MANHATTAN PHARMACEUTICALS INC
Form 424B3
November 26, 2008

Filed Pursuant to Rule 424(b)(3) and 424(c)
Commission File No. 333-150580

Manhattan Pharmaceuticals, Inc.

33,928,571 Shares
Common Stock

This prospectus supplement supplements the prospectus dated October 15, 2008, which relates to the shares of our common stock that may be sold by the selling securityholders named therein.

This prospectus supplement should be read in connection with, and may not be delivered or utilized without, the prospectus dated October 15, 2008 and the prospectus supplement dated November 21, 2008. This prospectus supplement is qualified by reference to the prospectus and the prospectus supplements, except to the extent that the information in this prospectus supplement updates or supersedes the information contained in the prospectus dated October 15, 2008 or the prospectus supplement dated November 21, 2008.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus supplement. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is November 26, 2008

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): November 19, 2008

Manhattan Pharmaceuticals, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-32639**	**36-3898269**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

48 Wall Street, Suite 1110
New York, New York 10005
(Address of principal executive offices) (Zip Code)

(212) 582-3950
(Registrant's telephone number, including area code)

Not applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Manhattan Pharmaceuticals, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Securities Purchase Agreement"), dated as of November 19, 2008, among the Company and the investors set forth on Exhibit A-1 and Exhibit A-2 thereto (the "Investors"). The Securities Purchase Agreement provides for the sale by the Company of up to 500 units (each a "Unit" and collectively, the "Units") with each Unit consisting of (i) a 12% Senior Secured Note Promissory Note in the principal amount of $5,000 (each a "Note", and collectively, the "Notes") and (ii) a warrant to purchase up to 166,667 shares of the Company's common stock ("Common Stock") at an exercise price of $.09 per share which expire on December 31, 2013 (each a "Warrant" and collectively, the "Warrants"); provided, that if 500 Units are sold, the Company may sell up to an additional 200 Units (the "Overallotment"). On November 19, 2008, the Company completed the sale of 207 Units (the "First Closing"). The Company may sell up to an additional 293 Units (493 Units if the Overallotment is exercised) in subsequent closings.

All of the Investors represented that they were "accredited investors," as that term is defined in Rule 501(a) of Regulation D under the Securities Act, and the sale of the Units was made in reliance on exemptions provided by Regulation D and Section 4(2) of the Securities Act of 1933, as amended.

In connection with the Securities Purchase Agreement, the Company, the placement agent acting in connection with the private placement (the "Placement Agent") and the Investors entered into a Registration Rights Agreement, dated as of November 19, 2008, and the Company agreed to file a registration statement to register the resale of the shares of Common Stock issuable upon exercise of the Warrants (the "Warrant Shares"), within 20 days of the final closing date and to cause the registration statement to be declared effective within 90 days (or 120 days upon full review by the SEC).

To secure its obligations under the Notes, at the First Closing the Company also entered into a Security Agreement with the Investors (the "Security Agreement") and a Default Agreement with the Investors (the "Default Agreement"). The Security Agreement provides that the Notes will be secured by a pledge of the Company's assets other than (i) its interest in the Hedrin joint venture, including, without limitation, its interest in Hedrin Pharmaceuticals K/S and Hedrin Pharmaceuticals General Partner ApS, (ii) the Company's rent deposit for its former office space, (iii) the Company's refund of a prepayment and (iv) the Company's tax refund for the 2007 fiscal year from the State of New York and City of New York. In addition, to provide additional security for its obligations under the Notes, the Company entered into a Default Agreement which provides that upon an event of default under the Notes, the Company shall at the request of the holders of the Notes use its reasonable commercial efforts to either (i) sell a part or all of its interests in the Hedrin joint venture or (ii) transfer all or part of its interest in the Hedrin JV to the holders of the Notes, as necessary, in order to fulfill its obligations under the Notes, to the extent required and to the extent permitted by the applicable Hedrin joint venture agreements.

At the First Closing the Company also entered into (i) Amendment No. 2 to the Employment Agreement with Douglas Abel, its Chief Executive Officer (the "Abel Amendment") and (ii) Amendment No. 1 to the Employment Agreement with Michael McGuinness, its Chief Financial Officer (the "McGuinness Amendment"). The Abel Amendment and the McGuinness Amendment provide for a reduction of up to 1/3 of the salary payable to Messrs. Abel and McGuinness, respectively, until the Company shall have received at least $2,500,000 of gross proceeds from the sale of the Units or other sales of securities or from other revenue received by the Company in the operation of its business or any combination of the foregoing.

In connection with the First Closing, the Company incurred expenses which included, without limitation, commissions to the Placement Agent, legal and accounting fees, and other miscellaneous expenses, of approximately $245,000. In addition, the Company issued a warrant to purchase 5,175,010 shares of Common Stock at an exercise price of $.09 per share to the Placement Agent (the "Placement Agent Warrant") as additional compensation for its services. Further, the Company granted the Placement Agent the right to nominate a member of the Board of Directors of the Company and such director shall receive all compensation and benefits provided to the other directors of the Company. Additionally, upon such director's appointment to the Board of Directors he shall be issued a warrant to purchase 1,000,000 shares of Common Stock at a per share exercise price equal to the greater of (i) the fair market value on the date of issuance or (ii) $.09.

The Company did not use any form of advertising or general solicitation in connection with the sale of the Units. The Notes, the Warrants and the Warrant Shares are non-transferable in the absence of an effective registration statement under the Act, or an available exemption therefrom, and all certificates are imprinted with a restrictive legend to that effect.

The description of the private placement described in this Current Report on Form 8-K does not purport to be complete and is qualified in its entirety by reference to the Securities Purchase Agreement filed as Exhibit 10.1 hereto, the Registration Rights Agreement filed as Exhibit 10.2 hereto, the Security Agreement filed as Exhibit 10.3 hereto, the Default Agreement filed as Exhibit 10.4 hereto, the form of Note filed as Exhibit 10.5 hereto, the form of Warrant filed as Exhibit 10.6 hereto, the Abel Amendment filed as Exhibit 10.7 hereto, the McGuinness Amendment filed as Exhibit 10.8 hereto and the form of Placement Agent Warrant files as Exhibit 10.9 (collectively, the "Transaction Documents"), all of which are incorporated herein by reference. The forms of the Transaction Documents have been included to provide investors and security holders with information regarding their terms. They are not intended to provide any other factual information about the Company. The Transaction Documents contain certain representations and warranties, as well as indemnification with respect to a breach of such representations or warranties. Investors and security holders should not rely on the representations and warranties as characterizations of the actual state of facts because they were made only as of the respective dates of the Transaction Documents. In addition, information concerning the subject matter of the representations and warranties may change after the respective dates of the Transaction Documents, and such subsequent information may not be fully reflected in the Company's public disclosures. A copy of issued by the Company in connection with the private placement is filed as Exhibit 99.1 hereto.

Forward Looking Statements

This Current Report on Form 8-K contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements typically are identified by use of terms such as "may," "will," "should," "plan," "expect," "anticipate," "estimate" and similar words, although some forward-looking statements are expressed differently. Forward-looking statements represent our management's judgment regarding future events. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable, the Company can give no assurance that such expectations will prove to be correct. All statements other than statements of historical fact included in this Current Report on Form 8-K are forward-looking statements. The Company cannot guarantee the accuracy of the forward-looking statements, and you should be aware that the Company's actual results could differ materially from those contained in the forward-looking statements due to a number of factors, including the statements under "Risk Factors" contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 filed with the Securities and Exchange Commission.

Item 3.02 Unregistered Sales of Equity Securities

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference in response to this Item 3.02.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference in response to this Item 5.02.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

10.1 Securities Purchase Agreement, dated November 19, 2008, by and among the Company and the investors listed on Exhibit A-1 and A-2 thereto.

10.2 Registration Rights Agreement, dated November 19, 2008, by and among the Company, the Placement Agent and the investors listed on Exhibit A thereto.

10.3 Security Agreement, dated November 19, 2008, by and among the Company and each person named on Exhibit A-1 and A-2 of the Securities Purchase Agreement.

10.4 Default Agreement, dated November 19, 2008, by and among the Company and the persons and entities listed on Schedule A thereto.

10.5 Form of 12% Senior Secured Promissory Note

10.6 Form of Warrant

10.7 Amendment No. 2 to the Employment Agreement between the Company and Douglas Abel, dated November 19, 2008.

10.8 Amendment No. 1 to the Employment Agreement between the Company and Michael McGuinness, dated November 19, 2008.

10.9 Form of Placement Agent Warrant

99.1 Press release issued by the Company on November 25, 2008

SIGNATURE

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 hereunto duly authorized.

MANHATTAN PHARMACEUTICALS, INC.

Date: November 25, 2008

By: /s/ Michael G. McGuinness
Michael G. McGuinness
Chief Financial Officer

Exhibit 10.1

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of November 19, 2008, by and between Manhattan Pharmaceuticals, Inc., a Delaware corporation (the "**Company**") and the investors (each, an "**Investor**" and, collectively, the "**Investors**"), set forth on Exhibit A-1 and Exhibit A-2.

A. **WHEREAS,** the Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, upon the terms and conditions stated in this Agreement, a minimum of 200 units (the "**Minimum Amount**") and a maximum of 500 units (the "**Maximum Amount**"); provided, however, there shall be an overallotment option to purchase an additional 200 units (the "**Overallotment Amount**"), at a purchase price of $5,000 per unit (each, a "**Unit**"), each Unit consisting of:

(a) a twelve (12%) percent senior secured promissory note (each a "**Note,**" and, collectively, the "**Notes**") of the Company in the aggregate principal amount of $5,000 in the form annexed hereto as Exhibit B; and

(b) a warrant (each a "**Warrant**," and, collectively, the "**Warrants**") to purchase up to 166,667 shares (the "**Warrant Shares**") of the Company's common stock, par value $0.001 per share (together with any securities into which such shares may be reclassified, the "**Common Stock**"), at an exercise price of $0.09 per share (subject to adjustment as set forth in the Warrants), which Warrants shall be substantially in the form attached hereto as Exhibit C, upon the terms and conditions set forth in this Agreement;

B. **WHEREAS**, the Units, Notes, Warrants and Warrant Shares issued pursuant to this Agreement are collectively referred to herein as the "**Securities,**" and

C. **WHEREAS,** contemporaneous with the sale of the Units, the parties hereto will execute and deliver a Registration Rights Agreement, substantially in the form attached hereto as Exhibit D (the "**Registration Rights Agreement**"), pursuant to which the Company will agree to provide certain registration rights with respect to the Warrant Shares under the Securities Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

NOW, THEREFORE, in consideration of the mutual terms, conditions and other agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree to the sale and purchase of the Units as set forth herein.

1. DEFINITIONS

For purposes of this Agreement, the terms set forth below shall have the corresponding meanings provided below.

(a) "**Affiliate**" means, with respect to any specified Person:

(i) if such Person is an individual, the spouse of that Person and, if deceased or disabled, his heirs, executors, or legal representatives, if applicable, or any trusts for the benefit of such individual or such individual's spouse and/or lineal descendants, or

(ii) otherwise, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified. As used in this definition, "control" shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of a Person, whether through the ownership of voting securities or by contract or other written instrument.

(b) "**Business Day**" means any day on which banks located in New York City are not required or authorized by law to remain closed.

(c) "**Closing**" and "**Closing Date**" as defined in Section 2.2(c).

(d) "**Common Stock**" as defined in the recitals above.

(e) "**Company Financial Statements**" as defined in Section 6.5 hereto.

(f) "**Company's knowledge**" means the information and/or other items that the Executives of the Company have actual knowledge of after due inquiry.

(g) "**Default Agreement**" means the Default Agreement, dated the date of the First Closing, by and among each Investor and the Company, the form of which is annexed hereto has Exhibit E.

(h) "**Deposit Account Agreement**" means the Deposit Agreement, dated October 21, 2008, by and among the Company, the Placement Agent and the Escrow Agent.

(i) "**ERISA**" as defined in Section 6.18 hereto.

(j) "**Environmental Laws**" as defined in Section 6.12 hereto.

(k) "**Escrow Agent**" means Signature Bank, a New York commercial bank.

(l) "**Escrow Agreement**" means the Amended and Restated Escrow Deposit Agreement, dated October 16, 2008, by and among the Company, the Placement Agent and the Escrow Agent.

(m) "**ExchangeAct**" means the Securities Exchange Act of 1934, as amended.

(n) "**Executives**" means Douglas Abel and Michael McGuinness.

(o) "**Executive Agreements**" as defined in Section 8.5.

(p) "**First Closing**" and "**First Closing Date**" as defined in Section 2.2(a).

(q) "**Intellectual Property**" means the Company's patents, patent applications, provisional patents, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, formulae, mask works, customer lists, internet domain names, know-how and other intellectual property, including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems, procedures or registrations or applications relating to the same.

(r) "**Indebtedness**" of any Person means all obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under capital leases, and (v) in the nature of guarantees of the obligations described in clauses (i) through (iv) above of any other Person.

(s) "**Investor**" means any person who purchases Units in the Offering pursuant to this Agreement.

(t) "**Lien(s)**" means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, lien, title claim, assignment, encumbrance, adverse claim, contract of sale, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes but is not limited to mechanics', materialmens', warehousemens' and carriers' liens and other similar encumbrances. For the purposes hereof, a Person shall be deemed to be the owner of Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

(u) "**Material Adverse Effect**" means a material adverse effect on, and a "**Material Adverse Change**" means a material adverse change in:

(i) the assets, liabilities, results of operations, condition (financial or otherwise), business, or prospects of the Company taken as a whole; or

(ii) the ability of the Company to perform its obligations under the Transaction Documents,

but, to the extent applicable, shall exclude any circumstance, change or effect to the extent resulting or arising from: (i) any change in general economic conditions in the industries or markets in which the Company and its Subsidiaries operates so long as the Company and its Subsidiaries are not disproportionately (in a material manner) affected by such changes; (ii) national or international political conditions, including any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack so long as the Company and its Subsidiaries are not disproportionately (in a material manner) affected by such changes; (iii) changes in United States generally accepted accounting principles, or the interpretation thereof; or (iv) the entry into or announcement of this Agreement, actions contemplated by this Agreement, or the consummation of the transactions contemplated hereby.

(v) "**Maximum Amount**" as defined in the recitals above.

(w) "**Minimum Amount**" as defined in the recitals above.

(x) **"Note(s)"** as defined in the recitals above.

(y) "**OTCBB**" shall mean the Over-the-Counter Bulletin Board system.

(z) "**Overallotment Amount**" as defined in the recitals above.

(aa) "**Offering**" shall mean the offering and sale of the Units pursuant to this Agreement and the Private Placement Memorandum.

(bb) "**Person**" shall mean an individual, entity, corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust or unincorporated organization.

(cc) "**Placement Agent**" shall mean [l].

(dd) "**Private Placement Memorandum**" means the Company's Confidential Private Placement Memorandum, dated October 22, 2008, together with any and all amendments and/or supplements thereto.

(ee) "**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

(ff) "**Public Information Failure**" as defined in Section 6.25 hereto.

(gg) "**Public Information Failure Payments**" as defined in Section 6.25 hereto.

(hh) "**Purchase Price**" shall mean up to $3,500,000 (which amount includes the $1,000,000 Overallotment Amount).

(ii) "**Registration Rights Agreement**" shall have the meaning set forth in the recitals.

(jj) "**Regulation D**" as defined in Section 4.11 hereto.

(kk) "**Rule 144**" as defined in Section 4.10(c) hereto.

(ll) "**SEC**" means the United States Securities and Exchange Commission.

(mm) "**SEC Documents**" as defined in Section 6.5 hereto.

(nn) "**Securities**" as defined in the recitals above.

(oo) **"Securities Act"** means the Securities Act of 1933, as amended.

(pp) **"Security Agreement"** means the Security Agreement by and among each Investor and the Company, the form of which is annexed hereto has Exhibit F.

(qq) "**Subsequent Closing**" and "**Subsequent Closing Date**" as defined in Section 2.2(b).

(rr) **"Subsidiaries"** shall mean any corporation or other entity or organization, whether incorporated or unincorporated, in which the Company owns, directly or indirectly, any controlling equity or other controlling ownership interest or otherwise controls through contract or otherwise.

(ss) "**Transaction Documents**" shall mean this Agreement, the Private Placement Memorandum, the Notes, the Security Agreement, the Default Agreement, the Executive Agreements, the Registration Rights Agreement, the Warrants, the Escrow Agreement and the Deposit Account Agreement.

(tt) "**Transfer**" shall mean any sale, transfer, assignment, conveyance, charge, pledge, mortgage, encumbrance, hypothecation, security interest or other disposition, or to make or effect any of the above.

(uu) "**Warrant Shares**" as defined in the recitals above.

(vv) "**Warrants**" as defined in the recitals above.

2. SALE AND PURCHASE OF UNITS.

2.1 **Subscription for Units by Investors**. Subject to the terms and conditions of this Agreement, on the Closing Date, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to each Investor, the number of Units specified by it on its respective signature page attached hereto in exchange for the Purchase Price.

2.2 **Closings**.

(a) First Closing. Subject to the terms and conditions set forth in this Agreement, the Company shall issue and sell to each Investor listed on Exhibit A-1, and each such Investor shall, severally and not jointly, purchase from the Company on the First Closing Date, such number of Units set forth on the respective signature pages attached hereto, which will be reflected opposite such Investor's name on Exhibit A-1 (the "**First Closing**"). The date of the First Closing is hereinafter referred to as the "**First Closing Date**". Units equal to at least the Minimum Amount are required to be sold at the First Closing within the time period set forth in the Private Placement Memorandum.

(b) Subsequent Closing(s). The Company agrees to issue and sell to each Investor listed on Exhibit A-2 (the Subsequent Closing Schedule of Investors), and each such Investor agrees, severally and not jointly, to purchase from the Company on the date set forth on Exhibit A-2 (each a "**Subsequent Closing Date**") such number of Units set forth on the signature pages attached hereto, which will be reflected opposite such Investor's name on Exhibit A-2 (a "**Subsequent Closing**"). There may be more than one Subsequent Closing; provided, however, that the final Subsequent Closing shall take place within the time periods set forth in the Private Placement Memorandum. The date of any Subsequent Closing is hereinafter referred to as a "**Subsequent Closing Date**").

(c) Closing. The First Closing and any applicable Subsequent Closings are each referred to in this Agreement as a "**Closing**". The First Closing Date and any Subsequent Closing Dates are sometimes referred to herein as a "**Closing Date**". All Closings shall occur within the time periods set forth in the Private Placement Memorandum at the offices of Gusrae, Kaplan, Bruno & Nusbaum PLLC, counsel to the Placement Agent, at 120 Wall Street, 11th Floor, New York, NY 10005 or remotely via the exchange of documents and signatures.

2.3 **Closing Deliveries**. At each Closing, the Company shall deliver to the Investors purchasing Units at such Closing, against delivery by the Investor of the Purchase Price (as provided below), the Notes and the Warrants. At each Closing, each Investor purchasing Units at such Closing shall deliver or cause to be delivered to the Company the Purchase Price set forth in its counterpart signature page annexed hereto by paying United States dollars via bank, certified or personal check which has cleared prior to the applicable Closing or in immediately available funds, by wire transfer to the following Escrow Account, pursuant to the Escrow Agreement:

Acct. Name: Signature Bank as Escrow Agent for Manhattan Pharmaceuticals, Inc.
A B A026013576
Number:
A c c t1501128178
Number:

2.4 **Terms of the Notes.** Each of the Notes shall have the terms and conditions and be in the form attached hereto as Exhibit B. The Company's obligations to the Investors under the Notes shall be secured by the assets of the Company as provided in the Security Agreement and in the Default Agreement. Upon an Event of Default (as defined in the Note), the Investors shall have, in addition to any rights provided hereunder, the rights provided them under the Transaction Documents.

2.5 **Restrictions on Release of Proceeds.** In addition to the other conditions to Closing listed in Section 8 hereof, the release of proceeds from the Escrow Account to the Company shall be subject to the following restrictions:

(i) The proceeds from the sale of the Units to be released to the Company shall be released from the Escrow Account and transferred to the deposit account (the "**Deposit Account**") established by the Deposit Account Agreement. Funds shall be released from the Deposit Account retroactive as of October 1, 2008, in a series of monthly payments (a "**Monthly Payment**") and Closing lump sum payments ("**Lump Sum Payment**") in the amounts set forth above:

Gross Proceeds	Monthly Payment	Aggregate Lump Sum Payment at Closing
$1,000,000 to $1,499,999	$ 106,000	0
$1,500,000 to $1,999,999	$ 113,300	$ 200,000
$2,000,000 to 2,500,000	$ 119,375	$ 225,000
$2,500,000 or more	$ 125,000	Any amount in excess of $1,500,000

(ii) At the First Closing the Company shall receive an amount equal to the Monthly Payment for the month in which such Closing occurs, plus any applicable Lump Sum Payment; provided, however, that if the First Closing shall occur after October 31, 2008 and prior to or on November 30, 2008, the Company shall receive an amount equal to two Monthly Payments, plus any applicable Lump Sum Payment; provided, further, that if the First Closing shall occur after November 30, 2008 and on or prior to December 31, 2008, the Company shall receive an amount equal to three Monthly Payments, plus any applicable Lump Sum Payment and provided, further, that if First Closing after December 31, 2008, the Company shall receive an amount equal to four Monthly Payments, plus any applicable Lump Sum Payment. Following the First Closing, Monthly Payments shall be paid by the Escrow Agent to the Company on the first Business Day of each month and shall be increased, as applicable in accordance with Section 2.5(i). The Escrow Agent shall pay to the Company the applicable Lump Sum Payment at each Closing which results in gross proceeds from the sale of the Units being at least equal to $1,500,000, $2,000,000 or $2,500,000, as the case may be.

2.6 **Use of Proceeds.** The Company hereby covenants and agrees that the proceeds from the sale of Units shall be used as provided for in the Private Placement Memorandum.

3. ACKNOWLEDGEMENTS OF THE INVESTORS.

Each Investor, severally and not jointly, acknowledges that:

3.1 **Resale Restrictions.** None of the Securities have been registered under the Securities Act, or under any state securities or "blue sky" laws of any state of the United States, and, unless so registered, none of the Securities may be offered or sold by the Investor except pursuant to an effective registration statement under the Securities Act, or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in each case only in accordance with applicable state securities laws.

3.2 **Legends on Notes, Warrants and Warrant Shares**. Such Investor understands that the Notes, the Warrants and certificates evidencing the Warrant Shares shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates evidencing such Warrant Shares):

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 HAVE BEEN ACQUIRED FOR INVESTMENT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL, IN A FORM ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR APPLICABLE STATE SECURITIES LAWS OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SAID ACT.

If required by the authorities of any state in connection with the issuance or sale of the Notes, the Warrants or any Warrant Shares, the Securities will also bear any legend required by such state authority.

3.3 **Agreements.** It has received and carefully read the Transaction Documents and Private Placement Memorandum, including the Risk Factors set forth in the Private Placement Memorandum;

3.4 **Books and Records.** The books and records of the Company were available upon reasonable notice for inspection, subject to certain confidentiality restrictions, by the Investor during reasonable business hours at its principal place of business, that all documents, records and books in connection with the sale of the Securities hereunder have been made available for inspection by it and its attorney and/or advisor(s) and that the Investor and/or its advisor has reviewed all such documents, records and books to its full satisfaction and all questions it and/or its advisor may have had been answered to their respective full satisfaction;

3.5 **Independent Advice.** The Investor has been advised to consult the Investor's own legal, tax and other advisors with respect to the merits and risks of an investment in the Securities and with respect to applicable resale restrictions, and it is solely responsible (and neither the Company nor the Placement Agent is in any way, directly and/or indirectly, responsible) for compliance with:

(a) any applicable laws of the jurisdiction in which the Investor is resident in connection with the distribution of the Securities hereunder, and

(b) applicable resale restrictions;

3.6 **No Insurance.** There is no government or other insurance covering any of the Securities.

4. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS OF THE INVESTORS.

Each Investor, severally and not jointly, represents and warrants to the Company solely as to such Investor that:

4.1 **Capacity.** The Investor: (i) if a natural person, represents that the Investor has reached the age of 21 and has full authority, legal capacity and competence to enter into, execute and deliver this Agreement and the Transaction Documents to which the Investor is a party and all other related agreements or certificates and to take all actions required pursuant hereto and thereto and to carry out the provisions hereof and thereof and, (ii) if a corporation, partnership, or limited liability company or partnership, or association, joint stock company, trust, unincorporated organization or other entity, represents that such entity was not formed for the specific purpose of acquiring the Units, such entity is duly organized, validly existing and in good standing under the laws of the state of its organization, such entity has full power and authority to execute and deliver this Agreement, the Transaction Documents to which it is a party and all other related agreements or certificates and to take all actions required pursuant hereto and thereto and to carry out the provisions hereof and thereof and to purchase and hold the Units, the execution and delivery of this Agreement and the Transaction Documents to which it is a Party have been duly authorized by all necessary action; or (iii) if executing this Agreement in a representative or fiduciary capacity, represents that it has full power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a Party in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or limited liability company or partnership, or other entity for whom the Investor is executing this Agreement and the Transaction Documents, and such individual, partnership, ward, trust, estate, corporation, or limited liability company or partnership, or other entity has full right and power to perform pursuant to this Agreement and the Transaction Documents to which it is a Party and make an investment in the Company;

4.2 **No Violation of Corporate Governance Documents.** If the Investor is a corporation or other entity, the entering into of this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby do not and will not result in the violation of any of the terms and provisions of any law applicable to, or the charter or other organizational documents, bylaws or other constating documents of, the Investor or of any agreement, written or oral, to which the Investor may be a party or by which the Investor is or may be bound;

4.3 **Binding Agreement.** The Investor has duly executed and delivered this Agreement and the other Transaction Documents to which it is a party, and this Agreement and the other Transaction Documents to which it is a party constitute a valid and binding agreement of the Investor enforceable against the Investor in accordance with their respective terms, except as such enforceability may be limited by general principals of equity, or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

4.4 **No SEC Review or Approval.** Neither the SEC nor any other securities commission, securities regulator or similar regulatory authority has reviewed or passed on the merits of the Securities or on any of the documents reviewed or executed by the Investor in connection with the sale of the Securities.

4.5 **Purchase Entirely for Own Account**. The Securities are being acquired for such Investor's own account, not as nominee or agent, for investment purposes only and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act, without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws.

4.6 **Not a Broker-Dealer.** Such Investor is neither a registered representative under the Financial Industry Regulatory Authority ("**FINRA**"), a member of FINRA or associated or Affiliated with any member of FINRA, nor a broker-dealer registered with the SEC under the Exchange Act or engaged in a business that would require it to be so registered, nor is it an Affiliate of a such a broker-dealer or any Person engaged in a business that would require it to be registered as a broker-dealer. In the event such Investor is a member of FINRA, or associated or Affiliated with a member of FINRA, such Investor agrees, if requested by FINRA, to sign a lock-up, the form of which shall be satisfactory to FINRA with respect to the Warrants and the Warrant Shares.

4.7 **Not an Underwriter.** Such Investor is not an underwriter of the Common Stock, nor is it an Affiliate of an underwriter of the Common Stock.

4.8 **Investment Experience**. Such Investor acknowledges that the purchase of the Securities is a highly speculative investment and that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial and/or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

4.9 **Disclosure of Information**. Such Investor has had an opportunity to receive, and fully and carefully review, all information related to the Company and the Securities requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement. Such Investor acknowledges that it has received, and fully and carefully reviewed and understands all of the Transaction Documents, including, but not limited to, the Private Placement Memorandum describing, among other items, the Company, its business, its risks, the Securities and the offering of the Securities. Investor acknowledges that it has received, and fully and carefully reviewed and understands, copies of the SEC Documents, either in hard copy or electronically through the SEC's EDGAR system. Such Investor understands that its investment in the Securities involves a high degree of risk. Such Investor's decision to enter into this Agreement and the Registration Rights Agreement has been made based solely on the independent evaluation of the Investor and its representatives. Such Investor has received such accounting, tax and legal advice from Persons other than the Company as it has considered necessary to make an informed investment decision with respect to the acquisition of the Securities.

4.10 **Restricted Securities**. Such Investor understands that except as provided in the Registration Rights Agreement, the sale or re-sale of the Securities has not been and is not being registered under the Securities Act or any applicable state securities laws, and the Securities, as applicable, may not be transferred unless:

(a) they are sold pursuant to an effective registration statement under the Securities Act; or

(b) they are being sold pursuant to a valid exemption from the registration requirements of the Securities Act and, if required by the Company, such Investor shall have delivered to the Company, at the Investor's sole cost and expense, an opinion of counsel that shall be in form, substance and scope customary for opinions of counsel in comparable transactions to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from the registration requirements of the Securities Act, which opinion shall be acceptable to the Company; or

(c) they are sold or transferred to an "affiliate" (as defined in Rule 144, promulgated under the Securities Act (or a successor rule ("**Rule 144**")) of such Investor who agrees to sell or otherwise transfer the Securities only in accordance with this Section 4.10 and who is an accredited investor, or

(d) they are sold pursuant to Rule 144.

Such Investor understands that any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and other than as provided in the Transaction Documents, neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws. Notwithstanding the foregoing or anything else contained herein to the contrary, the Securities may be pledged as collateral in connection with a *bona fide* margin account or other lending arrangement.

4.11 **Accredited Investor.** Such Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the Securities Act ("**Regulation D**").

4.12 **No General Solicitation**. Such Investor did not learn of the investment in the Securities as a result of any public advertising or general solicitation, and is not aware of any public advertisement or general solicitation in respect of the Company or its securities.

4.13 **Brokers and Finders**. No Investor will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company, any Subsidiary or any other Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

4.14 **Prohibited Transactions**. Other than with respect to the transactions contemplated herein, since the earlier to occur of (i) the time that such Investor was first contacted by the Company, or any other Person regarding an investment in the Company and (ii) the thirtieth (30^{th}) day prior to the date hereof, neither the Investor nor any Affiliate of the Investor which (x) had knowledge of the transactions contemplated hereby, (y) has or shares discretion relating to the Investor's investments or trading or information concerning such Investor's investments, including in respect of the Securities, or (z) is subject to the Investor's review or input concerning such Affiliate's investments or trading decisions (collectively, "**Trading Affiliates**") has, directly or indirectly, nor has any Person acting on behalf of, or pursuant to, any understanding with such Investor or Trading Affiliate effected or agreed to effect any transactions in the securities of the Company or involving the Company's securities (a "**Prohibited Transaction**").

4.15 **Residency**. Such Investor is a resident of the jurisdiction set forth in the Investor Questionnaire provided separately.

4.16 **Reliance on Exemptions**. The Investor understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities. All of the information which the Investor has provided to the Company is true, correct and complete as of the date this Agreement is signed, and if there should be any change in such information prior to the Closing, the Investor will immediately provide the Company with such information.

4.17 **Conflicts**. The Investor understands that Affiliates and/or employees of the Placement Agent (i) beneficially own in the aggregate approximately 1,087,920 shares of Common Stock, (ii) will receive the compensation set forth elsewhere herein in connection with the Offering, and (iii) may, but are not obligated to, purchase Securities in the Offering and any and all such Securities purchased shall be counted toward the Minimum Amount and the Maximum Amount.

5. COVENANTS OF THE COMPANY

5.1 Affirmative Covenants.

(a) **Furnishing of Information**. Until the date that any Investor owning Warrant Shares may sell all of them under Rule 144 of the Securities Act (or any successor provision) without restriction, the Company covenants to use its commercially reasonable efforts to (a) timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and (b) make and keep adequate "current public information" (as such term is described in Rule 144) available.

(b) **Rule 144 Sales**. In connection with any proposed sale of Warrant Shares pursuant to Rule 144 (or any successor provision) by the Investor, the Company covenants that it shall take such reasonable action as the Investor may request (including, without limitation, promptly obtaining any required legal opinions from Company counsel necessary to effect the sale of Warrant Shares under Rule 144 and paying all related fees and expenses of such counsel in connection with such opinions), all to the extent required from time to time to enable such Investor to sell Warrant Shares without registration under the Securities Act pursuant to the provisions of Rule 144 under the Securities Act (or any successor provision). The Company further covenants to take such action and to provide such legal opinions within three (3) business days after receipt from such Investor (or its representative) of documentation reasonably required by Company counsel to provide such opinion.

(c) **Filing of Tax Reports**. The Company shall, and shall cause each of its Subsidiaries to prepare and timely file (or obtain extensions in respect thereof and file within the applicable grace period) all tax returns and tax reports required to be filed by each of them in all required jurisdictions after the date hereof pursuant to applicable tax laws.

6. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents, warrants and covenants to the Investors that:

6.1 Organization; Execution, Delivery and Performance.

(a) The Company and each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or organized, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its business as and where now owned, leased, used, operated and conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership or use of property or the nature of the business conducted by it makes such qualification necessary except where the failure to be so qualified or in good standing would not have a Material Adverse Effect.

(b) Subsidiaries. The Company has no Subsidiaries other than those listed in Schedule 6.1(b) hereto. Except as disclosed in Schedule 6.1(b) hereto or in the SEC Documents, the Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any and all Liens and all of the issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive rights of first refusal and other similar rights. The Company has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital stock or other equity securities of its Subsidiaries that are owned by the Company.

(c) (i) The Company has all requisite corporate power and authority to enter into and perform the Transaction Documents and to consummate the transactions contemplated hereby and thereby and to issue the Securities in accordance with the terms hereof and thereof;