Commitment Fee shall be pro-rated for the period of such fiscal quarter that this Agreement was in effect. Borrower shall make 12 total payments of the Commitment Fee, with the first payment coming due on October 31, 2007. If a Commitment Termination Event occurs by notice by the Borrower by the earliest to occur of (a) [ \* ] and (b) [ \* ], the Lenders shall [ \* ].

**Section 2.5 Payments.** Payments of any amounts due to the Lenders under this Agreement shall be made in Dollars in immediately available funds prior to 11:00 a.m. New York City time on such date that any such payment is due, in such place or places, as Deerfield

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Private Design shall from time to time designate in writing. The Borrower shall pay all and any costs (administrative or otherwise) imposed by banks, clearing houses, or any other financial institution, in connection with making any payments under any of the Financing Documents, except for any costs imposed by the Lenders' banking institutions.

**Section 2.6 Optional Prepayment.** Upon the conclusion of the Chamber Study, Borrower may, upon three Business Day's written notice to Deerfield Private Design, prepay the total, but not less than the total, of the Final Payment calculated as of the date written notice is sent to Deerfield Private Design. If Borrower elects to make such prepayment at a time when Commitment Fees already paid to the Lenders would be required to be [ \* ], the total amount of the Final Payment that would otherwise be payable at that time will be [ \* ]. Upon remittance of such payment in accordance with Section 2.5, this Agreement shall be terminated.

**Section 2.7 Taxes, Duties and Fees.**

(a) The Borrower shall pay or cause to be paid all present and future Taxes (other than Excluded Taxes, if any), duties, fees and other charges of whatsoever nature, if any, now or at any time hereafter levied or imposed by any Government Authority, by any department, agency, political subdivision or taxing or other authority thereof or therein, by any organization of which the applicable Government Authority is a member, or by any jurisdiction through which the Borrower makes payments hereunder, on or in connection with the payment of any and all amounts due under this Agreement, and all payments of principal and other amounts due under this Agreement shall be made without deduction for or on account of any such Taxes, duties, fees and other charges, except for Excluded Taxes, which may be deducted or withheld from payments made by the Borrower only if such deduction or withholding is required by applicable law.

(b) If the Borrower is required to withhold any such amount or is prevented by operation of law or otherwise from paying or causing to be paid such Taxes, duties, fees or other charges as aforesaid except for Excluded Taxes, the principal and other amounts due under this Agreement (as applicable) shall be increased to such amount as shall be necessary to yield and remit to the Lenders the full amount they would have received taking into account any such Taxes (except for Excluded Taxes), duties, fees or other charges payable on amounts payable by the Borrower under this Section 2.7(b) had such payment been made without deduction of such Taxes, duties, fees or other charges (all and any of such additional amounts, herein referred to as the "Additional Amounts").

(c) If Section 2.7(b) above applies and Deerfield Private Design so requires, the Borrower shall deliver to the Lenders official tax receipts evidencing payment (or certified copies of them) of the Additional Amounts within thirty (30) days of the date of payment.

(d) If any Lender receives a refund from a Government Authority to which the Borrower has paid withholding Taxes pursuant to this Section 2.7, such Lender shall pay such refund to the Borrower.

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**Section 2.8 Costs, Expenses and Losses.** If, as a result of any failure by the Borrower to pay any sums due under this Agreement on the due date therefor, or to borrow in accordance with a request for Disbursement made pursuant to Section 2.2, any Lender shall incur costs, expenses and/or losses, by reason of the liquidation or redeployment of deposits from third parties or in connection with obtaining funds to make or maintain any Disbursement that such Lender would not otherwise have incurred, the Borrower shall pay to such Lender upon request by such Lender, the amount of such documented costs, expenses and/or losses within fifteen (15) days after receipt by it of a certificate from such Lender setting forth in reasonable detail such costs, expenses and/or losses along with supporting documentation. For the purposes of the preceding sentence, "costs, expenses and/or losses" shall include, without limitation, any interest paid or payable to carry any unpaid amount and any loss, premium, penalty or expense which may be incurred in obtaining, liquidating or employing deposits of or borrowings from third parties in order to make, maintain or fund the Loan or any portion thereof.

**Section 2.9 Delivery of Warrants.** Upon satisfaction of each condition set forth in Exhibit C, the Borrower shall issue to the Lenders, on the date such condition has been satisfied, Warrants to purchase the number of shares of its Common Stock set forth opposite such condition and in the proportions set forth therein (such amounts of Common Stock, the "Exercise Shares"). Except as set forth below, the Warrants shall be in the form annexed hereto as Exhibit C-1. The Exercise Price (as such term is defined in the Warrants) of each Warrant shall be (i) \$5.13 in the case of the Warrants issued on the date of this agreement and (ii) in the case of the other Warrants 120% of the average of the "Volume Weighted Average Price" of the Common Stock for each of the 15 consecutive trading days ending on the trading day immediately preceding the date of issuance. As used herein, the "Volume Weighted Average Price" for the Common Stock as of any date means the daily volume weighted average price (based on a Trading Day from 9:30 a.m. to 4:00 p.m. (New York time)) of the Common Stock on the NASDAQ Global Market ("NASDAQ") as reported by Bloomberg Financial L.P. using the AQR function or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by Deerfield Private Design and the Borrower ("Bloomberg") or, if NASDAQ is not the principal trading market for the Common Stock, the volume weighted average sale price of the Common Stock on the principal securities exchange or trading market where the Common Stock is listed or traded as reported by Bloomberg, or, if no volume weighted average sale price is reported for the Common Stock, then the last closing trade price of the Common Stock as reported by Bloomberg, or, if no last closing trade price is reported for the Common Stock by Bloomberg, the average of the bid prices of any market makers for the Common Stock in the over the counter market maintained by the National Association of Securities Dealers or in the "pink sheets" maintained by the National Quotation Bureau, Inc. If the Volume Weighted Average Price cannot be calculated for the Common Stock on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value as mutually determined by the Borrower and Deerfield Private Design. If any of the Lenders or any transferee of a Warrant delivers to the Borrower the written notice referred to in Section 1 of the Warrant annexed hereto as Exhibit C-1, then all Warrants thereafter issued to such Lender or such transferee shall be in the form annexed hereto at Exhibit C-2.

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### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

**Section 3.1 Representations and Warranties of the Borrower.** The Borrower represents and warrants to the Lenders as of the date hereof and as of each Disbursement Date, except as limited by the last sentence of Section 3.4 below, as follows:

- (a) The Borrower is a corporation duly organized and validly existing under the laws of the State of Delaware.
- (b) The Borrower is conducting its business in compliance with its Organizational Documents. The Organizational Documents of the Borrower (including all amendments thereto) as currently in effect have been furnished to Deerfield Private Design and remain in full force and effect with no defaults outstanding thereunder.
- (c) The Borrower has full power and authority to enter into each of the Financing Documents and to make the borrowings and the other transactions contemplated thereby.
- (d) All authorizations, consents, approvals, registrations, exemptions and licenses that are necessary for the borrowing hereunder, the execution and delivery of the Financing Documents and the performance by the Borrower of its obligations thereunder, have been obtained and are in full force and effect.
- (e) All authorizations, consents, approvals, registrations, exemptions and licenses with or from Government Authorities that are necessary for the conduct of its business as currently conducted and as proposed to be conducted have been obtained and are in full force and effect, except to the extent any failure to so obtain (i) would not be material to the business of the Borrower; (ii) would not materially adversely affect the business, financial position or results of operations of the Borrower or (iii) would not materially adversely affect the rights and remedies of the Lenders hereunder or under any of the Financing Documents.
- (f) Each Financing Document has been duly authorized, executed and delivered by the Borrower, is in full force and effect and constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms, except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) applicable equitable principles (whether considered in a proceeding at law or in equity).
- (g) No Default or Event of Default (or any other default or event of default, however described) has occurred under any of the Financing Documents.
- (h) Neither the entering into any of the Financing Documents nor the compliance with any of its terms conflicts with, violates or results in a breach of any of

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the terms of, or constitutes a default or event of default (however described) or requires any consent under, to the extent applicable, (i) any agreement or to which the Borrower is a party or by which it is bound, (ii) any of the terms of the Organizational Documents or (iii) any judgment, decree, resolution, award or order or any statute, rule or regulation applicable to the Borrower or its assets, except, with respect to (i) herein, for any contravention of or default under any agreement that (x) would not be material to the business of the Borrower; (y) would not materially adversely affect the business, financial position or results of operations of the Borrower or (z) would not materially adversely affect the rights and remedies of the Lenders hereunder or under any of the Financing Documents

(i) The Borrower is not engaged in, or a party to any litigation, arbitration, administrative regulatory compliance proceedings, or investigations, nor are there any litigation, arbitration, administrative regulatory compliance proceedings or investigations pending or, to the knowledge of the Borrower, threatened before any court or arbitrator or before or by any Government Authority against the Borrower that would materially impair Borrower's ability to comply with the terms of this Agreement, and the Borrower is not aware of any facts likely to give rise to any such proceedings.

(j) The Borrower (i) is capable of paying its debts as they come due and is not unable and has not admitted its inability to pay debts as they come due, (ii) is not bankrupt or insolvent and (iii) has not taken action, and no such action has been taken by a third party, for the Borrower's winding up, dissolution, or liquidation or similar executory or judicial proceeding or for the appointment of a liquidator, custodian, receiver, trustee, administrator or other similar officer for the Borrower or any or all of its assets or revenues.

(k) No Lien exists on Borrower's property, except for Permitted Liens.

(l) The obligation of the Borrower to make any payment under this Agreement (together with all charges in connection therewith) is absolute and unconditional, and, except as expressly provided for in Sections 2.4 and 2.6 of this Agreement, there exists no right of setoff or recoupment, counterclaim, cross-claim or defense of any nature whatsoever to any such payment.

**Section 3.2 Borrower Acknowledgment.** The Borrower acknowledges that it has made the representations and warranties referred to in Section 3.1 with the intention of persuading the Lenders to enter into the Financing Documents and that the Lenders have entered into these Financing Documents on the basis of, and in full reliance on, each of such representations and warranties. The Borrower represents and warrants to the Lenders that none of such representations and warranties omits any matter the omission of which makes any of such representations and warranties misleading.

**Section 3.3 Representations and Warranties of the Lenders.** Each of the Lenders represents and warrants to the Borrower as of the date hereof and as of each date Warrants are granted pursuant to this Agreement as follows:

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(a) That it is acquiring the Warrants and the Exercise Shares solely for its account for investment and not with a view to or for sale or distribution of said Warrants or Exercise Shares or any part thereof. Each of the Lenders also represents that the entire legal and beneficial interests of the Warrants and Exercise Shares such Lender is acquiring is being acquired for, and will be held for, its account only.

(b) That the Warrants and the Exercise Shares have not been registered under the Securities Act of 1933, as amended (the "Act") on the basis that no distribution or public offering of the stock of the Borrower is to be effected. Each of the Lenders realizes that the basis for the exemption may not be present if, notwithstanding its representations, such Lender has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. None of the Lenders has such present intention.

(c) That the Warrants and the Exercise Shares must be held indefinitely unless they are subsequently registered under the Act or an exemption from such registration is available. Each of the Lenders recognizes that the Borrower has no obligation to register the Warrants, or to comply with any exemption from such registration.

(d) That neither the Warrants nor the Exercise Shares may be sold pursuant to Rule 144 adopted under the Act unless certain conditions are met, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the Borrower, the resale following the required holding period under Rule 144 and the number of shares being sold during any three month period not exceeding specified limitations.

(e) That no Lender will make any disposition of all or any part of the Warrants or Exercise Shares in any event unless and until:

(i) The Borrower shall have received a letter secured by such Lender from the Securities and Exchange Commission stating that no action will be recommended to the Commission with respect to the proposed disposition;

(ii) There is then in effect a registration statement under the Act covering such proposed disposition and such disposition is made in accordance with said registration statement; or

(iii) Such Lender shall have notified the Borrower of the proposed disposition and, in the case of a sale or transfer in a so called "4(1) and a half" transaction, shall have furnished counsel for the Borrower with an opinion of counsel, substantially in the form annexed as Exhibit C to the Warrant annexed hereto as Exhibit C-1. The Borrower agrees that it will not require an opinion of counsel with respect to transactions under Rule 144 of the Securities Act of 1933, as amended, except in unusual circumstances.

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(f) That it understands and agrees that all certificates evidencing the shares to be issued to the Lenders may bear the following legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED “4(1) AND A HALF” SALE.”

“THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF JULY 18, 2007, AS AMENDED FROM TIME TO TIME, AMONG THE COMPANY AND CERTAIN HOLDERS OF ITS OUTSTANDING SECURITIES. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.”

(g) That each Lender is an “accredited investor” as defined in Regulation D promulgated under the Act.

(h) Each of the Lenders is a Limited Partnership duly organized and validly existing under the laws of the State of its formation.

(i) That each of the Lenders has and at all times shall maintain sufficient Dollars to fund the Disbursements.

**Section 3.4 Lender Acknowledgment.** Each of the Lenders acknowledges that it has made the representations and warranties referred to in Section 3.3 with the intention of persuading the Borrower to enter into the Financing Documents and that the Borrower has entered into these Financing Documents on the basis of, and in full reliance on, each of such representations and warranties. Each of the Lenders represents and warrants to the Borrower that none of such representations and warranties omits any matter the omission of which makes any of such representations and warranties misleading. Each of the Lenders also acknowledges that the representations and warranties made by the Borrower in Section 3.1, to the extent that they pertain to the Warrants or the Registration Rights Agreement (with the exception of Subsection (f) of Section 3.1), are made solely to the extent, and will only survive for so long as, any the Lender or any of the Deerfield Entities (as such term is defined in the Registration Rights Agreement) remains a party to the Registration Rights Agreement or a Warrant.

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**ARTICLE IV**  
**CONDITIONS OF DISBURSEMENTS**

**Section 4.1 Conditions to Initial Disbursement of the Loan.** The obligation of the Lenders to make the initial Disbursement of the Loan shall be subject to the fulfillment of the following conditions:

(a) Deerfield Private Design shall have received a copy of all documents authorizing the Borrower to execute, deliver and perform each of the Financing Documents and to engage in the transactions contemplated thereby and an opinion of Borrower's counsel satisfactory to Deerfield Private Design.

(b) Each of the Financing Documents shall have been duly executed and delivered by the Borrower and the Lenders and shall be in full force and effect and the Borrower shall be in compliance with all the terms thereof.

**Section 4.2 Conditions to All Disbursements of the Loan.** The obligation of the Lenders to make any Disbursement of the Loan shall be subject to the fulfillment of the following conditions; provided, however, such conditions, to the extent that they pertain to the Warrants or the Registration Rights Agreement, are made solely to the extent, and will only survive for so long as, any the Lenders or any of the Deerfield Entities (as such term is defined in the Registration Rights Agreement) remains a party to the Registration Rights Agreement or a Warrant:

(a) The Borrower shall have delivered to Deerfield Private Design a Disbursement Request not less than five Business Days prior to the proposed Disbursement Date.

(b) The Borrower shall have delivered to Deerfield Private Design the relevant Evidence of Disbursement duly executed by the Borrower, provided that such receipt shall not be effective until the Disbursement is actually advanced to the Borrower.

(c) The Borrower shall have complied with and shall be in compliance with all the terms of the Financing Documents.

(d) No Default or Event of Default shall have occurred.

(e) No Material Adverse Effect shall have occurred and be continuing.

(f) The representations and warranties made in each Financing Document shall be true on and as of the Disbursement Date with the same effect as though such representations and warranties had been made on and as of the Disbursement Date.

(g) The Borrower shall have delivered to Deerfield Private Design such evidence as to the satisfaction of the applicable Milestone as Deerfield Private Design shall have reasonably requested.

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**Section 4.3 Effect of Disbursement Request.** The delivery of a Disbursement Request and the acceptance by the Borrower of the proceeds of such Disbursement shall constitute a representation and a warranty by the Borrower that on the date of such Disbursement (both immediately before and after giving effect to such Disbursement and the application of the proceeds thereof) the representations and warranties of the Borrower for each Financing Document are true and correct.

**Section 4.4 Saving Rights.**

(a) No course of dealing or waiver by the Lenders in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of the Lenders with respect to any other condition of Disbursement, or be construed to be a waiver thereof; nor shall the action of the Lenders in respect of any Disbursement affect or impair any right, power or remedy of the Lenders in respect of any other Disbursement.

(b) Unless otherwise notified by the Borrower and without prejudice to the generality of this Section 4.4, the right of the Lenders to require compliance with any condition under this Agreement which may be waived by the Lenders in respect of any Disbursement is expressly preserved for the purposes of any subsequent Disbursement.

**ARTICLE V**

**PARTICULAR COVENANTS**

**Section 5.1 Affirmative Covenants.** Unless Deerfield Private Design shall otherwise agree:

(a) The Borrower shall (i) maintain its existence and qualify and remain qualified to do its business as currently conducted; (ii) maintain all approvals necessary for the Financing Documents; and (iii) operate its business with due diligence, efficiency and in conformity with the general business practices now conducted by Borrower.

(b) The Borrower shall comply in all material respects with all applicable laws, rules, regulations and orders of any Government Authority, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to so comply, individually or in the aggregate, would not have a material adverse effect on the business, financial position or results of operations of the Borrower.

(c) The Borrower shall maintain Available Cash, at all times, in an amount no less than the principal amount then outstanding under the terms of this Agreement.

(d) The Borrower shall obtain, make and keep in full force and effect all licenses, contracts, consents, approvals and authorizations from and registrations with Government Authorities that may be required to conduct its business.

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(e) The Borrower shall promptly notify Deerfield Private Design of the occurrence of (i) any Default or Event of Default; (ii) any claims, litigation, arbitration, mediation or administrative or regulatory proceedings that are instituted or threatened against the Borrower with regard to the Milestone Products; and (iii) each event which, at the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an event of default (however described) under any of the Financing Documents.

(f) The Borrower shall use reasonable commercial efforts to carry out the development program contemplated by the Milestones.

(g) The Borrower shall comply with the terms of each of the Financing Documents.

(h) (i) The Borrower will provide quarterly financials for itself and its Subsidiaries within 45 days after the end of each quarter, and annual financials within 120 after the end of each year; (ii) the Borrower will provide any annual reports, quarterly reports and other periodic reports pursuant to Section 13 or 15(d) of the Exchange Act actually prepared by the Borrower as soon as available; (iii) the Borrower and its Subsidiaries will provide to Deerfield Private Design copies of all documents, reports, financial data and other information as Deerfield Private Design may reasonably request, and permit the Lenders to visit and inspect any of the properties of the Borrower and its Subsidiaries, and to discuss its and their affairs, finances and accounts with its and their officers, all at such times as Deerfield Private Design may reasonably request; and (iv) Lenders shall have the right to consult with and advise the management of the Borrower and its Subsidiaries on matters relating to the operation of the Borrower and its Subsidiaries.

**Section 5.2 Negative Covenants.** Unless Deerfield Private Design shall otherwise agree:

(a) The Borrower shall not undertake or permit any (i) conversion of the Borrower into another form; or (ii) any sale, transfer, lease or exchange or other action with respect to the disposal of, or disposition of rights to, any assets or business lines of the Borrower that are necessary for the development of the Milestone Products in a single transaction or series of transactions; provided, however, Borrower may enter into any collaborative arrangement, licensing agreement, joint venture or partnership providing for the development or commercial exploitation of the technology or products of the Borrower whereby its income or profits are, or might be shared with any other Person .

(b) The Borrower shall not liquidate or dissolve or enter into any consolidation, merger, spin-off or reorganization, or acquire the assets or stock of any other business or company or enter into any partnership, joint venture, syndicate, pool, profit-sharing or royalty agreement or other combination, or engage in any transaction with an Affiliate, whereby its income or profits are, or might be shared with any other Person, or enter into any management contract or similar arrangement whereby its

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business or operations are managed by another Person; provided, however, Borrower may enter into any collaborative arrangement, licensing agreement, joint venture or partnership providing for the development or commercial exploitation of the technology or products of the Borrower whereby its income or profits are, or might be shared with any other Person.

(c) The Borrower shall not; (i) create, incur or suffer any Lien upon any of its assets, now owned or hereafter acquired, except Permitted Liens; or (ii) assign, sell, transfer or otherwise dispose of, any of the Financing Documents, or the rights and obligations thereunder.

(d) The Borrower shall not create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness, or prepay any Indebtedness or take any actions which impose on Borrower an obligation to prepay any Indebtedness, except Indebtedness to Lenders.

(e) The Borrower shall not make any payment in respect of any Subordinated Debt, except in compliance with the terms of such Subordinated Debt, or amend any provision affecting any of the Lender's rights contained in any documentation relating to the Subordinated Debt without Deerfield Private Design's prior written consent.

(f) The Borrower shall not sell, license, transfer, assign, encumber or otherwise dispose of any ownership rights to the intellectual property relating to any of the Milestone Products or any product developed from such intellectual property except in connection with any collaborative arrangement, licensing agreement, joint venture or partnership to develop or commercially exploit such Milestone Product or other products.

**Section 5.3 Reimbursement of Taxes.** The Borrower shall pay all Taxes, duties, fees or other charges payable on or in connection with the execution, issue, delivery, registration, notarization or enforcement of the Financing Documents and shall, upon notice from Deerfield Private Design, reimburse the Lenders for any such Taxes, duties, fees or other charges paid by the Lenders thereon; provided, however, that notwithstanding the foregoing, under no circumstances shall the Borrower have any obligation to reimburse the Lenders for Excluded Taxes.

## ARTICLE VI EVENTS OF DEFAULT

**Section 6.1 General Acceleration Provision upon Events of Default.** If one or more of the events specified in this Section 6.1 (each an "Event of Default") shall have happened and be continuing, Deerfield Private Design may cancel the Borrower's right to request Disbursements and declare the principal of, and all fees on, the Loan or any part of any of them (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become, immediately due and payable without prepayment premium without any further notice and without any presentment, demand or protest of any kind, all of which are

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hereby expressly waived by the Borrower, and take any further action available at law or in equity, including, without limitation, the sale of the Loan and all other rights acquired in connection with the Loan:

(a) A Lender shall have failed to receive its respective Warrant when required to be issued under this Agreement or payment when due of principal, Commitment Fee, or any other amounts due under the Loan or the Note and any such failure shall not have been cured by the Borrower within 3 Business Days after receiving written notice of such failure from Deerfield Private Design.

(b) The Borrower shall have defaulted or failed to comply in any material respect with the due observance or performance of any covenant contained in this Agreement or the Note and such default or failure to comply shall not have been cured by Borrower within 15 days after receiving written notice of such default or failure from Deerfield Private Design.

(c) Any representation or warranty made by the Borrower in any Financing Document shall be found to have been incorrect, false or misleading in any material respect as of the date it was made, deemed made, reaffirmed or confirmed.

(d) (i) The Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts as they come due or shall make a general assignment for the benefit of creditors; (ii) the Borrower shall declare a moratorium on the payment of its debts; (iii) the commencement by the Borrower of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the commencement of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, intervention or other similar relief under any applicable law, or the consent by it to the filing of any such petition or to the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) or of any substantial part of its assets; (iv) the commencement against the Borrower or any substantial part of its assets of a proceeding in any court of competent jurisdiction under any bankruptcy or other applicable law (as now or hereafter in effect) seeking its liquidation, winding up, dissolution, reorganization, arrangement, adjustment, or the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator (or other similar official), and any such proceeding shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall continue unstayed or otherwise in effect, for a period of ninety (90) days; (v) the making by the Borrower of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debt generally as they become due; or (vi) any other event shall have occurred which under any applicable law would have an effect analogous to any of those events listed above in this subsection.

(e) One or more judgments against the Borrower taken as a whole or attachments against any of its property, which in the aggregate exceed three million Dollars (\$3,000,000), or which could reasonably be expected to interfere materially and adversely with the conduct of the business of the Borrower remain(s) unpaid, unstayed on

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appeal, undischarged, unbonded or undismissed for a period of thirty (30) days from the date of entry of such judgment.

(f) Any license, permit or approval held by the Borrower including, without limitation from any Governmental Authority shall have been suspended, canceled or revoked and such suspension, cancellation or revocation (i) could reasonably expected to interfere materially and adversely with the conduct of the business of the Borrower and (ii) shall not have been cured by Borrower within 15 days after receiving written notice of such default or failure from Deerfield Private Design.

(g) Any authorization necessary for the execution, delivery or performance of any Financing Document or for the validity or enforceability of any of the Borrower's obligations under any Financing Document is not effected or given or is withdrawn or ceases to remain in full force or effect.

(h) The validity of or any Financing Document shall be contested by any legislative, executive or judicial body of any jurisdiction, or any treaty, law, regulation, communiqué, decree, ordinance or policy of any jurisdiction shall purport to render any material provision of any Financing Document invalid or unenforceable or shall purport to prevent or materially delay the performance or observance by the Borrower of its obligations hereunder or thereunder (as applicable).

(i) The Borrower has failed to comply with the requirements of the Securities and Exchange Act of 1934 in a manner which could reasonably expected to interfere materially and adversely with the conduct of the business of the Borrower.

(j) If there is a default or other failure to perform in any agreement to which Borrower is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of \$5,000,000.

(k) If Borrower makes any payment on account of Subordinated Debt, except to the extent the payment is allowed under any subordination agreement entered into with the Lenders.

(l) If an Event of Default pursuant to the Warrants (as such term is defined in the Warrants) shall have occurred, but only if a Lender or any of the Deerfield Entities (as such term is defined in the Registration Rights Agreement) is a holder of any of the Warrants at the time of such Event of Default.

**Section 6.2 Automatic Acceleration on Dissolution or Bankruptcy.** Notwithstanding any other provisions of this Agreement, if an Event of Default under Section 6.1(d) shall occur, the principal of the Loan (together with any other amounts accrued or payable under this Agreement) shall thereupon become immediately due and payable without any presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower.

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**Section 6.3 Recovery of Amounts Due.** If any amount payable hereunder is not paid as and when due, the Borrower hereby authorizes Deerfield Private Design to proceed, to the fullest extent permitted by applicable law, without prior notice, by right of set-off, banker's lien or counterclaim, against any moneys or other assets of the Borrower to the full extent of all amounts payable to the Lenders.

**ARTICLE VII**  
**MISCELLANEOUS**

**Section 7.1 Notices.** Any notice, request or other communication to be given or made under this Agreement to the Borrower or Deerfield Private Design shall be in writing. Such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, international courier (confirmed by facsimile), or facsimile (with a hard copy delivered within two (2) Business Days) to the Party to which it is required or permitted to be given or made at such Party's address specified below or at such other address as such Party shall have designated by notice to the Party giving or making such notice, request or other communication, it being understood that the failure to deliver a copy of any notice, request or other communication to whom copies are to be sent shall not affect the validity of any such notice, request or other communication or constitute a breach of this Agreement.

For the Borrower:

2929 Seventh Street, Suite 100  
Berkeley, CA 94710-2753  
Attention: Chief Executive Officer  
Facsimile: (510) 848-1327

with a copy (which shall not constitute notice) to:

Cooley Godward Kronish LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Facsimile: 650-849-7400  
Attention: Glen Sato, Esq.

For Deerfield Private Design:

780 Third Avenue, 37th Floor  
New York, New York 10017  
Attention: James E. Flynn  
Facsimile: (212) 573-8111

with a copy (which shall not constitute notice) to:

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Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, New York 10022-2585  
Facsimile: (212) 894-5511  
Attention: Robert I. Fisher

**Section 7.2 Waiver of Notice.** Whenever any notice is required to be given to Deerfield Private Design or the Borrower under the any of the Financing Documents, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 7.3 Reimbursement of Legal and Other Expenses.** If any amount owing to the Lenders under any Financing Document shall be collected through enforcement of this Agreement, any refinancing or restructuring of the Loan in the nature of a work-out, settlement, negotiation, or any process of law, or shall be placed in the hands of third Persons for collection, the Borrower shall pay (in addition to all monies then due in respect of the Loan or otherwise payable under any Financing Document) all reasonable, documented attorneys' and other fees and expenses incurred in respect of such collection.

**Section 7.4 Applicable Law and Consent to Non-Exclusive New York Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to the conflicts of laws principles thereof other than Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York.

(a) The Financing Documents, and any rights of the Lenders arising out of or relating to any Financing Documents, may, at the option of Deerfield Private Design, be enforced by Deerfield Private Design in the courts of the United States of America located in the Southern District of the State of New York or in any other courts having jurisdiction. For the benefit of the Lenders, the Borrower hereby irrevocably agrees that any legal action, suit or other proceeding arising out of any Financing Document may be brought in the courts of the State of New York or of the United States of America for the Southern District of New York. By the execution and delivery of this Agreement, the Borrower hereby irrevocably consents and submits to the jurisdiction of any such court in any such action, suit or other proceeding. Final judgment against the Borrower in any such action, suit or other proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment. Nothing contained in any Financing Document shall affect the right of the Lenders to commence legal proceedings or otherwise sue the Borrower in any court having jurisdiction, or concurrently in more than one jurisdiction, or to serve process, pleadings and other legal papers upon the Borrower in any manner authorized by the laws of any such jurisdiction.

(b) The Borrower irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any action, suit or other proceeding arising out of or relating to any Financing

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Document, brought in the courts of the State of New York or in the United States District Court for the Southern District of New York, and any claim that any such action, suit or other proceeding brought in any such court has been brought in an inconvenient forum.

(c) The Borrower hereby waives any and all rights to demand a trial by jury in any action, suit or other proceeding arising out of any Financing Document or the transactions contemplated by any Financing Document.

(d) To the extent that the Borrower or Deerfield Private Design may, in any suit, action or other proceeding brought in any court arising out of or in connection with any Financing Document, be entitled to the benefit of any provision of law requiring the Borrower or the Lenders, as applicable, in such suit, action or other proceeding to post security for the costs of the Borrower or Deerfield Private Design, as applicable, or to post a bond or to take similar action, the Borrower and Deerfield Private Design hereby irrevocably waive such benefit, in each case to the fullest extent now or hereafter permitted under any applicable laws.

**Section 7.5 Successor and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of Deerfield Private Design. Notwithstanding the foregoing, nothing herein shall be deemed to limit or otherwise restrict a merger, reorganization or sale of substantially all of the assets of Borrower.

**Section 7.6 Entire Agreement.** The Financing Documents contain the entire understanding of the Parties with respect to the matters covered thereby and supersede any and all other written and oral communications, negotiations, commitments and writings with respect thereto. The provisions of this Agreement may be waived, modified, supplemented or amended only by an instrument in writing signed by the authorized officer of each Party; provided, however, that any provision hereof that is solely for the Lenders' benefit may be waived by written instrument signed by an authorized officer of such Lender.

**Section 7.7 Amendments.** Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and Deerfield Private Design.

**Section 7.8 Severability.** If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**Section 7.9 Counterparts.** This Agreement may be executed in several counterparts, and by each Party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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### **Section 7.10 Survival.**

(a) This Agreement and all agreements, representations and warranties made in this Agreement, and in any document, certificate or statement delivered pursuant thereto or in connection therewith shall be considered to have been relied upon by the other Parties and shall survive the execution and delivery of this Agreement and the making of the Loan hereunder regardless of any investigation made by any such other Party or on its behalf, and shall continue in force until all amounts payable under the this Agreement shall have been fully paid in accordance with the provisions hereof and thereof, and the Lenders shall not be deemed to have waived, by reason of making the Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Lenders may have had notice or knowledge of any such Default or may have had notice or knowledge that such representation or warranty was false or misleading at the time any Disbursement was made hereunder.

(b) The obligations of the Borrower under Sections 2.7 and 2.8 and the obligations of the Borrower and the Lenders under this Article VII hereof shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan, or the termination of this Agreement or any provision hereof.

**Section 7.11 Waiver.** Neither the failure of, nor any delay on the part of, any Party in exercising any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, preclude other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver of any right, power, privilege or default hereunder, or under any agreement, document or instrument mentioned herein, constitute a waiver of any other right, power, privilege or default or constitute a waiver of any default of the same or of any other term or provision. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to the Lenders upon any default under this Agreement, or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Lenders in respect of any such default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lenders in respect of any other default. All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law.

### **Section 7.12 Indemnity.**

(a) The Parties shall, at all times, indemnify and hold each other harmless (the "Indemnity") and each of their respective directors, members, officers, employees, agents, counsel and advisors (each, an "Indemnified Person") in connection with any losses, claims (including the cost of defending against such claims), damages, liabilities, penalties, or other expenses arising out of, or relating to, this Agreement, the extension of credit hereunder or the Loan, the use or intended use of the Loan or any investment or

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proposed investment, which an Indemnified Person may incur or to which an Indemnified Person may become subject (each, a “Loss”). The Indemnity shall not apply to the extent that a court or arbitral tribunal with jurisdiction over the subject matter of the Loss, and over the Lenders or the Borrower, as applicable, and such other Indemnified Person that had an adequate opportunity to defend its interests, determines that such Loss resulted from the gross negligence or willful misconduct of the Indemnified Person, which determination results in a final, non-appealable judgment or decision of a court or tribunal of competent jurisdiction. The Indemnity is independent of and in addition to any other agreement of any Party under any Financing Document to pay any amount to the Lenders or the Borrower, as applicable, and any exclusion of any obligation to pay any amount under this subsection shall not affect the requirement to pay such amount under any other section hereof or under any other agreement.

(b) Without prejudice to the survival of any other agreement of any of the Parties hereunder, the agreements and the obligations of the Parties contained in this Section 7.12 shall survive the termination of each other provision hereof and the payment of all amounts payable to the Lenders hereunder.

**Section 7.13 No Usury.** This Agreement is hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration or otherwise, shall the amount paid or agreed to be paid to the Lenders for the Loan exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Lenders shall ever receive anything which might be deemed interest under applicable law, that would exceed the highest lawful rate, such amount that would be deemed excessive interest shall be applied to the reduction of the principal amount owing on account of the Loan, or if such deemed excessive interest exceeds the unpaid balance of principal of the Loan, such deemed excess shall be refunded to the Borrower. All sums paid or agreed to be paid to the Lenders for the Loan shall, to the extent permitted by applicable law, be deemed to be amortized, prorated, allocated and spread throughout the full term of the Loan until payment in full so that the deemed rate of interest on account of the Loan is uniform throughout the term thereof. The terms and provisions of this paragraph shall control and supersede every other provision of this Agreement and the Note.

**Section 7.14 Further Assurances.** From time to time, the Borrower shall perform any and all acts and execute and deliver to Deerfield Private Design such additional documents as may be necessary or as requested by Deerfield Private Design to carry out the purposes of this Agreement or any or to preserve and protect the Lenders’ rights as contemplated therein.

{SIGNATURE PAGE FOLLOWS}

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IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

**BORROWER:  
DYNAVAX TECHNOLOGIES CORPORATION**

By: /s/ Dino Dina  
Name: Dino Dina, MD  
Title: President and Chief Executive Officer

**LENDER:  
DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.**

By: /s/ James Flynn  
Name: James Flynn  
Title: General Partner

**LENDER:  
DEERFIELD PRIVATE DESIGN FUND, L.P.**

By: /s/ James Flynn  
Name: James Flynn  
Title: General Partner

**LENDER:  
DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: /s/ James Flynn  
Name: James Flynn  
Title: General Partner

**LENDER:  
DEERFIELD SPECIAL SITUATIONS FUND  
INTERNATIONAL LIMITED**

By: /s/ James Flynn  
Name: James Flynn  
Title: General Partner

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**SCHEDULE 1**

**FORM OF DISBURSEMENT REQUEST**

{LETTERHEAD OF THE BORROWER}

{Date}

Ladies and Gentlemen:

Request for Disbursement of the Loan

1. Please refer to the Loan Agreement (the "Loan Agreement"), dated as of July 18, 2007, between Dynavax Technologies Corporation (the "Borrower") Deerfield Private Design Fund, L.P., ("Deerfield Private Design) Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International, L.P. (each a "Lender" and, together the "Lenders" and together with the Borrower, the "Parties").

2. Terms defined in the Loan Agreement shall have the same meanings herein.

3. The Borrower hereby requests a Disbursement, on {date}, of the amount of {amount of drawdown}, in accordance with the provisions of Section 2.2 of the Loan Agreement. You are requested to pay the amount to the following account {account number} at {name of bank}.

4. Attached hereto is a signed but undated receipt for the amount hereby requested to be disbursed, and we hereby authorize Deerfield Private Design to date such receipt as of the date of actual disbursement by the Lenders of the funds hereby requested to be disbursed.

5. The Borrower hereby certifies as follows:

(a) The representations and warranties in Article III of the Loan Agreement are true in all material respects on the date hereof with the same effect as though such representations and warranties had been made on today's date;

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(b) All of the conditions set forth in Article IV of the Loan Agreement have been satisfied; and

(c) The date or Milestone required to be satisfied before the Borrower may request the Disbursement provided for herein has been achieved and the Borrower has provided evidence to Deerfield Private Design evidencing such achievement. Such Disbursement is to be used solely to reimburse the Borrower for expenses it incurred in achieving such Milestone.

6. The above certifications are effective as of the date of this request for Disbursement and will continue to be effective as of the Disbursement Date. If any of these certifications is no longer valid as of or prior to the Disbursement Date, the Borrower will immediately notify Deerfield Private Design and will repay the amount disbursed upon demand by Deerfield Private Design if Disbursement is made prior to the receipt of such notice.

DYNAVAX TECHNOLOGIES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**SCHEDULE 2**

FORM OF EVIDENCE OF DISBURSEMENT

{LETTERHEAD OF THE BORROWER}

{Date}

Ladies and Gentlemen:

Re: Disbursement Receipt

Dynavax Technologies Corporation (the "Borrower") hereby acknowledge receipt of the sum of {insert amount of disbursement} disbursed to us by Deerfield Private Design Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International, L.P. (each a "Lender" and, together the "Lenders") under the Loan provided for in the Loan Agreement, dated as of July 18, 2007, between the Borrower and the Lenders.

Yours faithfully,

DYNAVAX TECHNOLOGIES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

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**EXHIBIT A**

**FORM OF PROMISSORY NOTE**

**PROMISSORY NOTE**

**\$30,000,000.00**

**July 18, 2007**

FOR VALUE RECEIVED, DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation (the "Maker"), by means of this Promissory Note (this "Note") hereby unconditionally promises to pay to Deerfield Private Design Fund, L.P. (Deerfield Private Design"), Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International, L.P., (each a Payee and, together, the "Payees"), or order, the aggregate principal sum of THIRTY MILLION DOLLARS (US\$30,000,000.00) or so much thereof as may be advanced by the Payees from time to time hereunder to or for the benefit of the Maker (the "Loan"), in lawful money of the United States of America and in immediately available funds, on the dates provided in the Loan Agreement. The Payees may make notations on the Disbursement Grid attached hereto reflecting the dates and amounts of Disbursements of the Loan.

The principal balance of this Note outstanding at any time shall be subject to the Loan Agreement, dated as of July 18, 2007, between the Maker and the Payees (as modified and supplemented and in effect from time to time, the "Loan Agreement").

The Maker shall make all payments to the Payees of principal under this Note in the manner provided in and otherwise in accordance with the Loan Agreement. The outstanding principal balance of this Note shall be due and payable in full on the Final Payment Date.

This Note is the "Note" referred to in the Loan Agreement with respect to the Loan made by the Payees thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Loan Agreement.

If default is made in the punctual payment of principal or any other amount under this Note in accordance with the Loan Agreement, or if any other Event of Default has occurred, this Note shall, at Deerfield Private Design's option be exercised at any time upon or after the occurrence of any such payment default or other Event of Default and in accordance with the applicable provisions of the Loan Agreement, become immediately due and payable.

All payments of any kind due to the Payees from the Maker pursuant to this Note shall be made in the full face amount thereof. All such payments will be free and clear of, and without deduction or withholding for, any present or future taxes. The Maker shall pay all and any costs (administrative or otherwise) imposed by banks, clearing houses, or any other financial institution, in connection with making any payments hereunder, except for any costs imposed by Payees' banking institutions.

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The Maker shall pay all costs of collection, including, without limitation, all reasonable, documented legal expenses and attorneys' fees, paid or incurred by Payees in collecting and enforcing this Note.

The Maker and every endorser of this Note, or the obligations represented hereby, expressly waive presentment, protest, demand, notice of dishonor or default, and notice of any kind with respect to this Note and the Loan Agreement or the performance of the obligations under this Note and/or the Loan Agreement. No renewal or extension of this Note or the Loan Agreement, no release of any Person primarily or secondarily liable on this Note or the Loan Agreement, including the Maker and any endorser, no delay in the enforcement of payment of this Note or the Loan Agreement, and no delay or omission in exercising any right or power under this Note or the Loan Agreement shall affect the liability of the Maker or any endorser of this Note.

No delay or omission by the Payees in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Maker and Deerfield Private Design Fund.

Every holder of this Note shall have and may exercise all of the rights and powers given to the Payees in this Note.

THIS NOTE, AND ANY RIGHTS OF THE PAYEES ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE PAYEES, BE ENFORCED BY THE PAYEES IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE PAYEES, THE MAKER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 7.1 OF THE LOAN AGREEMENT, WHICH SERVICE THE MAKER AGREES SHALL BE SUFFICIENT AND VALID. THE MAKER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

This Note shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in such State, without giving effect to the conflicts of laws principles thereof other than Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York.

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IN WITNESS WHEREOF, an authorized representative of the Maker has executed this Note as of the date first written above.

DYNAVAX TECHNOLOGIES CORPORATION.

By: \_\_\_\_\_  
Name:  
Title:

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**DISBURSEMENT TO  
PROMISSORY NOTE HELD BY PAYEES**

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<u>Date</u>	<u>Amount of Disbursement</u>	<u>Payee's Initials</u>
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**EXHIBIT B**

**SCHEDULE OF AND CONDITIONS TO DISBURSEMENTS**

**TOLAMBA PAYMENTS**

1. Lenders shall pay to Borrower the aggregate of [ \* ] on [ \* ].
2. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ].
3. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide Deerfield Private Design with [ \* ].
4. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ].
5. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide Deerfield Private Design with [ \* ].
6. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide to Deerfield Private Design [ \* ].

**PRECLINICAL PEANUT/CAT PAYMENTS**

7. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide to Deerfield Private Design [ \* ].
8. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide to Deerfield Private Design [ \* ].
9. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide to Deerfield Private Design [ \* ].
10. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower will provide Deerfield Private Design with [ \* ].
11. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower will provide Deerfield Private Design with [ \* ].
12. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. If requested, Borrower will provide Deerfield Private Design with [ \* ].

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CLINICAL PEANUT/CAT PAYMENTS

13. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide Deerfield Private Design [ \* ].
14. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower will provide Deerfield Private Design with [ \* ].
15. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower shall provide Deerfield Private Design [ \* ].
16. Lenders shall pay to Borrower the aggregate of [ \* ] on the later of (a) [ \* ] and (b) [ \* ]. Borrower will provide Deerfield Private Design with [ \* ].

Deerfield Private Design shall determine, in the exercise of its reasonable discretion, if the Milestone identified for each Disbursement have been achieved. In making such determination, Deerfield Private Design shall use principles generally accepted for the development of pharmaceutical products.

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**Exhibit C**

Condition	Number of Shares of Common Stock Subject to Warrant
1. Execution of Agreement	1,250,000
2. [ * ]	[ * ]
3. [ * ]	[ * ]
4. [ * ]	[ * ]
5. [ * ]	[ * ]

**Allocation of Warrants**

Condition	Deerfield Private Design Fund	Deerfield Private Design International	Deerfield Special Situations Fund	Deerfield Special Situations International	Total
1.	[ * ]	[ * ]	[ * ]	[ * ]	1,250,000
2.	[ * ]	[ * ]	[ * ]	[ * ]	[ * ]
3.	[ * ]	[ * ]	[ * ]	[ * ]	[ * ]
4.	[ * ]	[ * ]	[ * ]	[ * ]	[ * ]
5.	[ * ]	[ * ]	[ * ]	[ * ]	[ * ]

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**Exhibit D**

FORM OF SUBORDINATION AGREEMENT

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## SUBORDINATION AGREEMENT

SUBORDINATION AGREEMENT (this “Agreement”), dated { }, between { } (the “Subordinating Creditor”) and Deerfield Private Design Fund, L.P., (“Deerfield Private Design”) Deerfield Special Situations Fund, L.P., Deerfield Special Situations Fund International Limited and Deerfield Private Design International, L.P. (each a “Lender” and, together the “Lenders”).

### RECITALS

A. Dynavax Technologies Corporation (“Dynavax”) intends to enter into a financing arrangement pursuant to which Deerfield Private Design will provide Dynavax with financial accommodations, all as more fully described in the Loan Agreement dated as of the date hereof (the “Loan Agreement”) among Dynavax and the Lenders (such arrangement and all related transaction documents as they may be amended, amended and restated, supplemented or otherwise modified from time to time, and the commitment of the Lenders to extend financing to Dynavax thereunder, the “Senior Debt”).

B. As a condition to the Lenders entering into the Senior Debt, the Lenders require that the Subordinating Lender enter into this Agreement.

NOW, THEREFORE, for in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lenders and the Subordinating Creditor hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall be defined in the following manner:

**Bankruptcy Code:** the United States Bankruptcy Code, 11 U.S.C. §§101-1331, as amended from time to time.

**Dynavax:** as defined in the recitals to this Agreement, together with any successor to, or assignee of, Dynavax, including, without limitation, Dynavax operating as a debtor-in-possession or a trustee appointed for Dynavax under the Bankruptcy Code.

**Commence Legal Action:** assert or participate in, or bring any legal action (including any bankruptcy or insolvency proceeding) either at law or in equity for the enforcement, collection or realization on all or any part of the Subordinated Debt from or against Dynavax or exercise any right of offset against amounts owing to Dynavax or any property of Dynavax at any time held by the Subordinating Creditor.

**Event of Bankruptcy:** any of the following: (i) Dynavax’s filing of a voluntary petition in bankruptcy under any provision of the Bankruptcy Code, or the filing by Dynavax of any other petition to take advantage of any receivership or insolvency laws, including, without limitation, any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of Dynavax or its respective debts or assets; (ii) Dynavax’s admission in writing of its inability to pay its

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debts generally as they become due; (iii) the appointment of a receiver, liquidator, trustee, custodian or other similar official for Dynavax or all or a material part of its assets; (iv) the filing of any petition against Dynavax under any provision of the Bankruptcy Code or any other receivership or insolvency law, including, without limitation, any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of Dynavax or its respective debts or assets; (v) an assignment by Dynavax for the benefit of creditors or any other marshalling of the assets and liabilities of Dynavax; or (vi) any corporate action taken by Dynavax to authorize any of the foregoing.

Senior Debt: as defined in the recitals to this Agreement.

Subordinated Debt: all present and future obligations, liabilities and indebtedness owed by Dynavax to the Subordinating Creditor (whether matured or unmatured) including, without limitation, all obligations, liabilities and indebtedness owed by Dynavax to the Subordinating Creditor pursuant to the Subordinating Creditor Loan Documents, all interest accruing thereon and all costs and expenses (including attorneys' fees) payable by Dynavax to the Subordinating Creditor in connection with the exercise of the Subordinating Creditor's rights under, and the enforcement of, the Subordinating Creditor Loan Documents, and including any Subordinated Debt purchased or otherwise acquired by the Subordinating Creditor and any participations in any Subordinated Debt purchased or otherwise acquired by the Subordinating Creditor.

Subordinating Creditor Loan Documents: { } as such documents may be amended, supplemented or restated from time to time.

2. **Subordination.** The Subordinating Creditor hereby subordinates the payment by Dynavax of all or any part of the Subordinated Debt to the full and final payment in cash and satisfaction of the Senior Debt.

3. **Permitted Payments to Subordinating Creditor.**

(a) So long as no Event of Default (as such term is defined in the Loan Agreement) has occurred in accordance with Section 6.1 of the Loan Agreement, Dynavax may make payments to the Subordinating Creditor and the Subordinating Creditor may accept from Dynavax payments of principal and interest when due, strictly in accordance with the terms the Subordinating Creditor Loan Documents.

(b) If the Subordinating Creditor receives a payment in any form and from any source (including by offset against amounts owing to Dynavax) with respect to the Subordinated Debt other than a payment permitted to be made under paragraph (a) of this Section 3, the Subordinating Creditor shall immediately deliver to the Lenders, for application against the Senior Debt, in the form received (except for proper endorsements or assignments, if necessary), such payment. Pending such delivery the Subordinating Creditor shall hold all such payment trust for the account of the Lenders.

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#### 4. **Enforcement of Subordinating Creditor's Rights.**

(a) The Subordinating Creditor shall not accelerate the maturity or payment of any Subordinated Debt or Commence Legal Action unless there occurs an Event of Bankruptcy; provided, however, that with respect to any insolvency or bankruptcy proceeding commenced against Dynavax, the Subordinating Creditor may only accelerate the Subordinated Debt or Commence Legal Action if such proceeding is not dismissed or discharged within 60 days.

(b) Notwithstanding the provisions of paragraph (a) of this Section 4, the Subordinating Creditor at no time will commence or join with any other creditor or creditors of Dynavax in the filing of any bankruptcy, reorganization, receivership or insolvency proceeding against Dynavax, or (ii) take any action to exercise any rights or remedies which the Subordinating Creditor may have under the Subordinating Creditor Loan Documents unless and until the Senior Debt has been fully and finally paid in full in cash and satisfied.

(c) Any amounts received by the Subordinating Creditor from Dynavax or by exercise of any right of offset against amounts owing to Dynavax as a result of any acceleration, action, suit or proceeding permitted in this Section 4, if received prior to the full and final payment in full in cash and satisfaction of the Senior Debt, shall be held in trust by the Subordinating Creditor for the Lenders and promptly paid to the Lenders in accordance with the provisions of this Agreement.

5. **Insolvency Proceedings.** Although the Subordinating Creditor retains its rights to vote its claims and otherwise act on its own behalf in any case or proceeding related to an Event of Bankruptcy, the following provisions shall apply upon the occurrence of any Event of Bankruptcy:

(a) Any payment or distribution of assets of Dynavax of any kind or character with respect to the Subordinated Debt that occurs after any Event of Bankruptcy, whether such payment or distribution consists of cash, property or securities, to which the Subordinating Creditor would be entitled except for the provisions of this Agreement shall be paid or delivered by the person or entity making such payment or distribution, directly to the Lenders for application to the payment of the Senior Debt, to the extent necessary to pay the Senior Debt in full in cash after giving effect to any concurrent payment or distribution to the Lenders with respect to the Senior Debt. To facilitate the foregoing, at the request of the Lenders, the Subordinating Creditor shall authorize and direct Dynavax, or any receiver, liquidator, custodian, conservator, trustee or other entity making any payment or distribution with respect to Dynavax or any of its assets, to make such payment or distribution directly to the Lenders.

(b) Without the prior written consent of the Lenders:

(i) The Subordinating Creditor shall not seek or request relief from the automatic stay under any provision of the Bankruptcy Code, or seek or request any

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adequate protection of the Subordinating Creditor's claims under any provision of the Bankruptcy Code; and

(ii) The Subordinating Creditor shall not contest, oppose, object or withhold its consent to, directly or indirectly, (A) any action by the Lender for adequate protection of the claims of the Lenders under the Bankruptcy Code, (B) any objection filed by the Lenders to any motion, relief, action or proceeding, if such objection is based (in whole or in part) on a lack of adequate protection of the claims of the Lenders, (C) the entry of any cash collateral order supported by the Lenders, (D) the entry of any financing order involving the Lenders (whether under §364 of the Bankruptcy Code or otherwise).

(c) In order to implement the provisions of this Agreement, upon the Lenders' request, the Subordinating Creditor shall expressly subordinate the payment of the Subordinated Debt to the payment of all Senior Debt consisting of post-petition indebtedness under any debtor-in-possession financing provided to Dynavax by the Lenders.

(d) The Subordinating Creditor shall not, directly or indirectly, take any action or vote in any way that would be inconsistent with or result in a breach of this Agreement, or challenge or contest (i) the validity or enforceability of the Senior Debt, (ii) the rights of the Lenders set forth in the Senior Debt or (iii) the validity or enforceability of any provision of this Agreement.

(e) The Subordinating Creditor irrevocably authorizes and empowers the Lenders, following any Event of Bankruptcy, to file proof of claim with respect to any Subordinated Debt held by it if the Subordinating Creditor fails to file a proof of claim prior to 30 days before the expiration of the time period during which such claim must be submitted, and to accept and receive any payment or distribution which may be payable or deliverable at any time on or with respect to the Subordinated Debt until all Senior Debt has been finally paid in full in cash and satisfied. The Subordinating Creditor will provide to the Lenders all information and documents necessary to present claims and to seek to enforce the Subordinated Debt in accordance with this paragraph.

(f) The obligations of the Subordinating Creditor under this Agreement shall continue to be effective, or be reinstated, as the case may be, as to any payment in respect of any Senior Debt that is rescinded or must otherwise be returned by the Lenders upon the occurrence or as a result of any Event of Bankruptcy, all as though such payment had not been made.

**6. Representations, Warranties and Covenants of Subordinating Creditor.** The Subordinating Creditor represents and warrants to the Lenders and covenants with the Lenders, that:

(a) it has not relied and will not rely on any representations or information of any nature made by or received from the Lenders relating to Dynavax in deciding to execute this Agreement;

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(b) all of the Subordinating Creditor Loan Documents to which it is a party currently in existence are set forth on Exhibit A attached hereto, and the Subordinating Creditor has delivered to the Lenders true, correct and complete copies of the Subordinating Creditor Loan Documents;

(c) it is the lawful owner of the Subordinated Debt held by it, free and clear of all liens and encumbrances, and has not subordinated, encumbered, assigned or transferred any right, claim or interest of any kind in or to the Subordinated Debt;

(d) it will not (i) assign or transfer the Subordinated Debt to any assignee unless such other assignee acknowledges in writing to the Lenders that such interests remain subject to this Agreement or (ii) subordinate or encumber any right, claim or interest of any kind in or to the Subordinated Debt;

(e) it has full power and legal capacity to execute and deliver this Agreement to the Lenders and this Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms; and

(f) without the prior written consent of the Lenders, it shall not amend, modify, restate or supplement any of the Subordinating Creditor Loan Documents in any manner which might terminate or impair the subordination of the Subordinated Debt.

**7. Exercise of the Lenders' Rights.**

(a) The Subordinating Creditor agrees that the Lenders may from time to time, in its sole discretion:

(i) increase the principal amount of the indebtedness under the Senior Debt;

(ii) renew, extend or otherwise modify in any manner (A) the rate of interest on the Senior Debt, (B) the time and/or terms of payment of the Senior Debt or (C) any condition, term or provision of the Senior Debt; and

(iii) lend additional monies, extend additional credit and make other financial accommodations to or for the account of Dynavax, whether under the Senior Debt or otherwise;

in each case, without necessity of notice to or consent from the Subordinating Creditor, and without impairing any of the Lenders' rights under this Agreement or affecting the Subordinating Creditor's undertakings and obligations under this Agreement. The Subordinating Creditor acknowledges that the Lenders have not made any warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Senior Loan Agreements, or the collectibility of the Senior Debt, and that the priorities provided in this Agreement shall not be affected or impaired in any manner whatsoever, including, without limitation, on account of the invalidity, irregularity or unenforceability of all or any part of the Senior Loan Agreements.

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(b) So long as any Senior Debt remains unpaid or outstanding or the Lenders have any commitments to extend further financing under the Loan Agreement, the Lenders shall have the exclusive right (whether exercised before or after the occurrence of an Event of Bankruptcy), without the consent of the Subordinating Creditor:

(i) to enforce all rights and privileges of the Lenders under the Loan Agreement (including, without limitation, all consent and approval rights), and to exercise the Lenders' power to act as attorney-in-fact of Dynavax and/or for purposes of carrying out the terms of the Senior Debt; and

(ii) to take any and all appropriate action, and to execute any and all documents and instruments which may be necessary or desirable, to accomplish the purposes of this Agreement.

In exercising the rights and privileges described above, the Lenders shall have sole control over the timing, circumstances and manner of exercising such rights and privileges.

8. **Waiver of Subrogation Rights.** The Subordinating Creditor waives any and all rights to be subrogated to the rights of the Lenders with respect to any of the Senior Debt, until the Senior Debt is fully and finally' paid in cash and satisfied and all commitments to extend further financing to Dynavax have been terminated.

9. **Miscellaneous.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GNEREAL OBLIGATION LAW. This Agreement contains the entire agreement between the Subordinating Creditor and the Lenders with respect to the Senior Debt and the Subordinated Debt and may be modified only by a writing signed by the Subordinating Creditor and the Lenders.

(b) The Lenders' failure to exercise any right hereunder shall not be construed as a waiver of the Lenders' right to exercise the same or any other right at any other time and from time to time thereafter, and such rights shall be cumulative and not exclusive.

(c) The knowledge by the Lenders of any breach or other non-observance by the Subordinating Creditor of the terms of this Agreement shall not constitute a waiver thereof, or of any obligations to be performed by the Subordinating Creditor.

(d) In the event of any conflict between any term of this Agreement and any of the Subordinating Creditor Loan Documents, the provisions of this Agreement shall govern and control. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

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(e) This Agreement shall continue in full force and effect until the Senior Debt is fully and finally paid in cash and satisfied and all commitments of the Lenders to extend further financing to Dynavax have been terminated, and shall be binding upon the Subordinating Creditor and its successors and assigns, including, without limitation, any future holder of all or any part of the Subordinated Debt, and shall inure to the benefit of the Lenders and its successors and assigns, including, without limitation, any future holder of all or any part of the Senior Debt, it being expressly acknowledged that the Lenders' rights under this Agreement may be assigned by the Lenders in connection with any assignment or transfer of all or any portion of Senior Debt and that each subsequent holder of any portion of Senior Debt shall be equally and ratably entitled to the benefits of this Agreement.

(f) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof, and all of which together shall be deemed to be a single agreement.

(g) All notices and other communications hereunder shall be in writing, and shall be deemed to have been duly made when delivered in person or sent by same day or overnight carrier, or when deposited in the United States first class or registered or certified mail return receipt requested, postage prepaid. Notices shall be sent:

If to the Subordinating Creditor:

{            }  
{            }  
{            }  
{            }

If to the Lenders:

{            }  
{            }  
{            }  
{            }

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IN WITNESS WHEREOF, the Lenders and the Subordinating Creditor have executed this Agreement as of the date first written above.

**DEERFIELD PRIVATE DESIGN FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:  
DEERFIELD PRIVATE DESIGN INTERNATIONAL,  
L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEERFIELD SPECIAL SITUATIONS FUND  
INTERNATIONAL LIMITED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:  
DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

{ \_\_\_\_\_ }

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

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ACKNOWLEDGMENT OF DYNVAVAX

The undersigned acknowledges receipt of a copy of the foregoing Subordination Agreement and consent to all of the terms and conditions thereof.

DYNVAVAX TECHNOLOGIES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
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**Rule 13a-14(a) Certification of Chief Executive Officer**

## CERTIFICATIONS

I, Dino Dina, M.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
  - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter that has materially affected, or is reasonably like to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of registrant’s board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 6, 2007

By: /s/ DINO DINA, M.D.

Dino Dina, M.D.

President, Chief Executive Officer and Director  
(Principal Executive Officer)

**Rule 13a-14(a) Certification of Chief Financial Officer**

## CERTIFICATIONS

I, Deborah A. Smeltzer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this quarterly report based on such evaluation; and
  - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter that has materially affected, or is reasonably like to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of registrant’s board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 6, 2007

By: /s/ DEBORAH A. SMELTZER

Deborah A. Smeltzer

Vice President, Operations and Chief Financial Officer  
(Principal Financial Officer)

**Certification Pursuant to Section 1350 of Chapter 63  
of Title 18 of the United States Code**

I, Dino Dina, M.D., hereby certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, in my capacity as an officer of Dynavax Technologies Corporation (the "Company"), that, to the best of my knowledge:

- (i) The Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and
- (ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2007

By: /s/ DINO DINA, M.D.

Dino Dina, M.D.

President, Chief Executive Officer and Director

(Principal Executive Officer)

A signed original of this written statement required by Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002 (18 U.S.C. § 1350, as adopted) has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission ("SEC") or its staff upon request. This certification "accompanies" the Form 10-Q to which it relates, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

**Certification Pursuant to Section 1350 of Chapter 63  
of Title 18 of the United States Code**

I, Deborah A. Smeltzer, hereby certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, in my capacity as an officer of Dynavax Technologies Corporation (the "Company"), that, to the best of my knowledge:

- (i) The Quarterly Report of the Company on Form 10-Q for the period ended September 30, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and
- (ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 6, 2007

By: /s/ DEBORAH A. SMELTZER  
Deborah A. Smeltzer  
Vice President, Operations and Chief Financial Officer  
(Principal Financial Officer)

A signed original of this written statement required by Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002 (18 U.S.C. § 1350, as adopted) has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission ("SEC") or its staff upon request. This certification "accompanies" the Form 10-Q to which it relates, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.