



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

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**FORM 10-Q**

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

For the quarterly period ended March 30, 2002

OR

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

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

Commission File Number: 0-4829-03

**Nabi Biopharmaceuticals**

(Exact name of registrant as specified in its charter)

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

**59-1212264**  
(I.R.S. Employer Identification No.)

**5800 Park of Commerce Boulevard N.W., Boca Raton, FL 33487**  
(Address of principal executive offices, including zip code)

**(561) 989-5800**  
(Registrant's telephone number, including area code)

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 twelve 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

The number of shares outstanding of registrant's common stock at April 27, 2002 was 38,619,950 shares.

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Nabi Biopharmaceuticals

INDEX

	<u>Page No.</u>
<b>PART I. FINANCIAL INFORMATION</b>	
<b>Item 1. Financial Statements</b>	3
- Consolidated Balance Sheets, March 30, 2002 and December 29, 2001	3
- Consolidated Statements of Operations for the Three Months Ended March 30, 2002 and March 31, 2001	4
- Consolidated Statements of Cash Flows for the Three Months Ended March 30, 2002 and March 31, 2001	5
- Notes to Consolidated Financial Statements	6
<b>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</b>	9
<b>Item 3. Quantitative and Qualitative Disclosures About Market Risk</b>	12
<b>PART II. OTHER INFORMATION</b>	
<b>Item 5. Other Events</b>	14
<b>Item 6. Exhibits and Reports on Form 8-K</b>	14
Signatures	15

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

**Nabi Biopharmaceuticals**  
**CONSOLIDATED BALANCE SHEETS**

(Amounts in Thousands, Except Per Share Data)	(UNAUDITED) March 30, 2002	December 29, 2001
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 126,117	\$ 131,192
Trade accounts receivable, net	26,870	36,039
Inventories, net	20,541	18,138
Prepaid expenses and other current assets	5,774	7,694
<b>Total current assets</b>	179,302	193,063
<b>Property and equipment, net</b>	106,709	107,866
<b>Other assets:</b>		
Intangible assets, net	7,115	6,859
Other, net	1,997	2,521
<b>Total assets</b>	\$295,123	\$310,309
<b>Liabilities and stockholders' equity</b>		
<b>Current liabilities:</b>		
Trade accounts payable	\$ 18,869	\$ 20,654
Accrued expenses	11,443	23,759
Notes payable	78,500	—
<b>Total current liabilities</b>	108,812	44,413
<b>Notes payable</b>	—	78,500
<b>Other liabilities</b>	166	190
<b>Total liabilities</b>	108,978	123,103
<b>Stockholders' equity:</b>		
Convertible preferred stock, par value \$.10 per share: 5,000 shares authorized; no shares outstanding	—	—
Common stock, par value \$.10 per share: 75,000 shares authorized; 38,588 and 38,445 shares issued and outstanding, respectively	3,859	3,845
Capital in excess of par value	159,433	158,687
Treasury stock	(2,137)	(977)
Retained earnings	24,990	25,651
<b>Total stockholders' equity</b>	186,145	187,206
<b>Total liabilities and stockholders' equity</b>	\$295,123	\$310,309

*See accompanying notes to consolidated financial statements*

Nabi Biopharmaceuticals

CONSOLIDATED STATEMENTS OF OPERATIONS

(UNAUDITED)  
For the Three Months Ended

(Amounts in Thousands, Except Per Share Data)	March 30, 2002	March 31, 2001
<b>Sales</b>	\$40,969	\$60,178
<b>Costs and expenses:</b>		
Costs of products sold	25,288	44,177
Royalty expense	1,559	2,364
<b>Gross margin</b>	14,122	13,637
Selling, general and administrative expense	9,183	8,929
Research and development expense	4,412	2,978
Other operating expenses, principally amortization and freight	198	456
<b>Operating income</b>	329	1,274
<b>Interest income</b>	647	6
<b>Interest expense</b>	(1,867)	(534)
<b>Other income (expenses), net</b>	10	(25)
<b>(Loss) income before benefit (provision) for income taxes</b>	(881)	721
<b>Benefit (provision) for income taxes</b>	220	(36)
<b>Net (loss) income</b>	\$ (661)	\$ 685
<b>Basic (loss) earnings per share:</b>	\$ (0.02)	\$ 0.02
<b>Diluted (loss) earnings per share:</b>	\$ (0.02)	\$ 0.02
<b>Basic weighted average shares outstanding</b>	38,523	37,840
<b>Diluted weighted average shares outstanding</b>	38,523	38,687

See accompanying notes to consolidated financial statements

**Nabi Biopharmaceuticals**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(UNAUDITED)  
For the Three Months Ended

(Dollars in Thousands)	March 30, 2002	March 31, 2001
<b>Cash flow from operating activities:</b>		
Net (loss) income	\$ (661)	\$ 685
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	2,577	2,674
Provision for doubtful accounts	4	—
Provision for slow moving or obsolete inventory	(135)	1,617
Write-off of loan origination fees	400	—
Other	13	23
Changes in assets and liabilities:		
Decrease in trade accounts receivable	9,165	8,053
(Increase) decrease in inventories	(2,268)	1,087
Decrease (increase) in prepaid expenses and other assets	1,920	(5)
Increase in other assets	(20)	(9)
Decrease in accounts payable and accrued liabilities	(14,125)	(8,197)
Total adjustments	(2,469)	5,243
<b>Net cash (used) provided by operating activities</b>	<b>(3,130)</b>	<b>5,928</b>
<b>Cash flow from investing activities:</b>		
Capital expenditures	(1,206)	(4,061)
Expenditures for other assets	(326)	(41)
<b>Net cash used by investing activities</b>	<b>(1,532)</b>	<b>(4,102)</b>
<b>Cash flow from financing activities:</b>		
Repayments under line of credit, net	—	(916)
Repayments of term debt	—	(250)
Purchase of treasury stock	(917)	—
Proceeds from exercise of employee stock options	504	56
<b>Net cash used by financing activities</b>	<b>(413)</b>	<b>(1,110)</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(5,075)</b>	<b>716</b>
<b>Cash and cash equivalents at beginning of period</b>	<b>131,192</b>	<b>1,554</b>
<b>Cash and cash equivalents at end of period</b>	<b>\$ 126,117</b>	<b>\$ 2,270</b>

*See accompanying notes to consolidated financial statements*

## Nabi Biopharmaceuticals

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

#### NOTE 1. OVERVIEW

Nabi Biopharmaceuticals (formerly known as “Nabi”) discovers, develops, manufactures and markets products that power the immune system to help people with serious, unmet medical needs. We have a broad product portfolio and significant research capabilities focused on developing and commercializing novel vaccines and antibody-based therapies that prevent and treat infectious, autoimmune and addictive diseases, such as *Staphylococcus aureus* and hepatitis infections, ITP and nicotine addiction. We have four marketed biopharmaceutical products: Nabi-HB™ [Hepatitis B Immune Globulin (Human)] for the prevention of hepatitis B infections, WinRho SDF® [Rho (D) Immune Globulin Intravenous (Human)] for the treatment of acute, chronic and HIV-related immune thrombocytopenia purpura, Autoplex® T [Anti-Inhibitor Coagulant Complex, Heat Treated] and Aloprim™ [(Allopurinol sodium) for injection], and several products in clinical trials. We have a state-of-the-art fractionation facility for our own manufacturing of biopharmaceutical products and for contract manufacturing. Further, we also collect specialty and non-specific antibodies for use in our products as well as to supply pharmaceutical and diagnostic customers for the subsequent production of their products.

The consolidated financial statements include the accounts of Nabi Biopharmaceuticals and its subsidiaries. All significant intercompany accounts and transactions were eliminated during consolidation. These statements should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in our Annual Report on Form 10-K for the year ended December 29, 2001.

In the opinion of management, the unaudited consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which, in the opinion of management, are necessary to present fairly, our consolidated financial position as of March 30, 2002 and the consolidated results of our operations for the three months ended March 30, 2002 and March 31, 2001 and our cash flows for the three months ended March 30, 2002 and March 31, 2001. The interim results of operations are not necessarily indicative of the results that may occur for the fiscal year.

#### NOTE 2. SIGNIFICANT EVENT

On March 15, 2002, by notification to the holders of our 6.5% Convertible Subordinated Notes (the “Notes”) aggregating \$78.5 million, we called the Notes for redemption on April 8, 2002. In conjunction with the notification made to the holders on March 15, 2002, we recorded \$0.4 million for the write-off of loan origination fees. The Notes were redeemed at 100% of the principal balance plus accrued interest through April 8, 2002 for cash. The Notes had a maturity date of February 1, 2003.

#### NOTE 3. INVENTORIES

The components of inventories, stated at the lower of cost or market with cost determined on the first-in first-out (FIFO) method, are as follows:

(Dollars in Thousands)	March 30, 2002	December 29, 2001
Finished goods	\$14,881	\$13,919
Work in process	4,639	3,265
Raw materials	1,021	954
<b>Total</b>	<b>\$20,541</b>	<b>\$18,138</b>

**NOTE 4. EARNINGS PER SHARE**

Basic earnings per share is computed by dividing our net income by the weighted average number of shares outstanding during the period.

When the effects are not anti-dilutive, diluted earnings per share is computed by dividing our net income by the weighted average number of shares outstanding and the impact of all dilutive potential common shares, primarily stock options. The dilutive impact of stock options is determined by applying the "treasury stock" method.

The following table reconciles net (loss) income and shares for the basic and diluted earnings per share computations:

(Amounts in Thousands, Except Per Share Amounts)	For the Three Months Ended					
	March 30, 2002			March 31, 2001		
	Net Loss	Shares	Per Share Amount	Net Income	Shares	Per Share Amount
Basic EPS	\$(661)	38,523	\$(0.02)	\$685	37,840	\$0.02
Effect of dilutive securities:						
Stock options and other dilutive securities	—	—	—	—	847	—
Diluted EPS	\$(661)	38,523	\$(0.02)	\$685	38,687	\$0.02

**NOTE 5. OPERATING SEGMENT INFORMATION**

The antibody products segment sales and operating income include the results of antibody operations that were sold as of September 6, 2001 for the three months ended March 31, 2001. The following table presents information related to our two operating business segments:

(Dollars in Thousands)	For the Three Months Ended	
	March 30, 2002	March 31, 2001
<b>Sales:</b>		
Biopharmaceutical products	\$15,309	\$15,114
Antibody products	25,660	45,064
<b>Total</b>	<b>\$40,969</b>	<b>\$60,178</b>
<b>Operating Income (Loss):</b>		
Biopharmaceutical products	\$ 960	\$ 1,800
Antibody products	(631)	(526)
<b>Total</b>	<b>\$ 329</b>	<b>\$ 1,274</b>



The following table reconciles reportable segment operating income to (loss) income before benefit (provision) for income taxes:

(Dollars in Thousands)	For the Three Months Ended	
	March 30, 2002	March 31, 2001
Reportable segment operating income	\$ 329	\$1,274
Unallocated interest income	647	6
Unallocated interest expense	(1,867)	(534)
Unallocated other income (expenses), net	10	(25)
<b>(Loss) income before benefit (provision) for income taxes</b>	<b>\$ (881)</b>	<b>\$ 721</b>

#### NOTE 6. TREASURY STOCK

On September 19, 2001, our Board of Directors approved the buy back of up to \$5.0 million of our common stock in the open market or in privately negotiated transactions. Repurchases will allow us to have treasury stock available to support our stock option and stock purchase programs. During the first quarter of 2002, we acquired 171,483 shares of Nabi Biopharmaceuticals stock for \$0.9 million under this program. To date we have acquired 345,883 shares of Nabi Biopharmaceuticals stock for a total of \$1.9 million under this buy back program. Repurchased shares have been accounted for as treasury stock.

In a transaction dated March 28, 2002, an officer of the company exercised 60,000 stock options, which were settled by the exchange of 40,107 shares of previously acquired common stock valued at \$0.2 million. The exchanged shares have been accounted for as treasury stock.

#### NOTE 7. INTANGIBLE ASSETS

The components of our intangible assets are as follows:

(Dollars in Thousands)	March 30, 2002	December 29, 2001
Manufacturing right	\$ 5,047	\$ 4,721
Other intangible assets	4,853	4,853
Less accumulated amortization	(2,785)	(2,715)
<b>Total</b>	<b>\$ 7,115</b>	<b>\$ 6,859</b>

In July 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" (SFAS No. 142) which is effective for fiscal periods commencing after December 15, 2001. Under SFAS No. 142, goodwill and indefinite-lived intangible assets are no longer amortized but are reviewed annually (or more frequently if impairment indicators arise) for impairment.

In conjunction with the sale of the majority of our antibody business on September 6, 2001, we disposed of all goodwill reflected on our balance sheet as of that date. As of March 31, 2001, we had goodwill of \$12.3 million net of accumulated amortization of \$6.1 million. A comparison of net income for the three months ended March 30, 2002 and March 31, 2001, adjusted to reflect the application of SFAS No. 142, follows:

(Amounts in Thousands, Except Per Share Data)	For the Three Months Ended	
	March 30, 2002	March 31, 2001
Net (loss) income as reported	\$ (661)	\$ 685
Goodwill amortization	—	182
Adjusted net (loss) income	\$ (661)	\$ 867
Basic (loss) earnings per share:	\$(0.02)	\$0.02
Diluted (loss) earnings per share:	\$(0.02)	\$0.02

We had no indefinite-lived intangible assets as of March 30, 2002, December 29, 2001 or March 31, 2001, respectively.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following is a discussion and analysis of the major factors contributing to our financial condition and results of operations for the three months ended March 30, 2002 and March 31, 2001. The discussion and analysis should be read in conjunction with the Consolidated Financial Statements and Notes thereto. All dollar amounts are expressed in thousands, except per share data.

On March 15, 2002, by notification to the holders of our 6.5% Convertible Subordinated Notes (the "Notes") aggregating \$78.5 million, we called the Notes for redemption on April 8, 2002. In conjunction with the notification made to the holders on March 15, 2002, we recorded \$0.4 million for the write-off of loan origination fees. The Notes were redeemed at 100% of the principal balance plus accrued interest through April 8, 2002 for cash. The Notes had a maturity date of February 1, 2003.

## RESULTS OF OPERATIONS

The antibody products segment sales and operating income include the results of antibody operations that were sold as of September 6, 2001 for the three months ended March 31, 2001. Information concerning our sales by operating segments is set forth in the following tables:

(Dollars in Thousands)	For the Three Months Ended			
	March 30, 2002		March 31, 2001	
<b>Biopharmaceutical products</b>	\$15,309	37.4%	\$15,114	25.1%
<b>Antibody products:</b>				
-Specialty antibodies	7,158	17.5	14,626	24.3
-Non-specific antibodies	18,502	45.1	30,438	50.6
	25,660	62.6	45,064	74.9
<b>Total</b>	\$40,969	100.0%	\$60,178	100.0%

## FOR THE THREE MONTHS ENDED MARCH 30, 2002 AND MARCH 31, 2001

*Sales.* Sales for the first quarter of 2002 were \$41.0 million compared to \$60.2 million for the first quarter of 2001, a decrease of \$19.2 million or 32%.

Biopharmaceutical sales increased in the first quarter of 2002 by approximately 1% from the 2001 first quarter due to higher sales of Nabi-HB™ [Hepatitis B Immune Globulin (Human)], which increased 31% from the first quarter of 2001 levels, and Autoplex® T [Anti-Inhibitor Coagulant Complex, Heat Treated]. These increases were offset by decreased sales of WinRho SDF® [Rho (D) Immune Globulin Intravenous (Human)]. Sales of Nabi-HB in the first quarter of 2002 benefited from decreased inventory levels in our distribution network in the fourth quarter of 2001, as we prepared for the transition to selling product manufactured at our own Boca Raton, Florida manufacturing facility. We have reviewed internally and externally generated end-user or sell through data which shows that Nabi-HB continues to demonstrate end-user increases. Sales of product manufactured in our Boca Raton facility commenced in the first quarter of 2002 with approval from the U.S. Food and Drug Administration ("FDA") of the initial production lots from the facility. Despite increases in sales of Autoplex T, sales of this product continued to be limited by contractual product supply shortfalls from the manufacturer of that product. First quarter 2002 sales of WinRho SDF were limited by high levels of sales for this product in the latter part of 2001 as wholesalers increased their inventory levels in anticipation of price increases after year end.

Total antibody sales for the first quarter of 2002 were \$25.7 million compared to \$45.1 million in the comparable quarter of 2001. This decrease results from the sale of the majority of the antibody business in September 2001.

*Gross margin.* Gross margin for the first quarter of 2002 was \$14.1 million, or 34% of sales, compared to \$13.6 million, or 23% of sales, in the first quarter of 2001. Increased gross profit for the first quarter of 2002 compared to the first quarter of 2001 reflects increased sales of Nabi-HB, our highest gross margin product, and increased sales of Autoplex T. Offsetting the effect of these increased sales were the impact of lower sales of WinRho SDF and excess plant capacity costs of \$0.5 million. In its initial periods of operation, the manufacturing capacity of the Boca Raton facility will not be fully utilized and costs and expenses related to excess manufacturing capacity will be expensed as cost of products sold. As noted, despite increases in sales of Autoplex T, sales of this product continued to be limited by contractual product supply shortfalls from the manufacturer of that product. Gross margin in each of the first quarters of 2002 and 2001 benefited from non-performance penalty payments of \$1.2 million and \$0.9 million, respectively. Royalty expense as a percentage of biopharmaceutical sales was 10% in the first quarter of 2002 compared to 16% in the first quarter of 2001 reflecting decreased sales of WinRho SDF in the first quarter of 2002.

*Selling, general and administrative expense.* Selling, general and administrative expense was \$9.2 million, or 22% of sales, for the first quarter of 2002 compared to \$8.9 million, or 15% of sales, in the first quarter of 2001. Increased selling, general and administrative expense in the first quarter of 2002 reflected increased costs for insurance, consulting and employee benefits. Our selling expense is primarily focused on the biopharmaceutical segment of our business and was not impacted by the sale of the majority of the antibody business in September 2001.

*Research and development expense.* Research and development expense was \$4.4 million, or 11% of sales, for the first quarter of 2002 compared to \$3.0 million, or 5% of sales, in the first quarter of 2001. In the first quarter of 2002, 54% of the research and development expense comprised activity to support development of our Gram-positive infections program including costs to continue the transfer of the manufacturing process for StaphVAX® (*Staphylococcus aureus* Polysaccharide Conjugate Vaccine) to the commercial manufacturer's facility. In addition, increased research and development spending was incurred for the manufacture of Civacir™ [Hepatitis C Immune Globulin (Human)] for use in clinical trials of that product and for the continued development of NicVAX™ (Nicotine Conjugate Vaccine).

*Interest income.* Interest income for the first quarter of 2002 was \$0.6 million compared to \$6.0 thousand for the first quarter of 2001. Increased interest income reflects interest income from the net cash proceeds from the sale of the majority of the antibody collection business in September 2001.

*Interest expense.* Interest expense for the first quarter of 2002 was \$1.9 million, or 5% of sales, compared to \$0.5 million, or 1% of sales, in the first quarter of 2001. Interest expense in the first quarter of 2002 included interest payable on our 6.5% Subordinated Convertible Notes (the "Notes"), amortization of loan origination fees and \$0.4 million related to the write-off of unamortized loan origination fees in conjunction with the redemption of the Notes announced March 15, 2002. Interest expense for the first quarter of 2001 was reduced by the effect of capitalizing interest incurred related to construction of our biopharmaceutical manufacturing facility in Boca Raton, Florida. Since the FDA's approval of our facility to manufacture Nabi-HB in October 2001, we ceased capitalizing interest related to the construction of this facility. Capitalized interest relating to construction of our biopharmaceutical manufacturing facility was approximately \$1.6 million for the quarter ended March 31, 2001.

*Other factors.* The benefit for income taxes was \$0.2 million for the first quarter of 2002 compared to a provision of \$36.0 thousand in the first quarter of 2001. We used a 25% effective tax rate in the first quarter of 2002 which differs from the statutory rate of 35% due to our expectation of realizing a current year tax benefit from the use of research and development tax credits. The 25% effective tax rate for 2002 differs from the 6% effective tax rate for 2001 primarily due to utilization of net operating loss carryforwards during 2001.

## **LIQUIDITY AND CAPITAL RESOURCES**

At March 30, 2002, our current assets exceeded current liabilities by \$70.5 million as compared to a net working capital position of \$148.7 million at December 29, 2001. The decrease in working capital is due to the reclassification of our \$78.5 million 6.5% Subordinated Convertible Notes to current liabilities which will be redeemed on April 8, 2002. Cash and cash equivalents at March 30, 2002 were \$126.1 million compared to \$131.2 million at December 29, 2001. Cash used by operations for the three months ended March 30, 2002 was \$3.1 million compared to \$5.9 million provided from operations for the three months ended March 31, 2001. The primary uses of cash from operations in the first quarter of 2002 were payment of six months of interest on the Notes in February 2002, amounts accrued for payment of management incentives for 2001 and amounts accrued for payments to the contract manufacturer for StaphVAX. In addition, we incurred capital expenditures of \$1.2 million and purchased treasury stock of \$0.9 million. The primary uses of cash during the three months ended March 31, 2001 were \$4.1 million in capital expenditures and the reduction of borrowings under the revolving credit facility and term loan of \$1.2 million.

Our credit agreement provides for a revolving credit facility of up to \$45.0 million subject to certain borrowing base restrictions. At March 30, 2002, we had no borrowings under the revolving credit facility and availability under this credit facility was \$15.0 million. The credit agreement is secured by substantially all of our assets, requires the maintenance of certain financial covenants and prohibits the payment of dividends.

We believe that cash flow from operations and cash and cash equivalents on hand will be sufficient to meet our anticipated cash requirements for at least the next twelve months.

## **SIGNIFICANT ACCOUNTING POLICIES**

### **Property, Plant and Equipment and Depreciation**

We incurred \$90.3 million to construct our biopharmaceutical manufacturing facility in Boca Raton, Florida and received approval to manufacture our own antibody-based therapy, Nabi-HB, at this facility from the FDA in October 2001. In constructing the facility for its intended use, we incurred approximately \$26.8 million in direct costs of acquiring the building, building systems, manufacturing equipment and computer systems. We also incurred a total of \$63.5 million of costs related to validation of the facility to operate in an FDA approved environment and capitalized interest. Costs related to validation and capitalized interest have been allocated to the building, building systems, manufacturing equipment and computer systems. Buildings and building systems are depreciated on a straight-line basis over 39 years and 20 years, respectively, the estimated useful lives of these assets. The specialized manufacturing equipment and computer systems are depreciated using the units-of-production method of depreciation. The units-of-production method of depreciation is based on management's estimate of production levels. Management believes the units-of-production method is appropriate for these specialized assets. Use of the units-of-production method of depreciation may result in significantly different financial results of operation than straight-line depreciation in periods of lower than average or higher than average production levels but is limited to a minimum of 60% of the depreciation that would have been recorded had we used the straight-line method.

### **Intangible Assets**

In 2000 we entered into a contract manufacturing agreement with Dow Biopharmaceutical Contract Manufacturing (formerly Collaborative BioAlliance) ("Dow") to establish commercial manufacturing capability for StaphVAX. The manufacturing process for StaphVAX is being transferred to Dow from our pilot manufacturing plant in Rockville, Maryland. The contract manufacturing agreement requires us to make certain payments to Dow to prepare the Dow facility for the future manufacture of StaphVAX and to ensure that we have access to commercial vaccine manufacturing capacity. These payments are recorded as a Manufacturing Right and included in Intangible Assets. Amortization of the Manufacturing Right will commence when commercial manufacture of StaphVAX commences at Dow. As of March 30, 2002, the Manufacturing Right was \$5.0 million.

## **FORWARD LOOKING STATEMENTS**

The part of this Quarterly Report on Form 10-Q captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" contains certain forward-looking statements, which involve risks and uncertainties. These statements are based on current expectations, estimates and projections about the industries in which we operate, management's beliefs and assumptions made by management. Readers should refer to a discussion under "Factors to be Considered" contained in our Annual Report on Form 10-K for the year ended December 29, 2001 concerning certain factors that could cause our actual results to differ materially from the results anticipated in such forward-looking statements. Said discussion is hereby incorporated by reference into this Quarterly Report.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or "other than trading" instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price or equity price risk. Our primary market risk exposure

is that of interest rate risk on investments, which are subject to interest rates based on market conditions. At March 30, 2002, we had cash and cash equivalents of \$126.1 million on hand.

*Interest rate risk.* Our outstanding revolving credit facility and term loan are sensitive to changes in U.S. interest rates, specifically the U.S. prime lending rate, and expire in September 2002. Outstanding variable rate debt under the revolving credit facility at March 30, 2002 was zero.

At March 30, 2002, we had outstanding debt in the form of convertible subordinated notes in the amount of \$78.5 million, which were due February 1, 2003. On March 15, 2002, by notification to the holders of our 6.5% Convertible Subordinated Notes (the "Notes") aggregating \$78.5 million, we called the Notes for redemption on April 8, 2002. In conjunction with the notification made to the holders on March 15, 2002, we recorded \$0.4 million for the write-off of loan origination fees. The Notes were redeemed at 100% of the principal balance plus accrued interest through April 8, 2002 for cash.

## PART II OTHER INFORMATION

### Item 5. Other Events

At the close of business on March 4, 2002, we changed our name from “Nabi” to “Nabi Biopharmaceuticals.” The name change was effective upon the filing of a Certificate of Ownership and Merger with the Secretary of State of Delaware resolving to merge a wholly owned subsidiary of the Company into the Company for the sole purpose of changing our name.

### Item 6. Exhibits and Reports On Form 8-K

#### (a) Exhibits:

10.49	Change in Control: Executive Compensation Package Agreement dated April 1, 2001 between Thomas H. McLain and Nabi
10.50	Change in Control: Executive Compensation Package Agreement dated April 1, 2001 between Mark L. Smith and Nabi

#### (b) Reports on Form 8-K:

On March 5, 2002, we filed a current report on Form 8-K, reporting under Item 5 thereof, Other Events.

On April 5, 2002, we filed an amended current report on Form 8-K/A, reporting under Item 7, Financial Statements and Exhibits.

**Nabi Biopharmaceuticals**

**SIGNATURES**

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

Date: May 1, 2002

**Nabi Biopharmaceuticals**

By: /s/ Mark L. Smith

---

**Mark L. Smith**  
Senior Vice President, Finance,  
Chief Financial Officer,  
Chief Accounting Officer and Treasurer



NABI

-----  
5800 PARK OF COMMERCE BOULEVARD, N.W.  
BOCA RATON, FL 33487

EFFECTIVE AS OF APRIL 1, 2001

Mr. Thomas H. McLain  
15975 Laurel Creek Drive  
Delray Beach, FL 33446

Dear Tom:

The Board of Directors of Nabi (the "Corporation") and the Compensation Committee (the "Committee") of the Board have determined that it is in the best interests of the Corporation and its shareholders for the Corporation to agree, as provided herein, to pay you termination compensation in the event you should leave the employ of the Corporation under the circumstances described below.

The Board and the Committee recognize that the continuing possibility of a sale or change of control of the Corporation is unsettling to you and other key employees of the Corporation. Therefore, these arrangements are being made to help assure a continuing dedication by you to your duties to the Corporation by diminishing the inevitable distraction to you from the personal uncertainties and risks created by a pending sale or change of control of the Corporation. In particular, the Board and the Committee believe it important, should the Corporation receive proposals from third parties with respect to its future, to enable you, without being influenced by the uncertainties of your own situation, to assess and advise the Board whether such proposals would be in the best interests of the Corporation and its shareholders and to take such other action regarding such proposals as the Board might determine to be appropriate, including being available to assist in any transition should there be a sale or change of control of the Corporation. The Board and the Committee also wish to demonstrate to executives of the Corporation that the Corporation is concerned with the welfare of its executives and intends to see that loyal executives are treated fairly.

1. In view of the foregoing and in further consideration of your continued employment with the Corporation, the Corporation will pay you as termination compensation a lump sum amount, determined as provided below, in the event that (a) within six months after a Change of Control of the Corporation you terminate your employment with the Corporation for Good Reason, (b) within twelve months after a Change of Control of the Corporation your employment with the Corporation is terminated by the Corporation for any reason, or (c) within the period beginning on the sixth monthly anniversary of a Change of Control of the Corporation and ending on the twelfth monthly anniversary thereof, you terminate your employment with the Corporation for any reason (including, without limitation, death or disability). The lump sum compensation so payable (hereinafter referred to as the "Lump Sum Amount") shall be an amount equal to two times the sum of (a) the higher of (i) your current annual base salary or (ii) your base salary immediately prior to the Change of Control plus (b)

your average Bonuses for the three most recently-ended fiscal years prior to the Change of Control. The Lump Sum Amount shall be paid to you within five days after the date of termination of your employment (hereinafter referred to as the "Termination Date").

2. In addition, in the event your employment with the Corporation terminates under circumstances entitling you to receive the Lump Sum Amount:

(a) Any compensation and other amounts previously deferred by you, together with accrued interest thereon, if any, to which you are entitled, and any accrued vacation pay and accrued paid leave bank amounts not yet paid by the Corporation, shall be paid to you within five days of such termination.

(b) All other amounts accrued or earned by you through the date of such termination and amounts otherwise owing under the Corporation's plans and policies shall be paid to you within five days of such termination.

(c) The Corporation shall maintain in full force and effect, for the continued benefit of you and/or your family for twenty-four months after the Termination Date, all employee welfare benefit plans and any other employee benefit programs or arrangements (including, without limitation, medical and dental insurance plans, disability and life insurance plans and car allowance programs) in which you were entitled to participate immediately prior to the Change of Control, provided that your continued participation is possible under the general terms and provisions of such plans and programs. In the event that your participation in any such plan or program is barred, the Corporation shall arrange to provide you with benefits substantially similar to those which you are entitled to receive under such plans and programs.

(d) All outstanding stock options which you hold shall vest immediately upon a Change of Control and shall be exercisable for (i) the remainder of the option term(s) or (ii) a period of five years from the Termination Date, whichever is shorter.

(e) The Corporation shall pay up to \$25,000 for outplacement services provided to you by an organization selected by you.

(f) You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by you as the result of employment by another employer after the Termination Date, or otherwise. The Corporation's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which it may have against you or others.

3. Any termination by you for Good Reason shall be communicated by a written notice given within 120 days of your having actual notice of the events giving rise to a right to terminate for Good Reason and which (i) sets forth in reasonable detail the facts and

circumstances claimed to provide a basis for termination for Good Reason and (ii), if the Termination Date is other than the date of receipt of such notice, specifies the Termination Date (which date shall not be more than 15 days after the giving of such notice). Your failure to set forth in the notice of termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of yours hereunder or preclude you from asserting such fact or circumstance in enforcing your rights hereunder.

4. For purposes of this Agreement:

(a) "Bonus" means bonus or incentive compensation paid or payable by the Corporation to you pursuant to plans which the Corporation now maintains or has maintained including, but not limited to, signing bonuses. If your Bonus for a fiscal year has been pro rated because you were not employed by the Corporation for the entire fiscal year, the pro ration shall be ignored and you shall be deemed to have received the entire Bonus for the year.

(b) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(c) A "Change of Control" shall be deemed to have taken place if (i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Corporation representing 25% or more of the combined voting power of the Corporation's then outstanding securities; (ii) the shareholders of the Corporation shall have approved (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were shareholders of the Corporation immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities or (B) a liquidation or dissolution of the Corporation; or (iii) as the result of a tender offer, exchange offer, merger, consolidation, sale of assets or contested solicitation of proxies or any combination of the foregoing transactions (a "Transaction"), the persons who were directors of the Corporation immediately before the Transaction shall cease to constitute a majority of the Board of Directors of the Corporation or of any parent of or successor to the Corporation immediately after the Transaction occurs.

(d) "Good Reason" means:

(i) The assignment to you of any duties inconsistent in any material adverse respect with your position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as in effect on the date of the Change of Control, or any other action by the Corporation which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Corporation promptly after receipt of notice from you;

(ii) Any reduction of your base salary or the failure by the Corporation to provide you with an incentive compensation program, welfare benefits, retirement benefits and other benefits which in the aggregate are no less favorable than the benefits to which you were entitled prior to the Change of Control;

(iii) The Corporation's requiring you to be based at any office or location more than 15 miles from that location at which you are employed on the date of the Change of Control, except for travel reasonably required in the performance of your responsibilities;

(iv) Any action taken or suffered by the Corporation as of or following the Change of Control (such as, without limitation, transfer or encumbrance of assets or incurring of indebtedness) which materially impairs the ability of the Corporation to make any payments due or which may become due to you under this Agreement; or

(v) any failure by the Corporation to obtain the assumption and agreement to perform this Agreement by a successor as contemplated by Section 10.

5.(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Corporation to you or for your benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then you shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by you of all taxes (including any interest or penalties imposed with respect to such taxes), including any Excise Tax, imposed upon the Gross-Up Payment, you retain an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 5(c), all determinations required to be made under this Section 5, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment, shall be made by Ernst & Young (the "Accounting Firm") which shall provide detailed supporting calculations both to the Corporation and you within 15 business days of the date your employment with the Corporation terminates, or such earlier time as is requested by the Corporation. If the Accounting Firm determines that no Excise Tax is payable to you, it shall furnish you with an opinion that you have substantial authority not to report any Excise Tax on your federal income tax return. Any determination by the Accounting Firm shall be binding upon the Corporation and you. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Corporation should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Corporation exhausts its remedies

pursuant to Section 5(c) and you thereafter are required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Corporation to you or for your benefit.

(c) You shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after you know of such claim and shall apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid. You shall not pay such claim prior to the expiration of the thirty-day period following the date on which you give such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Corporation notifies you in writing prior to the expiration of such period that it desires to contest such claim, you shall:

(i) give the Corporation any information reasonably requested by the Corporation relating to such a claim,

(ii) take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with regard to such claim by an attorney reasonably selected by the Corporation,

(iii) cooperate with the Corporation in good faith in order effectively to contest such claim, and

(iv) permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold you harmless, on an after-tax basis, for an Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation of the foregoing provisions of this Section 5(c), the Corporation shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct you to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and you agree to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; provided, however, that if the Corporation directs you to pay such claim and sue for a refund, the Corporation shall advance the amount of such payment to you, on an interest-free basis and shall indemnify and hold you harmless, on an after-tax basis, from any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations related to payment of taxes for your taxable year with respect to which such contested amount is claimed to be due

is limited solely to such contested amount. Furthermore, the Corporation's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and you shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), you become entitled to receive any refund with respect to such claim, you shall (subject to the Corporation's complying with the requirements of Section 5(c)) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), a determination is made that you shall not be entitled to any refund with respect to such claim and the Corporation does not notify you in writing of its intent to contest such denial of refund prior to the expiration of thirty days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

6. Anything in this Agreement to the contrary notwithstanding, if your employment with the Corporation is terminated prior to the date on which a Change of Control occurs, and it is reasonably demonstrated by you that such termination (a) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (b) otherwise arose in connection with or in anticipation of a Change of Control, then for all purposes of this Agreement, a Change of Control shall be deemed to have occurred the date immediately prior to the date of such termination.

7. This Agreement shall be binding upon and inure to the benefit of you, your estate and the Corporation and any successor or assign of the Corporation, but neither this Agreement nor any rights arising hereunder may be assigned or pledged by you. If you should die while any amount would still be payable to you hereunder if you had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee, or other designee or, if there be no such designee, to your estate.

8. For purposes of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed, in your case, to the address set forth on the first page of this Agreement and, in the Corporation's case, to the address of its principal office (all notices to the Corporation to be directed to the attention of the President of the Corporation with a copy to the Secretary of the Corporation) or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

9. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by you and such officer as may be specifically designated by the Board of Directors of the Corporation. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with,

any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the time or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Florida without regard to principles of conflicts of laws.

10. The Corporation will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Corporation to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform it if no such succession had taken place. As used in this Agreement, "Corporation" shall mean the Corporation as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. Nothing in this Agreement shall prevent or limit your continuing or future participation in any benefit, bonus, incentive or other plan or program provided by the Corporation and for which you may qualify, nor shall anything herein limit or otherwise prejudice such rights as you may have under any other agreements with the Corporation. Amounts which are vested benefits or which you are otherwise entitled to receive under any plan or program of the Corporation at or subsequent to any Change of Control shall be payable in accordance with such plan or program. To the extent the terms of any other agreements you may have with the Corporation are inconsistent with this Agreement, the terms of this Agreement shall control.

12. If you assert any claim in any contest (whether initiated by you or by the Corporation) as to the validity, enforceability or interpretation of any provision of this Agreement, the Corporation shall pay your legal expenses (or cause such expenses to be paid), including, without limitation, your reasonable attorneys' fees, on a quarterly basis, upon presentation of proof of such expenses in a form reasonably acceptable to the Corporation, provided that you shall reimburse the Corporation for such amounts, plus simple interest thereon at the 90-day United States Treasury Bill rate as in effect from time to time, compounded annually, if a court of competent jurisdiction shall find that you did not have a good faith and reasonable basis to believe that you would prevail as to at least one material issue presented to such court.

13. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

If you are in agreement with the foregoing, please so indicate by signing and returning to the Corporation the enclosed copy of this letter, whereupon this letter shall constitute a binding agreement under seal between you and the Corporation.

Very truly yours,

NABI

By /s/ DAVID J. GURY

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Name: David J. Gury  
Title: Chairman, President and  
Chief Executive Officer

Agreed:

/s/ THOMAS H. McLAIN

-----  
Name: Thomas H. McLain



NABI

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5800 PARK OF COMMERCE BOULEVARD, N.W.  
BOCA RATON, FL 33487

EFFECTIVE AS OF APRIL 1, 2001

Mr. Mark L. Smith  
21839 Marigot Drive  
Boca Raton, FL 33428

Dear Mark:

The Board of Directors of Nabi (the "Corporation") and the Compensation Committee (the "Committee") of the Board have determined that it is in the best interests of the Corporation and its shareholders for the Corporation to agree, as provided herein, to pay you termination compensation in the event you should leave the employ of the Corporation under the circumstances described below.

The Board and the Committee recognize that the continuing possibility of a sale or change of control of the Corporation is unsettling to you and other key employees of the Corporation. Therefore, these arrangements are being made to help assure a continuing dedication by you to your duties to the Corporation by diminishing the inevitable distraction to you from the personal uncertainties and risks created by a pending sale or change of control of the Corporation. In particular, the Board and the Committee believe it important, should the Corporation receive proposals from third parties with respect to its future, to enable you, without being influenced by the uncertainties of your own situation, to assess and advise the Board whether such proposals would be in the best interests of the Corporation and its shareholders and to take such other action regarding such proposals as the Board might determine to be appropriate, including being available to assist in any transition should there be a sale or change of control of the Corporation. The Board and the Committee also wish to demonstrate to executives of the Corporation that the Corporation is concerned with the welfare of its executives and intends to see that loyal executives are treated fairly.

1. In view of the foregoing and in further consideration of your continued employment with the Corporation, the Corporation will pay you as termination compensation a lump sum amount, determined as provided below, in the event that (a) within six months after a Change of Control of the Corporation you terminate your employment with the Corporation for Good Reason, (b) within twelve months after a Change of Control of the Corporation your employment with the Corporation is terminated by the Corporation for any reason, or (c) within the period beginning on the sixth monthly anniversary of a Change of Control of the Corporation and ending on the twelfth monthly anniversary thereof, you terminate your employment with the Corporation for any reason (including, without limitation, death or disability). The lump sum compensation so payable (hereinafter referred to as the "Lump Sum Amount") shall be an amount equal to one and one-half times the sum of (a) the higher of (i) your current annual base salary or (ii) your base salary immediately prior to the Change of

Control plus (b) your average Bonuses for the three most recently-ended fiscal years prior to the Change of Control. The Lump Sum Amount shall be paid to you within five days after the date of termination of your employment (hereinafter referred to as the "Termination Date").

2. In addition, in the event your employment with the Corporation terminates under circumstances entitling you to receive the Lump Sum Amount:

(a) Any compensation and other amounts previously deferred by you, together with accrued interest thereon, if any, to which you are entitled, and any accrued vacation pay and accrued paid leave bank amounts not yet paid by the Corporation, shall be paid to you within five days of such termination.

(b) All other amounts accrued or earned by you through the date of such termination and amounts otherwise owing under the Corporation's plans and policies shall be paid to you within five days of such termination.

(c) The Corporation shall maintain in full force and effect, for the continued benefit of you and/or your family for eighteen months after the Termination Date, all employee welfare benefit plans and any other employee benefit programs or arrangements (including, without limitation, medical and dental insurance plans, disability and life insurance plans and car allowance programs) in which you were entitled to participate immediately prior to the Change of Control, provided that your continued participation is possible under the general terms and provisions of such plans and programs. In the event that your participation in any such plan or program is barred, the Corporation shall arrange to provide you with benefits substantially similar to those which you are entitled to receive under such plans and programs.

(d) All outstanding stock options which you hold shall vest immediately upon a Change of Control and shall be exercisable for (i) the remainder of the option term(s) or (ii) a period of five years from the Termination Date, whichever is shorter.

(e) The Corporation shall pay up to \$25,000 for outplacement services provided to you by an organization selected by you.

(f) You shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by you as the result of employment by another employer after the Termination Date, or otherwise. The Corporation's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which it may have against you or others.

3. Any termination by you for Good Reason shall be communicated by a written notice given within 120 days of your having actual notice of the events giving rise to a right to terminate for Good Reason and which (i) sets forth in reasonable detail the facts and

circumstances claimed to provide a basis for termination for Good Reason and (ii), if the Termination Date is other than the date of receipt of such notice, specifies the Termination Date (which date shall not be more than 15 days after the giving of such notice). Your failure to set forth in the notice of termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of yours hereunder or preclude you from asserting such fact or circumstance in enforcing your rights hereunder.

4. For purposes of this Agreement:

(a) "Bonus" means bonus or incentive compensation paid or payable by the Corporation to you pursuant to plans which the Corporation now maintains or has maintained including, but not limited to, signing bonuses. If your Bonus for a fiscal year has been pro rated because you were not employed by the Corporation for the entire fiscal year, the pro ration shall be ignored and you shall be deemed to have received the entire Bonus for the year.

(b) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(c) A "Change of Control" shall be deemed to have taken place if (i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Corporation representing 25% or more of the combined voting power of the Corporation's then outstanding securities; (ii) the shareholders of the Corporation shall have approved (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were shareholders of the Corporation immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities or (B) a liquidation or dissolution of the Corporation; or (iii) as the result of a tender offer, exchange offer, merger, consolidation, sale of assets or contested solicitation of proxies or any combination of the foregoing transactions (a "Transaction"), the persons who were directors of the Corporation immediately before the Transaction shall cease to constitute a majority of the Board of Directors of the Corporation or of any parent of or successor to the Corporation immediately after the Transaction occurs.

(d) "Good Reason" means:

(i) The assignment to you of any duties inconsistent in any material adverse respect with your position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as in effect on the date of the Change of Control, or any other action by the Corporation which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Corporation promptly after receipt of notice from you;

(ii) Any reduction of your base salary or the failure by the Corporation to provide you with an incentive compensation program, welfare benefits, retirement benefits and other benefits which in the aggregate are no less favorable than the benefits to which you were entitled prior to the Change of Control;

(iii) The Corporation's requiring you to be based at any office or location more than 15 miles from that location at which you are employed on the date of the Change of Control, except for travel reasonably required in the performance of your responsibilities;

(iv) Any action taken or suffered by the Corporation as of or following the Change of Control (such as, without limitation, transfer or encumbrance of assets or incurring of indebtedness) which materially impairs the ability of the Corporation to make any payments due or which may become due to you under this Agreement; or

(v) any failure by the Corporation to obtain the assumption and agreement to perform this Agreement by a successor as contemplated by Section 10.

5.(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Corporation to you or for your benefit, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then you shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by you of all taxes (including any interest or penalties imposed with respect to such taxes), including any Excise Tax, imposed upon the Gross-Up Payment, you retain an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 5(c), all determinations required to be made under this Section 5, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment, shall be made by Ernst & Young (the "Accounting Firm") which shall provide detailed supporting calculations both to the Corporation and you within 15 business days of the date your employment with the Corporation terminates, or such earlier time as is requested by the Corporation. If the Accounting Firm determines that no Excise Tax is payable to you, it shall furnish you with an opinion that you have substantial authority not to report any Excise Tax on your federal income tax return. Any determination by the Accounting Firm shall be binding upon the Corporation and you. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Corporation should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Corporation exhausts its remedies

pursuant to Section 5(c) and you thereafter are required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Corporation to you or for your benefit.

(c) You shall notify the Corporation in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Corporation of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after you know of such claim and shall apprise the Corporation of the nature of such claim and the date on which such claim is requested to be paid. You shall not pay such claim prior to the expiration of the thirty-day period following the date on which you give such notice to the Corporation (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Corporation notifies you in writing prior to the expiration of such period that it desires to contest such claim, you shall:

(i) give the Corporation any information reasonably requested by the Corporation relating to such a claim,

(ii) take such action in connection with contesting such claim as the Corporation shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with regard to such claim by an attorney reasonably selected by the Corporation,

(iii) cooperate with the Corporation in good faith in order effectively to contest such claim, and

(iv) permit the Corporation to participate in any proceedings relating to such claim;

provided, however, that the Corporation shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold you harmless, on an after-tax basis, for an Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation of the foregoing provisions of this Section 5(c), the Corporation shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct you to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and you agree to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Corporation shall determine; provided, however, that if the Corporation directs you to pay such claim and sue for a refund, the Corporation shall advance the amount of such payment to you, on an interest-free basis and shall indemnify and hold you harmless, on an after-tax basis, from any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations related to payment of taxes for your taxable year with respect to which such contested amount is claimed to be due

is limited solely to such contested amount. Furthermore, the Corporation's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and you shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), you become entitled to receive any refund with respect to such claim, you shall (subject to the Corporation's complying with the requirements of Section 5(c)) promptly pay to the Corporation the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by you of an amount advanced by the Corporation pursuant to Section 5(c), a determination is made that you shall not be entitled to any refund with respect to such claim and the Corporation does not notify you in writing of its intent to contest such denial of refund prior to the expiration of thirty days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

6. Anything in this Agreement to the contrary notwithstanding, if your employment with the Corporation is terminated prior to the date on which a Change of Control occurs, and it is reasonably demonstrated by you that such termination (a) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (b) otherwise arose in connection with or in anticipation of a Change of Control, then for all purposes of this Agreement, a Change of Control shall be deemed to have occurred the date immediately prior to the date of such termination.

7. This Agreement shall be binding upon and inure to the benefit of you, your estate and the Corporation and any successor or assign of the Corporation, but neither this Agreement nor any rights arising hereunder may be assigned or pledged by you. If you should die while any amount would still be payable to you hereunder if you had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee, or other designee or, if there be no such designee, to your estate.

8. For purposes of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed, in your case, to the address set forth on the first page of this Agreement and, in the Corporation's case, to the address of its principal office (all notices to the Corporation to be directed to the attention of the President of the Corporation with a copy to the Secretary of the Corporation) or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

9. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by you and such officer as may be specifically designated by the Board of Directors of the Corporation. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with,

any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the time or at any prior or subsequent time. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Florida without regard to principles of conflicts of laws.

10. The Corporation will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Corporation to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform it if no such succession had taken place. As used in this Agreement, "Corporation" shall mean the Corporation as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. Nothing in this Agreement shall prevent or limit your continuing or future participation in any benefit, bonus, incentive or other plan or program provided by the Corporation and for which you may qualify, nor shall anything herein limit or otherwise prejudice such rights as you may have under any other agreements with the Corporation. Amounts which are vested benefits or which you are otherwise entitled to receive under any plan or program of the Corporation at or subsequent to any Change of Control shall be payable in accordance with such plan or program. To the extent the terms of any other agreements you may have with the Corporation are inconsistent with this Agreement, the terms of this Agreement shall control.

12. If you assert any claim in any contest (whether initiated by you or by the Corporation) as to the validity, enforceability or interpretation of any provision of this Agreement, the Corporation shall pay your legal expenses (or cause such expenses to be paid), including, without limitation, your reasonable attorneys' fees, on a quarterly basis, upon presentation of proof of such expenses in a form reasonably acceptable to the Corporation, provided that you shall reimburse the Corporation for such amounts, plus simple interest thereon at the 90-day United States Treasury Bill rate as in effect from time to time, compounded annually, if a court of competent jurisdiction shall find that you did not have a good faith and reasonable basis to believe that you would prevail as to at least one material issue presented to such court.

13. The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

If you are in agreement with the foregoing, please so indicate by signing and returning to the Corporation the enclosed copy of this letter, whereupon this letter shall constitute a binding agreement under seal between you and the Corporation.

Very truly yours,

NABI

By /s/ THOMAS H. McLAIN

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Name: Thomas H. McLain  
Title: Executive Vice President and  
Chief Operating Officer

Agreed:

/s/ MARK L. SMITH

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Name: Mark L. Smith